

2017

Consent Support

Consent processing administration



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This guidance has been updated to include the changes made to the consenting provisions of the RMA as a result of the Resource Legislation Amendment Act 2017 (RLAA17) which came into effect on 18 October 2017. For more information about the amendments refer to the RLAA17 Fact Sheets available from the [Ministry's website](#).

Administering the processing of resource consent applications in an efficient and cost effective way is an important part of the overall management of applications once they are lodged with the council.

It is also important for supporting council's duty to monitor the efficiency and effectiveness of their resource management functions and processes.

This guidance note provides good practice tips for keeping records and tracking consents throughout the resource consent process.

The Resource Management Act 1991 (RMA) sets out the statutory timeframes for the processing of applications and limits the times the processing 'clock ' can be stopped for further information requests and when s37A can be used to extend time frames. These provisions, in combination with the [Resource Management \(Discount on Administrative Charges\) Regulations 2010](#) (Discount Regulations), makes tracking key consent processing milestones particularly important.

Guidance note

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Why Keep Records?

In addition to performing an important audit function, keeping records of resource consents can also be used to:

- identify areas where improvements can be made in council practices, including feedback to plan development staff
- monitor council performance
- maintain consistency in procedures
- supporting council decisions on key stages in the process such as notification and whether to grant the consent.

Effective record keeping will also assist council's in addressing the following requirements described below:

National Monitoring System

The Minister for the Environment is responsible for monitoring the implementation and effectiveness of the RMA. Similarly, councils have a duty to monitor their RMA functions and processes to ensure these are carried out effectively.

The Ministry has been working with councils to develop a National Monitoring System (NMS) to improve monitoring of the RMA functions and processes.

The NMS represents a more transparent, robust and coordinated approach for monitoring how effectively the RMA is being implemented. It will improve the availability, consistency, comparability and timeliness of RMA information and achieve efficiencies by streamlining the collection of information.

The NMS replaces the biennial RMA Survey of Local Authorities.

For more information on the NMS refer to the [Ministry's website](#).

Duty to gather information, monitor and keep records

Sections 35 and 35A of the RMA require every council to gather sufficient information and undertake research as necessary to carry out its functions or regulations under the RMA.

Section 35 Duty to gather information, monitor and keep records

Section 35(2) requires councils to monitor matters such as the efficiency and effectiveness of policies and rules in its policy statement or plan, and the efficiency and effectiveness of the processes they use to exercise their functions under the RMA This reinforces the fact that councils are responsible for their performance.

Section 35(3) requires every council to keep records of certain information so the public is better informed of the duties, functions and powers of the council, and are able to participate effectively under the RMA. Section 35(5) requires councils to include records of all:



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- policy statements and plans, including requirements for designations and heritage orders
- material incorporated by reference in any plan under Part 3 Schedule 1
- decisions relating to submissions on any proposed policy statements or plans not yet operative
- Orders in Council served under s154(a) (only applicable to coastal tendering and regional councils)
- national environmental standards or national policy statements or the New Zealand Coastal Policy Statement
- resource consent applications received
- decisions under s37A (requirements for waivers and extensions)
- decisions on direct referral under s87E
- notification decisions under ss95 to 95F
- requests and decisions by requiring authorities for designations or heritage protection authorities for heritage orders under ss198C and 198H
- decisions on deemed permitted activities under s87BA and 87BB
- resource consents granted
- transfers of any resource consent
- written complaints received in the past five years concerning alleged breaches of the RMA or a plan and how each complaint was dealt with
- natural hazards (to the extent Council considers appropriate for the effective discharge of its functions)
- in the case of territorial authorities, locations and areas of all esplanade reserves, esplanade strips and access strips in the district
- in the case of regional councils, every protected customary rights order or agreement relating to a part of the common marine and coastal area within the region
- any other information gathered as part of its monitoring.

Section 35A Duty to keep records about iwi and hapū

Section 35A requires councils to keep and maintain records about each iwi and hapū within its region or district. This includes:

- the contact details of each iwi authority and any groups that represent hapū; and
- planning documents recognised by iwi authorities and lodged with council; and
- any area where iwi or hapū exercise kaitiakitanga; and
- any Mana Whakahono a Rohe entered into (under section 580)

This information is important to facilitate consultation with tāngata whenua and ensure that Māori interests are taken into account.

Resource Management (Discount on Administration Charges) Regulation 2010

It is important that the processing time frame is closely monitored as part of the administration of the application to help ensure the statutory time frames prescribed in the RMA are met.

This is particularly important considering the Resource Management (Discount on Administrative Charges Regulations 2010 (Discount Regulations). The Regulations require a discount of 1 per cent for each day an application is processed over the statutory



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timeframes, up to a limit of 50 working days. Therefore, for consent applications that take longer than 50 working days over statutory timeframes, the maximum discount that will apply is 50 per cent.

Councils are able to adopt their own more generous discount policy if they choose.

For more information on the Discount Regulations and how they should be implemented refer to the Ministry for the Environment's [Resource Management \(Discount on Administrative Charges\) Regulations 2010 Implementation Guidance \(PDF\)](#). This guideline also includes basic forms for discount invoicing.

Setting up the consent file

Councils developing a system to record information relating to resource consents may wish to consider their reporting requirements early on, including those required under sections 35 and 35A of the RMA, and the National Monitoring System. It may also be beneficial to consider what information could be collected and reported on internally and to inform plan-making decisions.

Information on resource consents is commonly recorded by councils electronically, although some information is also manually recorded in a physical record and/or register.

Physical records

A number of councils have created their own cover sheets for recording information about a particular application. These are usually copied and kept at the front of any file, or on the actual cover face of the file for easy reference.

Including a processing sheet at the front of a consent file is an effective way of recording key information and monitoring compliance with statutory time frames.

Note – the information recorded on a cover sheet should correspond to any electronic records.

Recommended matters for recording

Councils developing a system to record information relating to resource consents should consider the following matters:

- reporting requirements for the NMS
- requirements under sections 35 and 35A
- any necessary information that may assist in applying the discount regulation.

It is important to remember that any information recorded about a particular consent application must be clear and accurate, and relatively easy to extract. Information should also be recorded as it happens, not once the consent has been granted, declined or withdrawn.

The resource consent process

Allocating the application

Every application should be allocated to one council officer who is then responsible for its processing (including compliance with time frames and coordinating specialists). They should have suitable experience to process the particular proposal with additional senior/technical support as appropriate.

Applications should ideally be allocated according to their perceived complexity, staff skills and expertise, and any previous involvement, such as pre-application meeting(s) or involvement in prior consent(s) relating to the site or locality.

When allocating a more complicated application to new staff or less experienced staff, make sure an experienced staff member provides support, coaching and mentoring to the processing officer. The experienced staff member should maintain regular checks with the processing officer regarding the processing of the application and provide guidance to them if they have any concerns about how it should be managed or reported on. This will ensure the system runs as smoothly as possible and will provide the processing planner with greater confidence.

Circulating the application

Communication with other parts of the council about applications is highly recommended, particularly where specialist advice is needed on an aspect of the application. If comments are sought from another council department, a work brief should be prepared that clearly specifies the nature of the advice required and the date by which it must be provided. This will help to ensure advice is provided within the required time frames. Note that circulating an application to another council departments does not mean that the processing clock can be stopped. Time frames set for reporting on applications within the council must still allow the statutory time frames to be met.

It is good practice to:

- Talk to the other departments about suitable ways to streamline the process for circulating applications and seeking advice.
- Devise a standard brief cover sheet for requesting input from other staff and then add specific matters to be addressed on the sheet where necessary, including timeframes for when their response is required by.



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- It is recommended that service level agreements are established with other teams on their level of input and reporting timeframes.

Recording and filing key information

It is important councils record all key information and milestones relating to the resource consent process.

The following should be filed in the same place as the application:

- all correspondence relating to a resource consent application
- file notes of conversations with the applicant and any consultants, whether they were over the phone or in person
- advice received from specialist advisors or file notes of any conversations with them
- notes from any pre-application meetings
- documentation of the site visit, for example, a summary of the findings and potential issues, any photographs taken and aerial photographs
- completed rule compliance checklist
- any requests for further information and information received
- if the consent was notified, a copy of the advertisement
- record of who the application was sent to and their addresses (including electronic address) if notified or limited notified
- any written approvals received
- any submissions received
- records of any pre-hearing meetings or mediation
- planning reports
- minutes of hearings
- hearing evidence
- decisions
- objections
- appeals
- timesheets, invoices or any requests for additional fee payments.

Task for the allocated planner

To deliver better quality information about resource consents, it is important that the allocated planner takes the time to review the information about the resource consent (e.g. check the type of application, type of resource consent, site description, description of the proposal, date lodged, class of activity etc. is accurate).

It is important that information is continuously recorded throughout the resource consents process. However, it may be beneficial to put in place an 'audit step' whereby the allocated planner reviews the information recorded upon allocation, and at the time the decision is approved (and prior to invoicing).

The time frame milestones

Processing an application within the time frames set by the RMA is vital. The time taken to process an application is often the biggest complaint about the resource consent process.



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The onus is on councils to make sure time limits are met, which is particularly important in light of the Discount Regulations. In addition, there is also a requirement under section 18A to ensure that any processes are timely, efficient, consistent, cost effective and proportionate to the power being exercised or function being performed and s21 of the RMA to 'avoid unreasonable delay'.

The key time frame milestones in the RMA for processing a consent application include, but are not limited to:

1. **Date lodged (Clock Start):** the date an application was lodged with the council. This is the first statutory 'working day' for the application, ie, it is the date that the processing clock starts. If an application for the same activity has previously been returned under Section 88(3), the lodgement date should be the date the new application is lodged with the council as it must be treated as a new application under section 88(4).
2. **Date determined as incomplete under section 88(3) (Clock Stop):** if applicable, the date it was determined the application was incomplete.
3. **Date for deferred under section 91 (Clock Stop/Clock Restart):** if applicable the date a section 91 was issued for the applicant to apply for additional consents, and subsequently the date processing proceeded following deferral.
4. **Dates for section 92(1) and 92(2) requests:**
 - the date further information/commissioning of report requests are made (Clock stop)
 - The date that a response was received (possible Clock re-start), and
 - if on a different date, the date that the further information/report was received (Clock re-start) (noting that the clock can only be stopped once for a request under s92(1) when this is made before the hearing although it can be stopped a number of times for a report commissioned under s92(2)).
5. Date council notifies applicant that there are affected parties that need to provide written approval (Clock stop) and date that these are received (or date applicant informs council to proceed on limited notified basis) (Clock start).
6. **Date notified:** the date the consent was limited or publicly notified.
7. Date that a fast track application ceases to be continued to be processed as a fast track application (s 87AAC(4)) and is subsequently processed subject to the standard processing requirements/timeframes (depending on notification path it will follow).
8. **Section 37 time extension(s):**
 - a. the date that any extension of time under section 37 was made.
 - If the section 37 extension of time was made with the applicant agreement (under s37A(4)(b)(ii) or 37A(5)), the date entered should be the date the applicant agreed to the extension.



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- If the section 37 extension of time was made due to special circumstances (under section 37A(4)(b)(i)), the date entered should be the date the applicant is issued the notice of the section 37 extension.
- b. Length of section 37 extension:
- The number of working days that were extended through the use of section 37. It is implicit in the RMA that if a timeframe is extended, it should be for a specified period.
- c. The RMA timeframe that has been extended under s37 (refer to guidance below).
9. **Date submissions close:** if limited or publicly notified, the date the submissions closed.
10. **Date of advice of submissions to applicant:** the date council provided list of all submissions received to applicant (s98).
11. **Date of any request to delegate the decision making** to independent commissioners (s100A).
12. **Date of deferral under s91A (Clock stop):** the date that any request was made to put the consent on hold under s91A-C, the number of working days it is put on hold for, and the date it comes off hold (Clock re-start).
- 13. Start and end date of pre-hearing meetings.**
14. The **date for the provision of evidence** before the hearing for the council, applicant and submitters
15. **Commencement and conclusion dates of hearing:** the dates of commencement and conclusion of the hearing.
16. **Decision date:** the date the decision was issued or the application withdrawn or returned.
17. **Statutory days lapsed:** the number of statutory days the decision was made within, as defined under the Discount Regulations 2010.
- a. Total number of working days taken to process the application in accordance with timeframes under the RMA (Lapsed working days).
 - b. Total number of altered (excluded) working days (clock stops [S88B], time extension [s37(1)], awaiting fee payment [s36AAb(2)] non-notified hearing days etc)
 - c. Statutory Days Lapsed is calculated by subtracting the excluded days (and clock stop days) from the total number of working days.
18. **The date of any objections** received.
19. **The date of any objection hearing** (if necessary) and the date of the decision.

20. **The date of any appeals** lodged with the Environment Court.

21. **The date the resource consent commences.**

It is also useful to record information on any appeals that may be made. For example consider recording:

- date appeal period closes
- were appeals received? (yes/no) s274 notices lodged? (yes/no)
- Environment Court mediation date(s) and/or hearing date(s)
- consent granted by Environment Court? (yes/no).

Where direct referral has been requested, there are a number of other important milestones. These include:

1. The date any request for direct referral is received.
2. The date when council makes a decision on direct referral.
3. If direct referral declined:
 - the date which the council advises the applicant and provides reasons
 - the date for any objection to the council decision to decline the request for direct referral and the outcome of the objection
 - if the objection is upheld and the application is processed by council, the dates in the process (hearing etc.)
4. If direct referral granted:
 - the date which the council advises the applicant and provides reasons
 - the date the council report is provided to the applicant and all submitters
 - the date by which the Applicant must lodge a notice of motion with the Environment Court;
 - the date the council provides the Court with all information relating to the application (application, report, submissions etc.)
 - the date by which s274 parties must join the Environment Court proceedings;
 - the date of the Environment Court decision on the consent

Using sections 37-37A to extend the time frames

Section 37 allows council 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.

With respect to extending RMA time limits that are imposed on a council in relation to the processing of resource consent applications, changes or cancellations of conditions of resource consent or review of a resource consent conditions, sections 37A(4) and (5) apply.

For the extension of any other time limits outlined in the RMA, section 37A(1) and (2) apply (for example: the timeframe to provide a written notice relating to a deemed permitted boundary activity (s 87BA(3)), or to issue a certificate of compliance (s139(6)), or issue an existing use certificate (s139A(6))).



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Under s37A(4), a council can extend a time limit (relating to the stated resource consent matters) for up to double the maximum period specified in the RMA when:

- special circumstances apply (including special circumstances existing by the scale and complexity of the matter); or
- the applicant agrees to the extension.

The council must also take into account the matters in s37A(1), which include:

- the interests of any person who may be directly affected by the extension or waiver; and
- the interests of the community in achieving an adequate assessment of effects;
- the duty under s21 to avoid unreasonable delay.

Under s37A(5), a council may extend a time period to exceed twice the maximum time period specified in the RMA only if the applicant agrees to the extension and the matters in s37A(1) (as noted above) have been taken into account.

S 37(6) requires that the council notifies every person who it considers is directly affected by the extension of the time limit.

It is good practice for applicants to be contacted as early as possible if there may be a need to extend time frames and explain why this is required. Applicants are likely to be more agreeable to an extension of time frames when they understand the reasons why. 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.

The implications and/or alternatives of any agreement 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.

What are 'Special Circumstances'?

When the applicant does not agree to an extension of time, s37(4)(b) can then only be used where there are special circumstances. The existence of special circumstances may include (but are not limited to), 'the scale or complexity of the matter'. The use of s37-37A should be supported by clear reasons why special circumstances are considered to exist which require an extension of time. This should only be when the delay is outside the control of the council and may include the scale or complexity of the application. Special circumstances are unlikely to be justified when there is a high workload at the time or other internal resourcing issues within the council.



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Determining whether special circumstances exist will need to be done on a case by case base for individual projects. 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.

Special circumstances in the context of public notification of resource consents have been defined by the Court of Appeal as circumstances that are “outside the common run of things which is exceptional, abnormal or unusual but may be less than extraordinary or unique” (Far North DC v Te Runanga-iwi o Ngati Kahu).. Refer to the [To Notify or Not to Notify](#) guidance note for more information on special circumstances in the context of notification decisions. It is arguable whether this can be applied to Section 37A matters – which may well be established in case law in the future. It is clear that it is not appropriate to invoke “special circumstances” arbitrarily or without good reason – whether to improve statistics, avoid penalties under the Discount Regulations or other motive outside the intended purpose under Section 37A(4)(b)(i) (which is to get the best environmental outcome).

Reasons for Time Extensions

Time extensions may be appropriate in the following situations:

- to undertake further consultation where there is significant complexity or uncertainty about effects
- to gain agreement on consent conditions if the applicant wishes to discuss these prior to 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
- Unavailability or difficulty in accessing key expertise
- Where a prehearing meeting has been called (under s99) and is expected to take some time
- Where timeframe misalignment occurs as a result of deferral pending the lodgement of additional (associated) resource consents (under section 91).
- Where a natural disaster (such as an earthquake) significantly affects the councils ability to meet standard timeframes

When a section 37 extension is made, the reasons for the extension and which timeframe that is being extended needs to be recorded, along with the date that the council obtains the applicants agreement for the extension or the date that the council notifies the applicant that a time period is being extended due to special circumstances. There is no barrier under the RMA to extending all timeframes for a consent application at once, provided all section 37A criteria are met for each extended timeframe.

Where ss37 and 37A have been used to extend time periods, applications should be recorded as having been processed within time, provided the limits set for processing through the use of ss37 and 37A have not been exceeded.

Meeting the milestones



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Processing a consent application within the statutory time frames is the responsibility of the planner allocated the consent.

The majority of councils use a consent monitoring IT system to automatically track dates, milestones and to generate reports etc.

The extent of the system required will depend on the number of consents processed and the number of officers involved in processing them. Some councils use the following methods to ensure milestones are met:

- tracking consents on a whiteboard or wall chart (located in a visible position)
- computer generated reminders
- weekly print-outs of when reports/decisions are due and status of consent applications
- regular team or one-on-one manager/staff meetings to discuss progress on consent applications and workloads.

If the council does not process the resource consent application within the timeframes specified in the RMA, the Resource Management (Discount on Administrative Charges) Regulations 2010 apply, and the council must provide a discount to the applicant. Refer to the MfE [implementation guidance](#) for further information in relation to these regulations.

