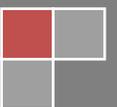


2017

# Consent Support

Administering Consent Charges



## Administering resource consent charges

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**This guidance has been revised to include changes to the RMA as a result of the Resource Legislation Amendment Act 2017 (RLAA17). The consenting provisions of the RLAA17 commenced on 18 October 2017. For more information about the amendments refer to the RLAA17 - Fact Sheets and technical guidance available on the [Ministry's website](#).**

Section 36 of the Resource Management Act 1991 (RMA) enables councils to charge applicants for all tasks related to the receiving, processing and granting (including declining) consents; and for the administering, monitoring and supervising consents. This also includes charges for Council functions relating to:

- issuing notices that boundary activities are deemed permitted activities (s87BA);
- marginal or temporarily non-compliant activities are deemed permitted activities (s87BB),
- charges for requests under s100A to have a resource consent application heard by one or more independent commissioner(s)
- for handling objections under s357A(1)(f)(g) to be heard by a hearings commissioner.

This guidance note provides good practice recommendations for levying such charges under s36.

[The Resource Management \(Discount on Administrative Charges\) Regulations 2010 \(Discount Regulations\)](#) and section 36AA introduced a requirement to give discounts on consent administration charges when consents are not processed within the RMA's timeframes. The Discount Regulations require a discount of one percent of the administrative charges for every day a consent is not processed up to a maximum of 50 percent. Councils may also adopt their own discount policy provided it is more generous than that set by regulation.



### Informing the applicant

Both applicants and submitters should be provided with clear information by the council about potential charges associated with the resource consent process, including:

- what the council will charge for, including the applicant and/or submitters responsibility to pay for independent commissioners under s100A if requested
- any additional charges that may be payable
- objection rights to additional charges
- the Discount Regulations or Council's policy for administrative charges and information about how discounts are applied
- how to reduce consent processing and compliance monitoring costs

### Schedules of charges

A council should have concise, clearly set out schedules of charges that are easy to follow.

These schedules should be included in the council's annual plan. Section 36AAB(4) also requires councils to publish, on a publicly accessible website, an up-to-date list of charges that they have fixed under section 36. A table is easier to read than just text. Schedules that only include RMA charges are easier to understand than longer lists of all council charges. A schedule of charges should:

- be simple to use and easy to understand
- follow a consistent format from year to year (other than when formatting improvements are made)
- clearly define the different categories of consent related activities that are covered by the charges (e.g. applications, hearings, certificates of compliance, compliance monitoring, enforcement actions, etc.)
- clearly note any difference in the charges for notified versus non-notified consents
- clearly identify any compliance monitoring charges payable, either by way of fixed charges payable in advance, or actual and reasonable charges payable in arrears
- use either single GST inclusive figures; or alternatively show the charge, the additional GST, and the total GST inclusive charge (three figures)
- state clearly if the charge is a set fee, or a fixed initial deposit charge payable in advance only
- advise that additional charges may be levied at the completion of the process (in the case of initial fixed deposit charges payable in advance)
- advise on charges to applicants and/or submitters who request to have the application heard by independent commissioners under s100A.
- advise on the Discount Regulations or council policy for discounts on administration charges on resource consents. (Note: if a council policy is adopted, this must specify the discount, or the method for determining the discount, and the procedure an applicant must follow to obtain the discount.)

If charges are changed, councils should advertise the new schedule of fees widely using a variety of methods such as community newspapers and the council's website.

### Direct Referrals to the Environment Court



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Additionally, a schedule should outline any council charges for applications that are directly referred to the Environment Court under s87D. Under s36, councils can recover all costs of processing an application that is directly referred to the Environment Court up to the point of preparing the report and sending it to the Court. This means the costs of initially considering the application, notification and receipt of submissions can all be directly recovered from the applicant, as described above.

However, the costs to the council of being party to the proceedings before the Environment Court are not recoverable directly from the applicant. The power to award costs to a council involved in a direct referral proceeding are highlighted in s285 (7) and (8). These sub-sections state:

*(7)The Environment Court may order an applicant to pay the costs and expenses that a consent authority or a territorial authority incurred in assisting the court in relation to a report provided by the authority under section 87F, 165ZFE(6), 198D, or 198J and that the court considers reasonable.*

*(8)In deciding whether to make an order under subsection (7), the court must apply a presumption that such costs are to be ordered against the applicant.*

If charges are changed, councils should advertise the new schedule of fees widely using a variety of methods such as community newspapers and the council's website.

### Guidance for officers

Staff should be provided with guidance on council procedures for determining resource consent charges. This could be a basic guide on what activities are chargeable, or a more comprehensive procedures manual. Staff should be given training in what to charge for when they first start working in a resource consent or compliance monitoring unit.

Staff should also be provided with guidance on how the Discount Regulations or the Council's discount policy work. [The Ministry for the Environment's Implementation Guidance](#) is a good starting point when creating specific council guidance for staff.

### Estimates

Section 36(6) requires councils to provide estimates of likely additional charges upon request. Such requests are usually associated with notified applications and more complex non-notified applications. It is good practice for councils to provide estimates for complex notified applications irrespective as to whether the applicant requests that information or not.

Estimates requested under s36(6) should be provided in writing. Any assumptions built into the estimate should be made explicit and clear to the applicant. This may include:

- whether or not additional information will be required
- the general number of submissions anticipated (Note: applicants need to be made aware that the number and scope of submissions received can have a significant impact on costs)
- whether or not a pre-hearing meeting might be held
- the assumption that there will be a hearing
- how long it is estimated that the hearing will last
- whether the hearing will likely be before councillors or independent commissioners
- that the council is required to appoint independent commissioner(s) if requested by the applicant and/or submitters.



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It is the applicant and/or submitters responsibility to pay for independent commissioners if they request them.

Given the range of variables that can affect the final cost of processing a resource consent, it may be desirable to cost each of the above items separately, so that a range of likely costs can then be estimated. Updates to estimates should be provided (e.g. after submissions have been received).

An estimate should also include a note about further information requests and reports commissioned by the council.

Council staff should refer to previous, similar applications to work out how many officer hours might be charged for.

Monthly billing on large-scale projects can avoid potential over runs by closely monitoring how actual and estimated costs are tracking. Keeping accurate timesheets can also assist here. Councils should advise the applicant in advance if it looks like the final costs are going to exceed the estimate.

This is particularly important in terms of the Discount Regulations, where a refund is required if there have been delays in the consent processing. Councils should closely monitor how the costs and processing time is tracking.

### **Invoicing**

Most councils use timesheets to ensure that staff keep accurate records of all time and costs associated with processing resource consents. All the time spent on a job should be recorded regardless of whether all the actual hours are deemed to be reasonable and consequently invoiced to the applicant.

A time-recording system should be easy to understand for all staff and not too complex, but able to generate enough detailed information. Accurate time recording also assists in reviewing set fees or deposits.

A clear, easy to read invoice should be provided, accompanied by a costing sheet that includes a breakdown of the total costs itemised in the invoice.

The invoicing process will be different if either an applicant and/or submitter has requested the application to be heard under s100A, depending on who made the request. Under s36, councils can now fix charges for applications where:

- The applicant only makes a request for the application to be heard by independent commissioners which is payable by the applicant (even when one or more submitters has also made a request). These charges should be for the costs of the application being heard and decided independently.
- The submitter makes a request for the application to be heard independently but the applicant does not make the same request. These charges should be for the estimated costs for hearing the application independently payable by submitters, above what it would have cost if it wasn't heard independently.

Where a council uses a system of fixed initial deposit charges, applicants should be advised when the deposit they have paid is nearing being spent and additional charges are likely. Another way of keeping applicants informed of costs is to charge at set points during the process, or to provide interim monthly invoices for larger or more complicated consents. Interim invoicing can also occur at defined points in the process such as after submissions have closed.

Under s41C (directions and requests before or at hearing) and s92(2)(b) (further information, or agreement, may be requested) of the RMA, an applicant must be advised



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if the council is going to commission a report on any matter raised in the resource consent application. An applicant should be informed that this will generate additional costs that will be payable by them.

Note that applicants may refuse to agree to the commissioning of a report. If this occurs, the council must notify the applicant subsequently and consider the application under s104.

The council must send the invoice to the applicant (to their electronic address for service if provided), which is not necessarily the address for service, or the applicant's consultant. It is advisable to include a separate space on the consent application forms for an electronic address for invoicing.

### **Objections to additional charges**

Section 357 enables consent applicants to object to the council for a range of matters. Section 357B provides a right of objection to payment of additional charges under s36(5). Objection rights also apply with respect to a person required by the Council, EPA or Minister to pay costs under s149ZD(1) to (4) (costs of EPA processes). Section 357C sets out the procedure for making and hearing objections.

Councils need to consider the Discount Regulations when setting charges, as they require that a discount is given on resource consents that are processed outside of statutory time frames.

Where a council does not use a schedule of fixed charges, it is recommended good practice to advise applicants of their ability to object to additional charges when sending out an invoice for processing a consent or for undertaking compliance monitoring. This information should either be printed on the invoice or included in an accompanying covering letter (if one is used). It should also be included in any general advisory material provided to applicants about consent charges. The advice should clearly explain that the consent applicant only has an ability to object to the additional charges, and not any fixed initial deposit charge already paid.

If an applicant is unhappy with the council's decision on a s357B objection, then they have the ability to lodge an appeal with the Environment Court under s358. All s357 decisions should be given in writing, reasons for the decision clearly outlined in terms of the criteria listed in s36AAA, and the applicant's appeal rights under s358 clearly noted in the decision.

While it may be possible for councils to charge for processing objections under s357, 357A, and 357B, the situation in relation to fixing charges for objections is not clear, except in relation to objections where the person objecting to a decision on a resource consent, an application to change or cancel a resource consent condition (s127), a consent notice condition (s221), or a review of resource consent conditions (s128) requests their objection to be heard by an independent commissioner. In this case, the council can fix a fee under s 36(1)(af) for the cost of the objection process.

Councils that intend to fix charges for any other types of objections should seek legal advice on the legality of those charges.

### **The Resource Management (Discount on administrative charges) Regulations 2010**

Section 36AA requires a discount policy on administration charges for resource consents. A discount policy was set by the Resource Management (Discount on Administrative Charges) Regulations 2010 and s36AA also allows councils to develop their own discount



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policy. This policy must be adopted in accordance with the consultative procedure under s83 the Local Government Act 2002. Section 36AA also specifies that:

- the policy must relate to circumstances where the consent is not processed within statutory time frames;
- the policy must specify the discount, or method for determining the discount, and the procedure the applicant must follow to obtain the discount; and
- the policy adopted must be more generous than provided for in the regulations.

Councils should, therefore, determine whether they should develop their own discount policies in light of the regulation set. If a council adopts its own discount policy it should provide guidance on the method to determine the discount.

