

Resource Management (Discount on Administrative Charges) Regulations 2010 Implementation Guidance

Updated for the Resource Management
Amendment Act 2013

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Contents

1.	Introduction	5
	Purpose of this guide	5
	Background to the Regulations	5
	What date do the Regulations apply from?	6
	Monitoring the Regulations	6
2.	Legislative context	7
	Section 360 – Regulations	7
	Section 36AA – Local authority policy on discounting administrative charges	7
3.	Scope of the Regulations	9
	The basics	9
	Applications the Regulations apply to	9
	Applications the Regulations do not apply to	10
4.	Calculating working days	11
	Calculating working days	11
5.	Calculating timeframes	13
	Time limits for processing applications	13
	Stopping the clock	15
	Modifying timeframes	17
6.	Calculating a discount	20
	When a discount applies	20
	Value of the discount	20
	How to calculate discounts	20
	Disputes	23
7.	Less common consent categories	25
	Regulation 6: Applications directly referred to the Environment Court	25
	Regulation 7: Replacement consents	26
	Regulation 8: Applications lodged with the local authority but called in by the Minister for the Environment	27
	Regulation 9: Applications lodged with the Environmental Protection Agency but sent back to a local authority	27
	Appendices	29
	Appendix A: Basic forms for discount invoicing	30

Appendix B: Basic form for reviewing decisions on discounts	36
Appendix C: Basic letter for discount disputes	37
Appendix D: Basic letters to accompany discount invoices	38
Appendix E: Calculating the total timeframes for common consent categories	41

Tables

Table 1: Time limits for processing applications	13
Table 2: Time limits for processing fully notified applications with a hearing	13
Table 3: Time limits for processing non-notified applications with a hearing	13
Table 4: Parallel timeframes	14
Table 5: Circumstances when the processing clock can stop for applications	15

Figures

Figure 1: Time limits for notified and non-notified applications processed by councils	14
Figure 2: How to calculate a discount	22
Figure 3: An example form showing applicant how the discount was calculated	23
Figure 4: Applying a discount when existing applications expire	26

1. Introduction

Purpose of this guide

This guide is to help local authorities understand and implement the Resource Management (Discount on Administrative Charges) Regulations 2010 (the Regulations).

It provides guidance on the intent of the Regulations, as well as approaches for local authorities to follow and matters to be considered during implementation. The guidance also incorporates any changes to the implementation of the Regulations following the introduction of the Resource Management Amendment Act 2013 (RMAA13).

The guide has been written for a local authority audience. Local authorities are welcome to share this guide with the public or to use information in this guide to develop and deliver their own targeted customer information.

It is important to note, this guide has no legal status and is not a legal interpretation of the Regulations.

Background to the Regulations

Section 36AA was added to the Resource Management Act 1991 (RMA) to specifically address concerns over resource consent decisions not being made within the statutory timeframes.

Section 36AA requires local authorities to adopt a policy to discount the administrative charges they impose under section 36 if they do not process resource consent applications, or applications to change or cancel conditions, within the RMA timeframes. This provides some compensation for applicants inconvenienced by delays.

The development of the Regulations was driven by survey results taken over eight years, which revealed a downward trend in the number of resource consent applications processed on time. The 2007/2008 result from the *Resource Management Act: Two-yearly Survey of Local Authorities 2007/2008* showed that, overall, just 69% of applications were processed on time, the lowest result for 10 years.

An attempt was made to rectify the issue through the Resource Management (Simplifying and Streamlining) Amendment Bill 2009. This proposed that a discount policy be set, but did not specify how to calculate the discount, what sort of applications were eligible, nor the minimum discount to apply. Concerns were raised that this would result in wide variations between local authorities and a significant number of submitters suggested that, instead, a national policy be set.

As a result, the Local Government and Environment Select Committee recommended a default discount policy should be developed and introduced as a regulation. This was to help ensure consistency across councils, and avoid individual local authorities spending time and resources developing individual policies.

What date do the Regulations apply from?

The Regulations commenced on 31 July 2010. The Regulations only apply to applications lodged on or after 31 July 2010. Any applications received before the Regulations come into force are not eligible for a discount.

Monitoring the Regulations

Information on the implementation of the Regulations is captured through the National Monitoring System (NMS).

The NMS, which replaces the RMA biennial survey of local authorities, captures a greater level of detail on the nature of resource consents and their level of complexity. This will allow for a better understanding of the relationship between the nature, type and scale of a consent, along with the time and cost of the process. Furthermore, the data collected will enable the Ministry to assess the number of working days the statutory timeframes are being exceeded by, and the average discount being applied by councils.

Where needed, other information will be collected outside of the NMS to support the evaluation of the Regulations.

2. Legislative context

Section 360 – Regulations

- “(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
- (hj) providing for discounts on administrative charges imposed under section 36 when local authorities are responsible for applications for a resource consent and applications to change or cancel conditions under section 127 not being processed within the time limits in this Act.”

Section 36AA – Local authority policy on discounting administrative charges

- “(1) A local authority must provide a discount on an administrative charge imposed under section 36 as follows:
- (a) a local authority that has not adopted a policy under subsection (3) must provide a discount if regulations under [section 360\(1\)\(hj\)](#) require the local authority to provide a discount:
 - (b) a local authority that has adopted a policy under subsection (3) must provide a discount under whichever of the policy and regulations under [section 360\(1\)\(hj\)](#) is more generous in the circumstances of the particular case.
- (2) The Minister must recommend to the Governor-General within 9 months of the commencement of [section 32](#) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 that regulations be made under [section 360\(1\)\(hj\)](#) and the Minister must, before making the recommendation, consult with local authorities about the proposed regulations.
- (2A) The Minister must ensure that regulations made under [section 360\(1\)\(hj\)](#) remain in force, but this subsection does not prevent regulations made under [section 360\(1\)\(hj\)](#) (including the regulations made in compliance with subsection (2)) from being amended or from being revoked and replaced by another set of regulations made under [section 360\(1\)\(hj\)](#).
- (3) A local authority may adopt, in accordance with the special consultative procedure set out in [section 83](#) of the Local Government Act 2002, a policy in respect of discounting administrative charges imposed under [section 36](#) of this Act in the circumstances where—
- (a) an application for a resource consent or an application to change or cancel conditions under [section 127](#) is not processed within the time frames set out in this Act; and
 - (b) the responsibility for the failure rests with the local authority.

- (4) The policy must specify—
 - (a) the discount, or the method for determining the discount, that would be given for any application fees or charges paid or owing; and
 - (b) the procedure an applicant must follow to obtain the discount

- (5) *[Repealed]*”

3. Scope of the Regulations

The basics

The Resource Management (Discount on Administrative Charges) Regulations 2010 (the Regulations) automatically apply to all applications processed by local authorities which are not decided within timeframes set in the Resource Management Act 1991 (RMA).

The Regulations capture notified, limited notified and non-notified applications, applications lodged under section 124 (exercise of a resource consent while applying for a new consent) and section 127 (change or cancellation of conditions), to directly referred applications and to applications that are called in.

The local authority must provide a discount if the relevant timeframes are exceeded. The applicant does not need to make an application to the council for this discount to be provided.

A discount of 1% of the total for every working day on which an application remains unprocessed beyond the statutory timeframes, up to a maximum of 50 working days, must be applied *unless* a local authority has adopted a more generous policy.

The discount only applies to administrative charges imposed under section 36. It includes the total charges an applicant would pay the local authority to receive, process, make a recommendation on and/or make a decision on an application.

If no administrative charges are associated with the processing of an application, no discount will apply.

The discount regulations do not apply to administrative charges for development contributions, monitoring fees and charges, subdivision certifications and any other charges set by a local authority under any other Act, such as building consent fees or dog registrations.

Applications the Regulations apply to

Section 360(1)(hj) limits discounts to applications for resource consent or applications to change or cancel conditions under section 127.

The meaning of 'resource consent' is set out in section 87 of the RMA and includes land-use consents, subdivision consents, coastal permits, water permits and discharge permits.

The Regulations only apply to applications that are processed by local authorities, or in some instances to the parts of an application that are processed by a local authority. For example:

- the regulations do apply to the council's notification of an application under section 95 where the Minister calls in the application under section 142 (regulation 8)
- the regulations do apply to the council's processing of applications that are lodged with the Environmental Protection Agency (EPA) under section 145 but are referred back to a local authority by the Minister under section 147 (regulation 9)

Further detail regarding these applications is provided in Chapter 7 under 'Less common consent categories'.

Applications the Regulations do not apply to

The Regulations do not apply to the processing of applications by the EPA or the Environment Court.

The Regulations do not apply to:

- applications for extensions to consent lapsing periods (section 125)
- local authority initiated consent reviews (section 128)
- certificates of compliance (section 139)
- existing use certificates (section 139A)
- designations and heritage protection orders (notices of requirement) (Part 8)
- outline plans (section 176A)
- water conservation orders (Part 9)
- survey plans (section 223)
- completion certificates (section 224)
- objections to council decisions (section 357A).

4. Calculating working days

To calculate a discount you must know the timeframes you are working under and have a consistent approach to working days.

Calculating working days

Definition of a working day

A working day is defined in the Resource Management Act 1991 (RMA) as:

“**working day** means a day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
- (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (c) a day in the period commencing on 20 December in any year and ending with 10 January in the following year.”

The definition of working day within the RMA cannot be changed through regulations.

The first day

The first statutory ‘working day’ for an application should be the first **full day** after the application is received. For example, if an application is lodged at any time after 9.00am on a Monday, the first statutory day will be the Tuesday.

Examples

An application is **emailed to the local authority** and received by the local authority email system at **4.00pm on Tuesday**. The application is officially received and the statutory timeframe begins **on the Wednesday**.

An application is **sent via the post to the local authority** and is received by the local authority mail room at **10.00am on Monday**. The application is officially received and the statutory timeframe begins **on the Tuesday**.

An application is **dropped off at the local authority** and received by the reception desk at **8.30am on Monday**. The application is officially received and the statutory timeframe starts **on that day, Monday**.

How to stop and start the clock

If the clock is stopped at any time during the day after 9.00am, the entire day should not be counted. Conversely, if further information is received after 9.00am, and it includes all the information requested, then the clock does not start again until the next day.

Examples

A **further information request letter is sent** to the applicant at **4.30pm on Tuesday**. The **whole of Tuesday** will not count towards the statutory time frame of the application.

A **further information request letter is sent** to the applicant at **10.00am on Tuesday**. The **whole of Tuesday will not count** towards the statutory time frame of the application.

Further information is received from the applicant at **2.00pm Friday**, and is considered to include all of the information requested. The **whole of Friday will not count** towards the statutory time frame of the application and the **clock will start again on the Monday**.

Further information is received from the applicant at or before **9.00am Friday**, and is considered to include all of the information requested. The whole of Friday will count towards the statutory time frame of the application and the **clock will start again on the Friday**.

The last day

The clock does not stop when a decision is made on an application. It only stops when the notice of decision is issued and sent (along with the decision itself) to the applicant as required under section 114. Therefore, a discount will apply if the notice of decision is not given by the end of the relevant timeframe.

To ensure the applicant receives their decision as soon as possible, notices should be emailed as well as sent via mail whenever possible. This practice should also apply to notification, information requests, commissioning reports, and any other formal communication with the applicant.

Although councils are required to serve the notice of decision on other parties under section 114(2)(b) (for example, submitters), this step is outside of the timeframes considered relevant to whether a discount applies. However, it is still best practice to send the notice of decision to submitters and other relevant parties at the same time as the applicant.

When is a document considered to be received?

A document or piece of information is 'received' by the local authority when:

- it physically enters the local authority building or
- it is received in the local authority's email inbox.

It is important for a local authority to have a consent tracking system that begins from the time a document or information enters its building so that applicants are not penalised by a local authority's internal procedures (for example, by delays caused by its internal mail system).

Note, the clock begins ticking from the first **full day** after the information enters the local authority building. This may not be the day it is received by the councils consent department.

5. Calculating timeframes

Time limits for processing applications

The time limits for processing applications are provided in Table 1, below.

Table 1: Time limits for processing applications

	Hearing held?	Working days
Full notification	✓	130
Full notification	x	60
Limited notification	✓	100
Limited notification	x	60
Non-notified	✓	50
Non-notified	x	20

The timeframes are not set out as one figure in the Resource Management Act 1991 (RMA), but are calculated by adding up all of the timeframes from the relevant sections. For example, the overall timeframe for a fully notified application that goes to a hearing is made up from the following sections of the RMA as shown in Table 2.

Table 2: Time limits for processing fully notified applications with a hearing

Section	Timeframe
95	20 working days to make the notification decision
97	20 working days for submissions
103A	75 working days to complete the hearing
115	15 working days for a decision to be issued
Total	130 working days

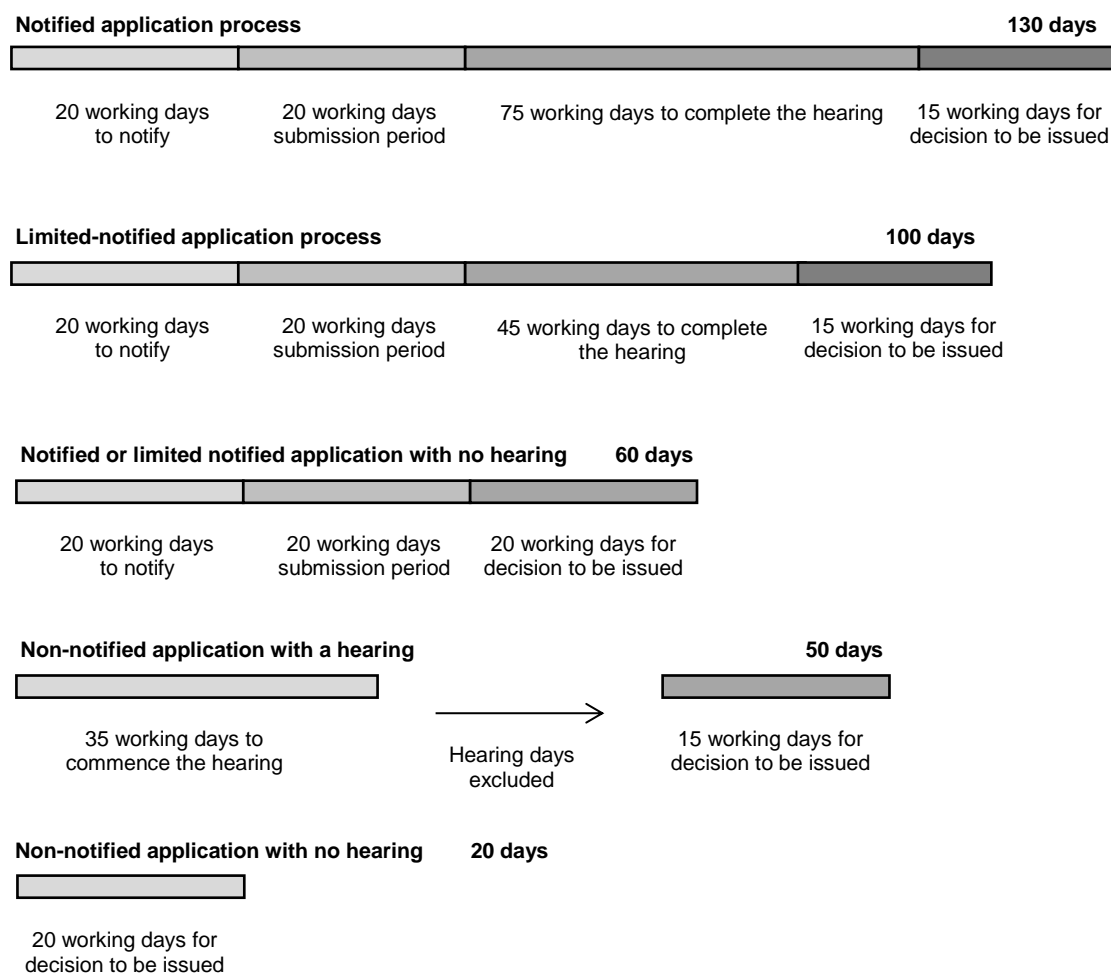
It is important to note that section 103A of the Resource Management Amendment Act 2013 introduced timeframes for the completion of hearings for both fully and limited notified applications. Previously hearing days were excluded from timeframe calculations.

The exception to this, is that hearing days for non-notified applications that go to a hearing must still be excluded. The relevant timeframes that make up the total timeframe for a non-notified application with a hearing are shown within Table 3, below.

Table 3: Time limits for processing non-notified applications with a hearing

Section	Timeframe
101(2)	35 working days to commence the hearing Hearing days excluded by the regulations
115(2)	15 working days for a decision to be issued
Total	50 working days

Figure 1: Time limits for notified and non-notified applications processed by councils



Parallel timeframes

Every application has timeframes that add together to make the total statutory timeframe in which to process the application. However, there are often additional timeframes specified within the RMA that run alongside the statutory timeframes but do not count towards the total processing time. These are called ‘parallel timeframes’. Some examples of parallel timeframes are in table 4, below. Appendix E further illustrates parallel timeframes.

Table 4: Parallel timeframes

Step	Section	Statutory timeframe (working days)
Time from consent being lodged until decision that application is complete	88(3)	10
Lodgement to decision that an application is non-notified	95	20
From close of submissions to request a commissioner	100A(3)	5
To provide notice of hearing	101(3)	10 before hearing date
Council to provide their evidence to the applicant and submitters who wish to be heard prior to the hearing	103B(2)	15 before hearing date
Applicant to provide their evidence to the consent authority prior to the hearing	103B(3)	10 before hearing date
Submitter who is calling expert evidence to provide the evidence to the council prior to the hearing	103B(4)	5 before hearing date

Excluded days

The Resource Management (Discount on Administrative Charges) Regulations 2010 (the Regulations) exclude the following days:

- although the clock does not stop, the working days on which a council is waiting for the full payment of an administrative charge under section 36(7)
- the extended working days as provided for by section 37(1)
- any of the excluded days listed by section 88B
- the working days when a council does not process the application for any other reason in the RMA; in any other enactment, or for a reason based on any rule of law
- for non-notified applications where a hearing is held, the working days from the commencement to the close of the hearing
- if the application needs to be renotified, the working days starting on the day on which the application is first notified and ending on the last working day before the application is renotified

Stopping the clock

Table 5, below, sets out the only circumstances under which the clock can be stopped by the council.

As outlined in Chapter 4, if the clock is stopped at any time during the day, even if it is after 9.00am, the entire day should not be counted toward the statutory timeframe.

If further information is received before 9.00am, that day must count towards the statutory timeframes. If further information is received after 9.00am, then the clock does not start again until the next day.

Table 5: Circumstances when the processing clock can stop for applications

Section	Circumstances	Clock stops	Clock starts
At the request of the council			
88C(2)	Further information is requested pursuant to section 92(1), it is the first request and the request is made prior to notification	Date of the request	When: <ul style="list-style-type: none"> • the applicant refuses, or • there has been no response from the applicant and 15 working days expire, or • the information is provided
88C(4), (6)	A report is commissioned pursuant to section 92(2)	Date of request	When: <ul style="list-style-type: none"> • the report is received, or • the applicant refuses, or • there has been no response from the applicant and 15 working days expire
88D(2)	A request for direct referral is declined and no objection is made	The date the council receives the request for direct referral	When the 15 working days for an objection to be lodged under section 357C(1) end
88D(4)	A request for direct referral is declined and an objection is dismissed	The date the council receives the request for direct referral	When the council notifies the applicant of its decision to dismiss the objection

Section	Circumstances	Clock stops	Clock starts
88D(6)	A request for direct referral is granted OR A request for direct referral is declined but an objection is upheld	The date the council receives the request for direct referral	When: <ul style="list-style-type: none"> the 15 working days to lodge a notice of motion end (section 87G(2)), or the applicant advises the council that they will not be lodging a notice of motion whichever happens first
88E(2)	The local authority requests that additional resource consents be lodged pursuant to section 91	The date the local authority advises the applicant of the decision to defer	When the required applications are lodged with the appropriate local authority
88E(4)	The applicant tries to obtain written approval for the purposes of sections 95E and 95F	The date the applicant advises that they wish to seek written approval	When: <ul style="list-style-type: none"> the written approvals are received, or the applicant informs the local authority that they wish to continue the application without the written approvals
88E(6)	The application is referred to mediation pursuant to section 99A	The date that the application is referred	When the mediator reports the outcome of the mediation to the authority
At the request of the applicant			
88E(8)	The applicant requests that the application is put on hold pursuant to section 91A	The date the council receives the request from the applicant	When: <ul style="list-style-type: none"> the applicant requests that the application is taken off hold, or the application has been on hold for a total of 130 working days

By the council

Section 88B lists the time limits that can have time periods excluded by sections 88C, 88D, 88E and 88F. These time limits relate to:

- the time limit for notification pursuant to section 95
- the time limit for a council to report on an application that has been directly referred to the Environment Council pursuant to section 87F(3)
- the time limit for the commencement of a hearing for a non-notified application pursuant to section 101(2)
- the time limit for the completion of a hearing for a notified application pursuant to section 103A
- the time limit for giving the decision for a non-notified or notified application where no hearing is held pursuant to sections 115(3) and 115(4)

By the applicant

Sections 91A to 91C introduce a formal mechanism for applicants to place their notified and limited notified applications on hold any time between notification and the close of the hearing.

The council must resume processing of a suspended application at the applicant's request. Alternatively, once the application has been on hold for a total of 130 working days (including all other periods when the application was on hold), the consent authority must either return the application to the applicant or take it off hold and continue to process it.

The other on-hold periods arise from sections 91, 92(1), 92(2), 95 and 99A as outlined by table 5, above.

Further information about how to implement sections 91A to 91C can be found in the Ministry for the Environment's publication '*A guide to the six-month process for notified resource consent applications*'.

The RMA does not allow for applicants to place non-notified applications on hold, or for notified applications to be placed on hold prior to the submission period. If an applicant wishes to suspend the processing of an application in these instances, it is recommended that council considers whether to extend the relevant timeframes using section 37, with the applicant's approval, in accordance with section 37A criteria. It would be appropriate to ensure a sufficient extension is agreed with the applicant to avoid numerous section 37 extensions.

Alternatively, if the applicant is uncertain how long to place the application on hold, the local authority may want to discuss the possibility of it being withdrawn and re-lodged at an appropriate later date.

Suspension for payment of fees (section 36(7))

Where a fixed charge has been set by a council for certain actions (such as a deposit for the processing of a resource consent application), under section 36(7) the council is not required to undertake an action under the RMA until the fixed charge is paid. As can be seen in table 5, there is no allowance in the RMA for the clock to stop in these situations.

This section only applies to fixed charges, such as an application deposit or notification fee. This section does not apply to additional charges under section 36(3) of the RMA, such as the cost of additional time spent by officers to process an application.

The Regulations exclude any working days where the local authority does not process an application under section 36(7) from the total days. Therefore, it is important that a full information record is kept. The information should include the type of charge which has not been paid, the day the charge is required and the day the charge is received. Applicants should be made aware that section 36(7) is being applied, so they can make the payment as soon as possible and ensure their application is progressed.

Modifying timeframes

Extensions to timeframes (section 37)

Section 37 enables a local authority to extend a time period specified in the RMA. Section 37A sets out the matters that the local authority must consider when deciding on an extension. Local authorities can double the timeframe if there are special circumstances, or if the applicant agrees. To extend the timeframe for longer than double, the applicant must agree.

It is good practice for applicants to be contacted as early as possible if there is a need to extend timeframes, and explain why this is required. The implications and/or alternatives of any decision should also be made clear to the applicant. For example, where consideration needs to be given to draft conditions, the implication of not agreeing to an extension may be that concerns are resolved through a section 357 objection process, which can take up to 20 working days, leading to an additional delay.

Where an applicant agrees to more than double the timeframes, it is appropriate to set an extension long enough to avoid numerous further extensions.

When the applicant does not agree to an extension of time, section 37 can only be used where there are special circumstances. The use of sections 37–37A should be supported by clear reasons why special circumstances are considered to exist, such as the scale or complexity of the application. Special circumstances are unlikely to exist only because of high workload or other internal resourcing issues. As special circumstances are not defined within the RMA it is recommended that councils refer to case law when considering whether special circumstances are a factor in an application.

Time extensions may be appropriate in the following situations:

- to undertake further consultation where there is significant complexity or uncertainty about the effects of an application
- to gain agreement on consent conditions if the applicant wishes to discuss these before the decision
- for a hearings committee or commissioner to make and compile a decision on an application of large scale or complexity
- to review a complex assessment of environmental effects associated with a large scale proposal.

When a section 37 extension is made, the reasons for the extension and each timeframe extended need to be recorded. There is no barrier under the RMA to extending all timeframes for an application at once, provided all section 37A criteria are met for each extended timeframe.

It is implicit in the RMA that, if a timeframe is extended, it should be for a specified period or until a specified event occurs. If only a short extension is required (for example, five days), specifying the length of the extension may help gain the applicant's agreement.

When circumstances change

The Regulations make an allowance for when the circumstances of an application change, affecting the processing timeframes. The most likely example is when the sole submitter on an application either gives approval or pulls out of a hearing at the last minute, and a hearing is no longer required.

The Regulations stipulate that the original timeframe still applies for calculating a discount, even though the changed circumstances may mean fewer days are actually allowed under the RMA. In practice, this means that while the time taken to process the application may not meet the timeframes under the RMA, a discount will not be required.

Other statutorily authorised delays

Other statutory issues may, from time-to-time, affect the processing timeframes of resource consents. For example, the aquaculture moratorium legislation¹ and provisions in the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010.

In cases where an application is not processed on time due to delays resulting from other statutory issues, the days where processing does not occur for this reason are excluded from the calculation of a discount under the Regulations.

¹ Resource Management (Aquaculture Moratorium) Amendment Act 2002 and Resource Management (Aquaculture Moratorium Extension) Amendment Act 2004.

6. Calculating a discount

When a discount applies

The starting position in determining whether a discount will apply is the local authorities' duty to comply with timeframes in the Resource Management Act 1991 (RMA). If these timeframes are not met, a discount will apply.

As outlined in Chapter 5, there are some statutory reasons that will alter the timeframes (eg extensions under section 37) and these will affect when a discount must apply.

Value of the discount

The Resource Management (Discount on Administrative Charges) Regulations 2010 (the Regulations) set out a discount of 1% for every working day an application remains unprocessed over the statutory timeframe, up to a maximum of 50 working days. Therefore, for applications that take more than 50 working days over statutory timeframes, the maximum discount that will apply is 50%.

Alternatively, a local authority may set its own more generous discount policy.

How to calculate discounts

The Regulations outline how a discount is to be calculated. Regulation 9 deals with all consent applications:

- that are not called in by the Minister
- where direct referral is not granted
- where the application is not a 'replacement consent'.

The Regulation 9 stipulates that:

“(2) An application is not processed in the time limit applicable to it if the number of working days in the time limit described in subclause (3) is smaller than the number of working days actually taken to process the application as determined by subclause.

(3) The time limit is the number of working days specified by the Schedule that is applicable to the application.

(4) The number of working days actually taken to process the application is the number of working days (excluding the excluded days) in the period starting on the day after the day on which the application is lodged and ending on the day on which the local authority complies with section 114(1).”

Regulation 3, which deals with interpretation, notes that:

excluded days means, for an application,—

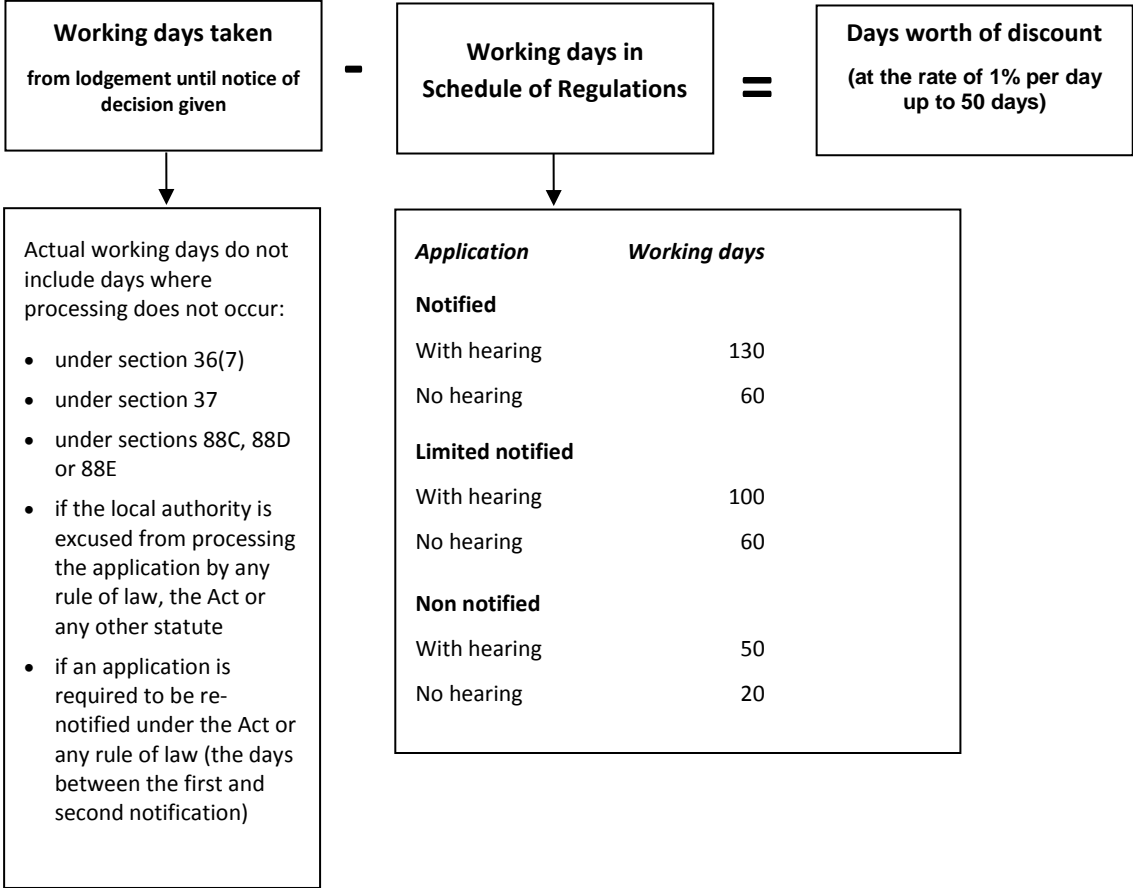
- (a) the working days on which a local authority does not perform an action on the application because the authority has not received the full amount of an administrative charge for the action, which section 36(7) permits the authority to do:
- (b) the working days in an extension to a time period applicable to the application, as provided for in section 37(1):
- (c) the working days in a time period that section 88B requires to be excluded from a time limit applicable to the application:
- (d) the working days in a time period during which a local authority does not process the application —
 - (i) for any other reason in the Act; or
 - (ii) for a reason in any other enactment; or
 - (iii) for a reason based on any rule of law:
- (e) if the application is not notified and there is a hearing on the application, the working days from and including the day on which the hearing starts to and including the day on which the hearing concludes:
- (f) if anything in the Act or under any rule of law requires the application to be renotified, the working days starting on the day on which the application is first notified and ending on the last working day before the application is renotified.”

Effectively, this means the discount needs to be calculated in a two-stage process, summarised in figure 2. The first step is to identify the total actual number of working days taken to process the application. Note that some days are ‘excluded days’, which means that if they are initially counted, then they must then be deducted as part of step 1.

The second step is to subtract the relevant number of working days selected from the Schedule of the Regulations.

A discount will need to be given if the working days taken to process the application are more than the amount provided for in the schedule.

Figure 2: How to calculate a discount



Whether or not excluded days are routinely counted will vary between local authorities. If counted, they can be deducted later. If not counted, they do not need to be factored into the discount calculation.

Invoicing for any additional fees and any discount should be done at the same time and as soon as possible after the notice of decision has been issued. The discount should be deducted from any additional fees at the time of invoicing, and a single notice sent to the applicant. Combining the two will reduce the likelihood of a refund being required.

The council must give the applicant a discount if it is due. It is recommended that any refund should be paid to an applicant as soon as is practical after the application is decided. It is important to note that the applicant is not required to request the discount, but that it is a requirement of the council. The council does not have discretion over whether or not to provide the discount.

The calculations can be displayed in several ways. For example, a letter or form could be sent to the applicant, outlining the working days taken to carry out tasks and the dates on which these actions occurred. The form could also show alterations to the timeframes, total days, total fees and the discount being taken off the fees if appropriate. Appendix A includes a number of examples of basic forms for discount invoicing covering the different kinds of consents outlined in the Schedule of the Regulations. One example is shown below (figure 3). Appendix D also includes example letters to accompany discount calculations and invoices.

Figure 3: An example form showing applicant how the discount was calculated

Calculation of time taken to process resource consents and discount (if any) under the Resource Management (Discount on Administrative Charges) Regulations 2010 for Application No: <insert application number

Processing Step	Dates	Working days taken	Alteration of working days	Reason for alteration	Working days for the purpose of calculating a discount
Lodgement of resource consent application to decision to proceed on a notified basis	Day/Month/Year to Day/Month/Year	25	5	Clock stopped for information request	20
Notification to close of submissions	Day/Month/Year to Day/Month/Year	20			20
Close of submissions to close of hearing	Day/Month/Year to Day/Month/Year	80			80
Close of hearing to notice of decision	Day/Month/Year to Day/Month/Year	25	10	Time extension agreed by applicant under section 37	15
Total processing time					135
Required processing time under Act					130
Days over processing time					5
% discount					5
Deposit paid					\$5,000.00
Additional fees due					\$1,000.00
Total fees before discount					\$6,000.00
Discount					\$300.00
Fees due					\$700.00

Disputes

Disputes regarding a discount, or the amount of a discount, cannot be considered under the RMAs existing review procedures (sections 357, 357A or 357B). These sections outline when there is a right of objection, but none reference the Regulations. However, it is good practice to reconsider the process if the applicant disagrees with either the amount of the discount, or the decision on whether a discount applies (ie whether the application was processed within the RMA timeframes, or if it was late, by how many working days).

Issues likely to require reconsideration in a dispute are:

- whether the correct working days are described as the ‘working days taken’
- what the applicable timeframe in the Schedule is (or, for less common consent applications, what the applicable processing timeframe is under the relevant regulation)
- whether, based on those two factors, timeframes have been exceeded and a discount applies.

For disputes about 'working days taken', local authorities may need to recheck what the Regulations say about valid reasons for the days to have been excluded. If the applicant is sent an invoice or form that includes all relevant information, then the local authority could require the applicant to point out what they believe has been miscalculated and why.

To make the disputes process easier, local authorities could create forms for applicants to use, including which area of the calculation the applicant thinks is incorrect and why. The applicant may also attach any evidence in support of their claim. An example is provided in Appendix B.

In most situations it will not be necessary to hold a hearing for the dispute. Decisions should be made on a case-by-case basis and should be notified to the applicant in writing, including the reasons for the decision. If the applicant has not given any particular reasons for disputing the decision, it will be sufficient for the local authority to note it has reassessed whether the amount of the discount (or whether a discount is payable) is correct and whether it is satisfied the discount has been calculated in accordance with the law. Again, to make the process more streamlined, local authorities may wish to develop a form letter for decisions on disputes. An example is provided in Appendix C.

If an applicant still disputes the local authority's findings they may wish to contact the Office of the Ombudsmen and request an investigation. The Office of the Ombudsmen will usually only consider complaints if the complainant has already attempted to resolve the issue with the agency concerned.

7. Less common consent categories

Regulation 6: Applications directly referred to the Environment Court

Request for direct referral granted or objection upheld

Because of the changes to section 88D (Excluded time periods relating to direct referral) of the Resource Management Act 1991 (RMA), there are no longer any circumstances under which a discount could be payable for an application where direct referral is requested and that request is granted.

Section 88D states:

Request for direct referral granted or objection upheld

- (5) Subsection (6) applies when—
 - (a) an applicant makes a request under section 87D(1); and
 - (b) either—
 - (i) the consent authority grants the request under section 87E(5) to (6A); or
 - (ii) the consent authority declines the request under section 87E(5) to (6A), but upholds the applicant's objection under section 357D.
- (6) The period that must be excluded from every applicable time limit under section 88B is the period—
 - (a) starting with the date on which the consent authority receives the request; and
 - (b) ending with the earlier of the following:
 - (i) the date on which the 15 working days referred to in section 87G(2)(a) end; and
 - (ii) the date on which the applicant advises the consent authority that the applicant does not intend to lodge a notice of motion with the Environment Court under section 87G(2).

This means that working days are excluded from the date the request for direct referral is received (which could be at lodgement up until five working days after the close of submissions, see section 87D) until the 15 working day time limit to lodge a notice of motion (NOM) expires or the applicant advises they will not be lodging a NOM.

The trigger for calculating a discount is the preparation of the section 87F(4) report by the council. Given this action and the associated timeframe it must be completed within are now excluded days, a discount cannot be calculated.

Request for direct referral declined

If the council declines a request for direct referral, the excluded days are from the date the request for direct referral is received up until:

- if no objection is made, 15 working days after the decision to decline the referral is made (this allows the section 357D objection period to be excluded); or
- if an objection is made and dismissed, the date the council notifies the applicant that the objection is dismissed.

Under these circumstances the application reverts back to the council for processing. The processing clock starts ticking again on whatever day it was on prior to the request for direct referral being made. So, this could be zero if the request was lodged at the same time the application was lodged, or it could be at a maximum of 45 working days if the request was made by the applicant on the last possible day (five working days after submissions close).

The council must then comply with the normal timeframes for a notified application being 130 working days if a hearing is held or 60 working days if no hearing is held. Regulation 9 must be used to calculate whether any discount is payable for these types of applications.

Regulation 7: Replacement consents

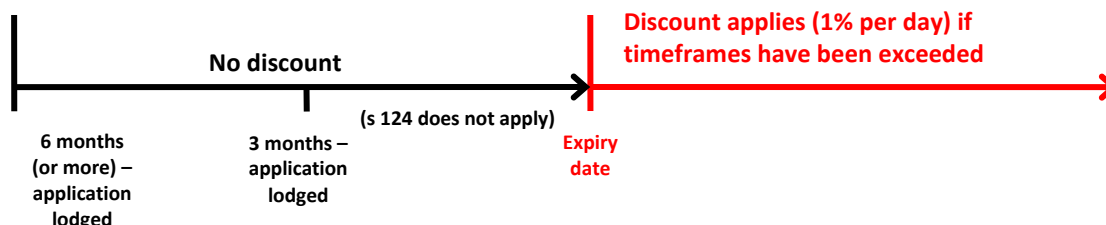
The Regulations specifically address applications to which section 124 applies. That is, where:

- a renewal application is lodged with the local authority six or more months before the expiry of the existing resource consent
- a renewal application is lodged with the local authority between three to six months before the expiry of the existing resource consent and the local authority allows the holder to continue to operate.

In these situations, a discount does not apply if the notice of decision (section 114) on the renewal application is served on the applicant before the existing resource consent expires.

If the notice of decision is not served on the applicant before the existing application expires and it should have been (within the applicable timeframes in the RMA), a discount of 1% per day applies to each working day beyond the expiry date that an application is still being processed (see figure 4).

Figure 4: Applying a discount when existing applications expire



Regulation 8: Applications lodged with the local authority but called in by the Minister for the Environment

Applications that are lodged with a local authority may be called in by the Minister if the Minister believes they are nationally significant. The Minister can call in a notified application up until five working days after the close of submissions. Non-notified applications can be called in up until the decision is made.

In these cases, any discount for the application will only be calculated on the timeframes for which the local authority is responsible under the RMA.

The fees that are discounted for applications that are called in are only the fees that relate to the processing of the application up until notification, or the decision not to notify. The Regulations do not apply to any costs incurred by a local authority once an application has been called in by the Minister.

Examples

- The Minister calls in an application before a decision is made on whether to notify it. A discount is only paid if the time frame of 20 working days for notification is not met. If this time frame has not ended then no discount is required.
- The Minister calls in an application during the submission period. The only completed time frame is for notification, so a discount will only be paid if the application was not notified by the council within 20 working days pursuant to section 95.
- The Minister calls in an application after submissions close. The only completed time frames are for notification and for submissions. However, the time frame for submissions is always met so a discount will only be paid if the application was not notified within 20 working days pursuant to section 95.
- The Minister calls in a non-notified application before the decision is made. Because the timeframe for notification is the same as for a decision, the application will not qualify for any discount.

Regulation 9: Applications lodged with the Environmental Protection Agency but sent back to a local authority

If an application is lodged with the EPA but the Minister does not consider the application to be nationally significant, the application will be returned to the relevant local authority (or authorities) for processing.

For the purposes of calculating timeframes, the processing clock starts on the date which the EPA notifies the local authority of the Minister's decision, or the day after if the notification is

received after 9.00am. The application is then subject to the same timeframes as a normal application. Any discount will only be calculated on the timeframes for which the local authority is responsible under the RMA. This means that any working days that the application is held by the EPA are not included in the calculation of a discount.

It is important to note, in these circumstances the local authority cannot determine the application is incomplete under section 88.

Appendices

Appendix A: Basic forms for discount invoicing

Appendix B: Basic form for reviewing decisions on discounts

Appendix C: Basic letter for discount disputes

Appendix D: Basic letters to accompany discount invoices

Appendix E: Calculating the total timeframes for common consent categories

Appendix A: Basic forms for discount invoicing

Non-notified no hearing

Processing step	Dates	Actions	Working days taken	Alteration of working days	Reason for alteration	Working days for the purpose of calculating a discount
Lodgement of resource consent application to issuing of notice of decision	Day/Month/Year to Day/Month/Year	Clock stopped for information request	26	5	Clock stopped for information request	21
Total processing time						21
Required processing time under Act						20
Days over processing time						1
% discount						1%
Deposit paid						\$1,000.00
Additional fees due						\$500.00
Total fees before discount						\$1,500.00
Discount						\$15.00
Fees due						\$485.00

Non-notified with hearing

Processing step	Dates	Working days taken	Alteration of working days	Reason for alteration	Working days for the purpose of calculating a discount
Lodgement of resource consent application to decision to proceed on a non-notified basis	Day/Month/Year to Day/Month/Year	25	5	Clock stopped for information request	20
Notification decision to commencement of hearing	Day/Month/Year to Day/Month/Year	15			15
Hearing days	Day/Month/Year to Day/Month/Year	5	5	Hearing days are excluded	0
Closing of hearing to notice of decision	Day/Month/Year to Day/Month/Year	25			25
Total processing time					55
Required processing time under Act					50
Days over processing time					5
% discount					5%
Deposit paid					\$1,000.00
Additional fees due					\$1000.00
Total fees before discount					\$2,000.00
Discount					\$100.00
Fees due					\$900.00

Notified no hearing

Processing step	Dates	Working days taken	Alteration of working days	Reason for alteration	Working days for the purpose of calculating a discount
Lodgement of resource consent application to decision to proceed on a notified/limited notified basis	Day/Month/Year to Day/Month/Year	30	5	Clock stopped for information request	25
Notification to close of submissions	Day/Month/Year to Day/Month/Year	20			20
Close of submissions to notice of decision	Day/Month/Year to Day/Month/Year	70			70
Total processing time					115
Required processing time under Act					60
Days over processing time					55
% discount					50%
Deposit paid					\$3,000.00
Additional fees due					\$2,000.00
Total fees before discount					\$5,000.00
Discount					\$2,500.00
Fees due					\$0.00
Refund due					\$500.00

Notified hearing

Processing step	Dates	Working days taken	Alteration of working days	Reason for alteration	Working days for the purpose of calculating a discount
Lodgement of resource consent application to decision to proceed on a notified basis	Day/Month/Year to Day/Month/Year	32	7	Clock stopped for information request	25
Notification to close of submissions	Day/Month/Year to Day/Month/Year	20			20
Close of submissions to close of hearing	Day/Month/Year to Day/Month/Year	105	30	Application on hold at applicants request under section 91A	75
Close of hearing to notice of decision	Day/Month/Year to Day/Month/Year	28	13	Extension agreed by applicant under section 37	15
Total processing time					135
Required processing time under Act					130
Days over processing time					5
% discount					5%
Deposit paid					\$10,000.00
Additional fees due					\$1,000.00
Total fees before discount					\$11,000.00
Discount					\$550.00
Fees due					\$450.00

Limited notified no hearing

Processing step	Dates	Working days taken	Alteration of working days	Reason for alteration	Working days for the purpose of calculating a discount
Lodgement of resource consent application to decision to proceed on a notified/limited notified basis	Day/Month/Year to Day/Month/Year	20			20
Notification to close of submissions	Day/Month/Year to Day/Month/Year	15			15
Close of submissions to notice of decision	Day/Month/Year to Day/Month/Year	23			23
Total processing time					58
Required processing time under Act					60
Days over processing time					0
% discount					0%
Deposit paid					\$2,000.00
Additional fees due					\$1,000.00
Total fees before discount					\$3,000.00
Discount					\$0.00
Fees due					\$1,000.00

Limited notified hearing

Processing step	Dates	Working days taken	Alteration of working days	Reason for alteration	Working days for the purpose of calculating a discount
Lodgement of resource consent application to decision to proceed on a notified/limited notified basis	Day/Month/Year to Day/Month/Year	20			20
Notification to close of submissions	Day/Month/Year to Day/Month/Year	15			15
Close of submissions until close of hearing	Day/Month/Year to Day/Month/Year	50			50
Closing of hearing to notice of decision	Day/Month/Year to Day/Month/Year	15			15
Total processing time					100
Required processing time under Act					100
Days over processing time					0
% discount					0
Deposit paid					\$2,000.00
Additional fees due					\$1,000.00
Total fees before discount					\$3,000.00
Discount					\$0.00
Fees due					\$1,000.00

Appendix B: Basic form for reviewing decisions on discounts

Form for reviewing decisions on discount given under the Resource Management (Discount on Administrative Charges) Regulations 2010

To <insert name of local authority>

Application number:

Full name:

Address to which application relates:
.....
.....

Address for Service (if different to application address):
.....

Date notice of decision on application received:

Invoice number:

Was a discount given? Yes/ No Amount of discount given (if applicable): \$

What part of the discount calculation do you think is incorrect?
.....
.....

Why do you think the calculation is incorrect?
Please include any relevant dates and attach any relevant additional information
.....
.....
.....

I hereby certify that, to the best of my knowledge and belief, the information given in this form is true and correct.

Signature of the applicant or person authorised to sign on their behalf:

..... Date:

Appendix C: Basic letter for discount disputes

Application Number:

< Date >

< Name >

<Address>

Dear < Name >

Review of discount on administrative charges for resource consent: <insert application number>

As requested a review has been undertaken of the discount calculated under the Resource Management (Discount on Administrative Charges) Regulations 2010 (referred to from now on as the discount regulations) for application, <insert application number>.

The discount was reviewed by inspecting the file for the application, reviewing all the dates used and reconsidering the calculation of working days. The review <upheld the original discount OR has determined that an additional discount is due>.

<The total refund due is <insert dollar amount>. A cheque for this amount is enclosed.>

OR

<The total additional fees have been adjusted and are now <insert dollar amount> which is the result of the time taken to complete the processing of your application by Council staff after the deduction of the deposit paid and the discount owing to you under the discount regulations. This invoice is due by <enter date> unless an objection to additional charges is lodged under section 357B of the Resource Management Act 1991.> delete one

If you are still dissatisfied with the decision reached as to the discount calculated under the discount regulations you may choose to contact the Office of the Ombudsman.

Please feel free to contact me on <telephone number>, if you have any questions or concerns.

Yours faithfully

<Officer's name>

<Job title>

Appendix D: Basic letters to accompany discount invoices

Application Number:

< Date >

< Name >

<Address>

Dear < Name >

Resource consent application: Refund due

Please find enclosed a credit note for a refund which is due to you. This refund is the difference between the discount payable to you under the Resource Management (Discount on Administrative Charges) Regulations 2010 (referred to from now on as the discount regulations) and the actual and reasonable costs charged for processing your resource consent application.

This refund is made in accordance with section 36AA of the Resource Management Act 1991. The attached page outlines how your refund has been calculated under the discount regulations.

A cheque for the amount of the refund will be sent to you when you confirm to the <inset council name> that you have no objections to the refund being paid, or after 15 working days, whichever is sooner.

You can request a review of the discount if you believe that a larger amount is due. To object to the discount, please fill out the discount review form <available from the <inset council> website at <insert website link> OR enclosed, delete one>. The form requires you to give reasons for the review and to highlight the step(s) of the process that you believe have been calculated incorrectly.

Please contact me on < telephone number > if you have any questions or concerns.

Yours faithfully

< Officer's name >

< Job title >

Application Number:

< Date >

< Name >
<Address>

Dear < Name >

Resource consent application: Additional charges payable

Please find enclosed an invoice for additional fees payable. This fee is for the actual and reasonable cost incurred in processing your resource consent application over and above the deposit paid *<and after deducting the discount payable to you under the Resource Management (Discount on Administrative Charges) Regulations 2010 (referred to from now on as the discount regulations). delete if not applicable>*

This fee is charged in accordance with section 36(3) of the Resource Management Act 1991 (RMA) and the *<insert local authority name>*'s resource management schedule of fees and charges. The attached page outlines how these fees have been calculated to meet the discount regulations.

The total additional fees are *<insert dollar amount>*. This invoice is due for payment by *<enter date>* unless an objection to the charges is lodged under section 357B of the RMA.

You may object to the additional charges under sections 357 and 358 of the RMA, within 15 working days of receiving this letter. This objection must be made in writing and set out the reasons for your objection.

Similarly, you can request a review of the discount calculations if you feel that a larger discount is due, or a discount is due where none has been given. Please fill out the discount review form *<available from the <inset council> website at <insert website link> or enclosed, delete one>*. The form requires you to give reasons for the review and to highlight the step(s) of the process that you believe have been calculated incorrectly.

Please contact me on *< telephone number >* if you have any questions or concerns.

Yours faithfully

< Officer's name >
< Job title >

Application Number:

< Date >

< Name >

<Address>

Dear < Name >

Resource consent application: Breakdown of fees payable and refund due

Please find enclosed a breakdown of the administrative fees and discount calculated for processing your resource consent application. The breakdown shows that no additional fee is to be paid and no refund is due under the Resource Management (Discount on Administrative Charges) Regulations 2010 (referred to from now on as the discount regulations).

The attached page outlines the calculations, in accordance with section 36(3) of the Resource Management Act 1991 (RMA) and the <insert local authority name>'s resource management fee schedule.

<Additional fees were incurred because the time taken to process your application by Council staff was more than the deposit paid. However, this equals the refund payable to you, calculated under the discount regulations. *delete if not applicable* >

<Additional fees were not incurred and no discount is required to be paid as processing your application met the timeframes within the Act. *delete if not applicable* >

<You may object to the additional charges under sections 357 and 358 of the RMA. This objection must be made in writing setting out the reasons for the objection within 15 working days of the receipt of this letter. *delete if not applicable* >

You can request a review of the discount calculations if you feel that a larger discount is due, or a discount is due where none has been given. Please fill out the discount review form <available from the <inset council> website at <insert website link> or enclosed, *delete one*>. The form requires you to give reasons for the review and to highlight the step(s) of the process that you believe have been calculated incorrectly.

Please contact me on < telephone number > if you have any questions or concerns.

Yours faithfully

< Officer's name >

< Job title >

Appendix E: Calculating the total timeframes for common consent categories

This appendix shows how each of the total timeframes is calculated. If a timeframe is in a grey box it is a parallel timeframe which does not count towards the total.

Only the timeframes in white boxes count towards the total.

Non-notified

Non-notified, no hearing

Action	Section	Timeframe (working days)
Time from application being lodged until decision that application is complete	88(3)	10
From time the application is lodged to the decision not to notify	95	20
From the time the application is lodged until notice of decision	115(3)	20
	Total	20

Non-notified, hearing

Action	Section	Timeframe (working days)
Time from application being lodged until decision that application is complete	88(3)	10
From time the application is lodged to the decision not to notify	95	20
Pre-circulation of councils evidence	103B(2)	15 (prior to hearing)
Notice of the date and location of the hearing	101(3)	10 (prior to hearing)
Pre-circulation of applicants evidence	103B(3)	10 (prior to hearing)
From date application is lodged until hearing	101(2)(b)	35
From date hearing closes until notice of decision	115(2)	15
	Total	50

Notified

Notified, no hearing

Action	Section	Timeframe (working days)
Time from application being lodged until decision that application is complete	88(3)	10
From time the application is lodged to the decision to notify	95	20
From notification to closing date for submissions	97	20
From closing date for submissions to notice of decision	115(4)	20
	Total	60

Notified, hearing

Action	Section	Timeframe (working days)
Time from application being lodged until decision that application is complete	88(3)	10
From time the application is lodged to the decision to notify	95	20
From notification to closing date for submissions	97	20
From close of submissions to request a commissioner	100A(3)	5
Pre-circulation of councils evidence	103B(2)	15 (prior to hearing)
Notice of the date and location of the hearing	101(3)	10 (prior to hearing)
Pre-circulation of applicants evidence	103B(3)	10 (prior to hearing)
Pre-circulation of submitters expert evidence	103B(4)	5 (prior to hearing)
From close of submissions to completion of hearing	103A(2)	75
From close of hearing to notice of decision	115(2)	15
	Total	130

Limited notified

Limited notified, no hearing

Action	Section	Timeframe (working days)
Time from application being lodged until decision that application is complete	88(3)	10
From time the application is lodged to the decision to notify	95	20
From notification to closing date for submissions	97	20
From closing date for submissions to notice of decision	115(4)	20
	Total	60

Limited notified, hearing

Action	Section	Timeframe (working days)
Time from application being lodged until decision that application is complete	88(3)	10
From time the application is lodged to the decision to notify	95	20
From notification to closing date for submissions	97	20
From close of submissions to request a commissioner	100A(3)	5
Pre-circulation of councils evidence	103B(2)	15 (prior to hearing)
Notice of the date and location of the hearing	101(3)	10 (prior to hearing)
Pre-circulation of applicants evidence	103B(3)	10 (prior to hearing)
Pre-circulation of submitters expert evidence	103B(4)	5 (prior to hearing)
From close of submissions to completion of hearing	103A(2)	45
From close of hearing to notice of decision	115(2)	15
	Total	100