



RESOURCE MANAGEMENT AMENDMENT ACT 2009

Fact Sheet 3: Improving Resource Consent Processes

This is one of a series of fact sheets giving an overview of the amendments to improve the Resource Management Act (RMA). This fact sheet outlines the changes to resource consent processes.

WHAT WERE THE ISSUES?

The amendments address concerns about:

- council delays with processing of resource consents, non-compliance with the RMA's timeframes, and a significant increase in the use of section 37 to extend timeframes
- duplication of some processes and information requests, increased costs to all parties, the quality of decision-making, and documenting decisions
- the cost and delay of assessing and justifying decisions not to notify resource consent applications
- the RMA not reflecting reality because only a small number of consents were actually notified.

HOW HAS THE RMA BEEN IMPROVED?

Changes to notification criteria

The new notification provisions are in sections 95 to 95F. There is no longer a presumption that a council must publicly notify a resource consent application unless the proposal meets certain tests (either that the application relates to a controlled activity, or the effects are minor).

Under section 95A the council has discretion whether to publicly notify an application for resource consent.

The application is required to be publicly notified if:

- the council decides under section 95D that the activity will have or is reasonably likely to have adverse effects on the environment that are more than minor, or
- if the applicant requests it, or
- if a rule or national environmental standard requires it.

However, the council must not publicly notify an application if a rule or national environmental standard precludes it and the applicant has not requested it.

Under section 95D the council considers effects on the environment, but must disregard the effects on people who own or occupy land on which the activity will occur, or land adjacent to that land.

Under section 95B, if a council does not publicly notify an application, the council must decide if there are any affected persons or affected order holders (customary rights order holders). Affected persons will get 'limited notification' unless a rule or national environmental standard precludes such notification. However, even in these circumstances affected order holders will get 'limited notification'.

Under section 95E the council must decide that:

- a person is an 'affected person' if adverse effects on them are minor or more than minor (but not less than minor)
- a person is not an 'affected person' if:
 - they have given written approval (and not withdrawn approval) to the application, or
 - it is unreasonable in the circumstances to seek their written approval.



As a result of section 95E a person who has provided written approval to an application (and not withdrawn approval) does not need to be included in serving notice for limited notification.

When considering whether someone is affected, a council can still consider the ‘permitted baseline.’ The permitted baseline now includes a national environmental standard that permits an activity with that effect.

In the case of controlled or restricted discretionary activities, a council must disregard an adverse effect that does not relate to matters controlled by a rule or national environmental standard.

Further information requests and the ability to ‘stop the clock’

Further information

Section 88C clarifies that a council can only ‘stop the clock’ for two further information requests – once before and once after the closing date for submissions. This enables councils to address matters raised through submissions.

The clock will not stop for subsequent requests – so while councils can ask for further information more than twice, they will have to keep processing the application while waiting for the applicant to provide the information. This applies regardless of whether or not the applicant provides the information.

The applicant no longer has a right under section 92 to object to requests for further information. Councils are required to notify submitters of any further information received.

Section 41C requires a council to provide copies of any further information provided by a submitter before the hearing to the applicant and all other submitters where a hearing is held.

When further information or a report is not provided

Under section 92A, if the applicant does not respond, provide the further information or a report or refuses to do so, a council must still make a decision on the application under section 104.

Under section 104, if a council considers it has inadequate information, it can decline the application and must take into account whether any further information or reports were available as a result of its requests.

Under section 159 of the Amendment Act (note that other section references are to the RMA as the principal Act), if an application for resource consent was lodged before 10 August 2005 and the applicant does not respond to a further information request within 12 months after *either* the commencement of the Amendment Act *or* the date on which the request was made (whichever is the later), the application is deemed to have lapsed.

For further information on direct referral, refer to Fact Sheet 4: *Direct Referral, Independent Commissioners and Restricted Coastal Activities*.

Simplifying decision-making and reporting requirements

Section 113(4) now requires that decisions on non-notified resource consents need only state the reasons for the decision.

The decision on notified applications can be limited to the main findings on the principal issues that were in contention – rather than the main findings of fact.

To reduce the need to repeat material, reports and decisions on notified applications may refer to all or part of the assessment of effects on the environment. Decisions can also refer to and adopt the findings of any reports prepared under sections 41C, 42A or 92.

Discount policy for late consents

New section 36AA enables councils to discount section 36 charges where resource consents are not processed within the required timeframe, and the council is at fault.

The Minister will prepare a default discount policy that sets out how the fault is determined, and what will happen in the event of a dispute. The default policy will be a regulation which will come into force nine months after the Amendment Act commences.

Councils can also develop a discount policy using the special consultative procedure in the Local Government Act 2002. The policy must specify the discount, or the method for determining it, and the procedure required to obtain the discount. A council can make its discount more generous than the Minister's default policy, but not less generous.

Requirements for waivers and extensions

Section 37A clarifies that extensions of time only apply to applications for resource consent, changes of conditions, or reviews of consents.

A consent authority can extend a timeframe to twice the maximum period set out in the RMA in special circumstances including the scale and complexity of an issue or with the applicant's agreement. Timeframes can only be extended longer than this if the applicant agrees.

Enabling electronic correspondence

In section 2, the definition of 'public notice' has been amended to clarify that a notice may be published on the internet, provided it is also published in a newspaper. This section also clarifies that submissions can be received electronically.

OTHER INITIATIVES TO IMPROVE RESOURCE CONSENT PROCESSING

Refer to the Ministry's Everyday Guide to the RMA booklet 2.1 *Applying for a Resource Consent*. This general guide outlines the resource consent process.

Refer to the consent processing resource on the Quality Planning website
www.qualityplanning.org.nz/consents

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WANT TO KNOW MORE?

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