

2017

Consent Steps

Issuing a Resource Consent



Issuing Consents

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.

This guidance note provides good practice advice on issuing a resource consent.

Sign-off consent: Quality assurance

Before a resource consent is signed-off by a council and issued to the applicant, it is good practice to carry out checks to ensure each step of the consent process has been completed correctly and that the file is complete.

It is helpful to have a list of the quality assurance matters to be completed. This list could include checking that:

- the applicant's contact details are correct
- if the applicant is a company, evidence that the Companies Office Register was checked to ensure the company is registered
- the property data is correct
- the details of the consent are correct (i.e. the proposal, activity status, relevant rules)
- the approved plans are stamped/marked 'approved ' to distinguish them from other versions of the plans
- any outdated plans on file have been stamped/marked as 'superseded '
- all relevant information is logged into the council database
- appropriate delegations have been used
- the statutory timeframes are recorded:
 - date lodged and that it matches date stamp on application
 - date of any s91 (deferral pending application for additional consents) and s92 (further information) requests, their responses and a note as to whether the processing 'clock' was stopped
 - date notified
 - date of any request by the applicant under section 91A and the date that the processing of the application is recommenced under 91B or returned under 91C
 - date any request for direct referral received and the subsequent steps in the process
 - date consent granted/declined, commencement date, and lapse date
- statutory procedures have been followed:
 - written approvals - all necessary approvals obtained correctly
 - notification decision made correctly (and s95A to 95F report on file)



THE RMA QUALITY PLANNING RESOURCE

- notification undertaken correctly
- direct referral processes - including decision on a request for direct referral and the preparation of a report for the Environment Court
- pre-hearing meetings recorded and circulated
- mediation meetings recorded
- submissions received
- evidence provided before the hearing within correct timeframes
- s37 time extensions recorded correctly, including details of the special circumstances leading to the extension, and/or the agreement of the applicant in writing under ss37A(4) or 37A(5)
- decision information recorded
- compliance monitoring:
 - inspection requirements set up
 - monitoring officer assigned
 - self-monitoring requirements set up if appropriate.

It is good practice to prepare a checklist that lists the quality assurance matters to be covered off when issuing the resource consent, which can be included in the file.

It is also good practice to prepare a standard notice of decision template to provide consistency and minimise the risk of errors.

Issuing the decision

When do I notify (issue) the decision?

Section 114 of the RMA requires a council to serve a copy of its decision on the applicant, every person who made a submission, and any other persons or authorities the council considers to be appropriate. This notice must also contain a statement of the timeframe in which an appeal against a decision may be lodged. As outlined under the s113 requirements, the decision must be in writing.

Section 115 of the RMA outlines the time limits for notification of a decision. These are:

- 15 working days after the close of the hearing.
- If the application was non-notified and no hearing was held, then notification of the decision must occur no later than 20 working days after the date the application was first lodged (excluding any period when the processing clock was stopped for further information).
- If the application was notified but no hearing was held, notification of the decision must occur no later than 20 working days after the closing date of submissions.
- If the application was notified and a hearing is held, then the decision must occur 15 working days from the close of submissions.
- Where it is decided under s87I that a request for direct referral is to be determined by the council and a hearing is not held, notification of the decision must occur no later than 20 working days after the date on which the council knows s87I applies. This is the same timeframe between the close of submissions and the issue of a decision as a normal publicly or limited notified consent that does not go to a hearing as set out by section 115(4).



How do I notify the applicant of the decision?

Decisions must be served to an electronic address (if provided). If an electronic address is not provided, it can be served by post, by hand, or by leaving it at a document exchange, or faxed. Where a decision is sent by post it is normally deemed to have been received by the person at the time at which the letter would have been delivered in the ordinary course of the post (s352(5)).

The decision letter must include a copy of the decision including any consent conditions imposed. It must also inform the applicant of the right of appeal to the environment court (s120) and/or objection to the council (s357) and of the 15 working day time frame within which to lodge an appeal/objection should the decision not be satisfactory.

With non-notified resource consents, the decision letter should advise that the resource consent commences immediately unless an objection is lodged. If an objection is made under s357A, the resource consent can only commence once the objection and any appeal under s358, has been decided on, or withdrawn.

With notified resource consents, the decision letter should advise that until the period for lodging appeals is up (15 working days from the date the applicant received notice of the decision), the consent holder must not commence the consent. The applicant cannot commence the consent until the time for lodging appeals expires and no appeals have been lodged, or until the Environment Court determines that the appeals be withdrawn.

If the consent is granted, the decision letter should also advise the applicant of the consent expiry/lapse date. In accordance with s125, a resource consent lapses on the date specified in the consent or five years after the date of commencement of the consent (three years if the consent is for aquaculture activities in the coastal marine area), unless the consent has been given effect to or unless the applicant applies to the council to extend the consent period.

In addition to notifying the applicant of the decision, some councils also include details of the charges the applicant has incurred. This is best attached as an invoice rather than detailed in the letter. The letter should at least indicate to the applicant that an invoice will be sent separately. If the consent application was approved, the invoice may also need to include any charges associated with monitoring the consent.

How do I notify the submitters of the decision?

Submitters are notified of the decision in the same way as applicants – via an electronic address for service (if provided) or if not, in writing, with a copy of the decision and any consent conditions attached.

If the application drew a large number of submissions and the notice of decision is somewhat lengthy due to the nature of the application, s114(3) allows a summary of the decision to be served (instead of the full decision). This option is likely to be only needed if a number of these submitters did not provide an electronic address for service. If this is the case, the council must make a full copy of the decision available for viewing (physically or by electronic means) at all of its council offices and public libraries within the area of jurisdiction and the parties must be made aware of these locations for



THE RMA QUALITY PLANNING RESOURCE

viewing. The council should also make parties aware that they can request a full copy of the decision and that it must be provided to them within three working days of a request being made.

As with the letter to the applicant, submitters need to be informed of their appeal rights under s120(1) should they be dissatisfied with the decision. Submitters also need to know that they have 15 working days from the date they received notification of the decision, to lodge their appeal with the Environment Court.

Other matters

Section 133A enables an amended decision to be issued to correct minor mistakes or defects in the original decision within 20 working days of the granting of consent.

To help others referring to the file in the future, ensure all details of the approved proposal and plans, including the consent decision, are held together on file.

Objections to decisions

Under s357A there is a right of objection in respect of the consent authority's decision on an application or review, provided that either:

- the application or review was notified; and either no submissions were received, or any submissions received were withdrawn (s357(1)(f)); or
- the application or review was not notified (s357(1)(g)).

Section 357B also provides for a right of objection to a request by council to pay additional charges or costs.

Process

An objection must be made in writing and must be lodged with the council within 15 working days of receipt of the decision and must set out the reasons for the objection (s357C(1)-(2)).

In the case of an objection under s357A(1)(f) or (g), applicants are able to request under s357AB that their objection against a decision to be heard by an independent commissioner if the objection relates to:

- a decision of a council officer on a resource consent;
- an application to change or cancel a resource consent condition (s127) or consent notice condition (s221);
- a review of resource consent conditions (s128).

If an applicant makes such a request, the council must use independent commissioner(s) who are not members of the council and who are accredited (unless exceptional circumstances apply). The commissioner can call for further information (from the applicant, council or they can commission a report) if they consider that it would be helpful in determining the objection (s357CA).

The council (or commissioner) must consider the objection under s357A within 20 working days and if the objection has not been resolved, give at least five working days' written notice to the objector of the date, time, and place for the hearing of the objection.

For objections made under s357B (objections to costs and charges) the council must consider the objection "as soon as reasonably practicable" and give written notice to the objectors, as for a s357A objection.

The council may choose to hear the objection; or where officers have delegation to do so, deal with it at officer level if agreement can be reached between the objector and the council.

A decision on an objection is to be made in writing and then served on the applicant within 15 working days of making the decision.

Appeals against objection decisions

An applicant dissatisfied with the council decision on the objection (under s357A(1)(a), (d), (f), or (g)), may appeal to the Environment Court under s358 within 15 working days of the receipt of the objection decision.

This avenue is not open if an appeal in respect of the same matter has been lodged under s120, or the matter to which the resource consent relates is excluded under s120A (i.e. it is a boundary activity (defined in s87AAB), a subdivision, or a residential activity (defined in s95A(6) unless any of these activities has a non-complying activity status).

Appeals to the Environment Court on decisions

For notified resource consents, an applicant, consent holder or submitter can appeal a council resource consent decision to the Environment Court under s120(1). If however the application was for a boundary activity (defined in s87AAB), a subdivision, or a residential activity (defined in s95A(6)), there is no right to appeal to the Environment Court on , unless the activity status of any of these application types is non-complying activity.

If multiple resource consent applications for the same activity are lodged together (known as a 'bundled consent', and one or more of those consents is able to be appealed, then the entire 'bundle' of consents can be appealed together.

Submitters on resource consents can only appeal to the Environment Court if their appeal is related to a matter that they raised (excluding any part of their submission that may have been struck out).

The appeal must be made in the prescribed form ([Form 34](#)) and must state the reasons for the appeal, the relief sought and state any matters required by the regulations. The appeal must be received by the Environment Court within 15 working days of receiving the Council's decision. A copy of the notice of appeal must be served on the council, any



THE RMA QUALITY PLANNING RESOURCE

submitter and applicant (as appropriate) except for the appellant within five working days of the notice being lodged with the Court.

The Environment Court may order a party to an appeal to give security for costs prior to the proceedings. Where an appeal is not successful, the appellant may be awarded costs against them to pay for the costs of the defendant having to represent their case to the Court. Costs can be awarded by the Environment Court regardless of whether security of costs was required prior to the commencement of proceedings (s285).

See the Ministry's booklet [The Environment Court: Awarding and Securing Costs](#) for more information.

