

2017

Consent Steps

Recommending the Duration and Lapse
Period



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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.

Sections 123 to 126 of the Resource Management Act 1991 (RMA) deal with determining the duration and lapse periods of resource consent applications and the cancellation of consents. This guidance note explains these sections of the RMA and provides advice on determining the duration of consent, whether consent has lapsed and cancelling consent.

This note does not cover cancelling consents when enforcement action has taken place and the Environment Court has ordered a review of the consent (s132(4)).

Duration of consent

Sections 123 and 123A set out the duration period (expiry dates) of resource consents. Except as provided for in s125 (lapsing of consents), the following durations apply:

- coastal permit or land-use consents for reclamations that contravene s13 and any other land-use or subdivision consent - unlimited duration unless otherwise specified in the consent
- other coastal permits or any other land use that contravenes s13 - five years from the date of commencement of the consent (s116) if not specified, and not exceeding 35 years if a duration time is specified.
- coastal permits for aquaculture activities must have a duration of no less than 20 years from the date of commencement of the consent unless the applicant has requested a shorter period or a shorter period is required to ensure that adverse effects are adequately managed. The duration for such a consent must also not exceed 35 years.

For resource consents being determined in relation to a rule in an NES that prohibits an activity (unless certain conditions/terms are complied with), the NES may specify a particular consent duration allowed in relation to that resource consent.

Decisions on the term of a consent need to be carefully considered and should be made in writing. For notified consents these decisions must be included in the decision report and must outline the reasons for deciding on a shorter term than requested in the application or set in legislation (s113(1)(b)).

Exercise of resource consent while applying for new resource consent / Lapsing of consent



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When resource consent is due to expire and a consent holder applies for a new consent for the same activity, s124 allows a consent holder to continue to exercise their existing consent until a new consent is granted or declined and all appeals determined if:

- the new application is lodged at least six months before the expiry of the existing consent, or
- the new application is lodged between three and six months before the expiry of the existing resource consent and the council agrees to the applicant continuing to exercise their original consent.

Sections 124A to 124C outline how the council must consider new applications under s124 if other consent applications are received to use the same natural resource as the existing consent holder. The provisions of sections 124A to 124C relate to new applications from either the existing consent holder or other persons.

Section 124 does not apply to an application to which section 165ZH applies. Section 165ZH applies to processing applications for existing coastal permit holders in relation to aquaculture activities.

Section 124B gives priority to the existing consent holder to have their new consent application determined ahead of anyone else competing for the same resource. In determining the new application, the council must consider all relevant provisions of the RMA and whether the existing consent holder:

- uses the resource efficiently, and
- uses industry good practice, and
- has been served with an enforcement order that was not later cancelled or has been convicted for an offence under s338.

Section 124C relates to competing applications by persons who are not existing consent holders. This section also gives priority to the existing consent holder. Such applications need to be made at least three months before the expiry of the existing consent. When such applications are received, the council must hold the application without processing it and notify the existing consent holder that the application has been received and that they may make an application for a new consent.

If the existing consent holder does make a new application within the three month time frame before the consent expiring, the council must hold the other resource consent application until the application by the existing consent holder and any subsequent appeal has been determined. If the consent is granted, the application by the other person lapses.

If the existing consent holder advises in writing they do not wish to make a new application or they do not make a new application at least three months before the expiry of the consent, the council can then process the other application. However, any consent granted cannot be fully exercised until the expiry of the existing consent.

Section 124 generally applies to water and discharge permits which have a maximum duration of 35 years.

Please note that subsequent changes to any of the RMA planning documents (or any new documents) under which the resource consent or coastal permit is applied for, can change the status of any new resource consent. The new resource consent can therefore



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be impacted by any new planning documents that have come into force since the consent was granted and will need to be assessed.

Cancellation of consent

Section 126 allows a council to cancel a resource consent if it has been exercised in the past but has not been exercised during the preceding five years. If a council decides to take this action then it must serve written notice on the consent holder.

A council may not cancel a consent if the consent expressly allows for an activity to be suspended for a period greater than five years. The consent holder can apply to have their notice revoked as long as the application is made within three months of receiving the notice of cancellation. The council can then decide to revoke the notice and state a period after which a new notice may be served. In deciding whether to revoke a notice or not the council needs to consider:

1. whether the applicant has obtained the approval of persons that might be adversely affected by the revocation of the notice, and
2. the effect of the revocation of the notice on the objectives and policies of any plan or proposed plan.

A consent holder can object to any decision made by the council to cancel a consent (ss357A and 357C to 358).

As mentioned in the abstract of this note, this note does not cover cancelling consents when enforcement action has taken place and the Environment Court has ordered a review of the consent (s132(4)).

