

2017

Consent Steps

Non-Notified Resource Consents



Non Notified Resource 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.

Non notified resource consents make up the majority of resource consent applications under the RMA and follow a shorter and simpler process than notified applications. This guidance note outlines how the non-notified resource consent process works, the key statutory considerations and provides best practice advice on preparing s42A officer reports for non-notified applications.

Guidance note

What are Non-Notified Resource Consent Applications?

How is the Process for Non-Notified Applications Different to Notified Ones?

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What are Non-Notified Resource Consent Applications?

Non-notified resource consent applications are those applications that are not publicly or limited notified. The process for councils to determine whether resource consent applications are notified or not is outlined in "To Notify or Not to Notify"

If the council determines under the step-by-step process in s95A to 95G that the application does not need to be publicly or limited notified, then the application can proceed on a non-notified basis. Non notified applications must be processed within 20 working days.

The non-notified process can also apply to applications to change consent conditions under s127 of the RMA.

For notified applications, refer to the relevant guidance note.

Fast Track applications

The RLAA17 has amended the RMA to introduce a new fast-track process for particular types of resource consent applications. They are those applications that are district land use activities with controlled activity status or an activity that regulations prescribe as being eligible to be fast tracked, and where the applicant has supplied an electronic address for service. Fast track applications must be processed in ten, instead of the standard 20 working days. Applicants can opt-out of the process if they wish (at the time of lodgement).

A fast track application ceases to be a fast track application if either the council determines that the application needs to be notified, or if a hearing is required. The application is then continued to be processed via the standard resource consent process (depending on the notification path it follows), and the relevant timeframes that apply, noting that the date of lodgement of the original (fast track) consent remains the same. The process for councils to continue processing these consents on a notified basis is outlined in "Notified and limited notified applications".

Section 127 applications for a change or cancellation of consent conditions cannot be processed via the new fast track process given that they must be processed as if they were a resource consent for a discretionary activity (s127(3)(a)) and to be eligible for the fast track process, the district land use activity must have a controlled activity status.

How is the process for non-notified applications different to notified ones?

Once a decision has been made to proceed with the application on a non-notified basis, then an application can be assessed and a decision made about whether to grant or refuse the application under ss 104 - 107. There is no avenue for any input into the process by any other persons. The council can delegate the approval of non-notified applications to officers.

In contrast, the public notification process allows any person to lodge a submission on the application, and for limited notified applications persons identified as being adversely



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affected can lodge a submission. The limited and publicly notified processes also specifically provide for pre-hearing meetings, mediation, and hearings.

Hearings

Non-notified applications generally do not require a hearing to make a decision. However, sometimes a hearing may be required where the applicant asks for one, or if the council considers it appropriate that the application be heard for a particular reason (eg, when the applicant and council cannot agree on the conditions of the consent, where it is recommended the consent be declined, or in some cases where the council is the applicant).

As noted above, if the council decides a hearing is required for a fast track application, the application ceases to be continued to be processed as a fast track consent, and the application then reverts to being processed via the standard non-notified process (with hearing).

In contrast, for public and limited notification, it is normal practice for a hearing to be held (unless no submissions are received or no submitters wish to be heard in relation to their submission).

Timeframes

Timeframes are shorter for non-notified applications. Subject to the applicable stop clocks noted in the RMA and excluded days outlined in the Discount Regulations:

- A decision on a non-notified resource consent should be issued within 10 to 50 working days (see below for further detail).
 - A decision on a limited notified consent should be issued within 100 working days if a hearing is held (60 working days if no hearing).
 - A decision on a publicly notified resource consent should be issued within 130 working days if a hearing is held (60 working days if no hearing).
- (all time is calculated from the date the application was first lodged)

Appeals

The applicant/consent holder (and/or a submitter in the case of a notified consent) has a right to appeal the decision of the consent authority to the Environment Court (unless the application was for a boundary activity, a subdivision consent or a residential activity, unless any of these had a non-complying activity status) (s120).

What time frames apply?

The time frames and processes for a non-notified application are shown in the flowcharts linked below:

- Flowchart for [resource consent process for non-notified applications](#)
- Flowchart for [resource consent process for fast-track consents](#)



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A fast track application must be decided within 10 working days (s115(4)), and other non-notified applications that do not require a hearing must be decided within 20 working days. If the application is non-notified but does require a hearing, the hearing must commence within 35 days of the application being lodged. Unlike notified applications, the hearing days for a non-notified application are excluded from the working day calculation (by the Resource Management (Discount in Administrative Charges) Regulations 2010. A decision must then be issued within 15 working days of the close of the hearing.

Non notified application with a hearing	50 days
35 working days to commence a hearing	15 working days to issue a decision
Non notified application with no hearing	20 days
20 working days to issue decision	
Fast track application	10 days
10 working days to issue a decision	

The timeframes for notified and limited notified applications are longer to allow for submissions to be provided and considered. Decisions must be issued within 130 working days from lodgement (approximately six months) for publicly notified applications where a hearing is held, 100 working days for limited notified applications where a hearing is held, and 60 working days for notified applications where no hearing is required. For more information refer to the notified and limited notified resource consents guidance note.

Writing the report on a non-notified application

Purpose of the report

The purpose of the officer’s report is to inform those making the decision (the person with the delegated authority to do so) on the application. The officer’s report therefore needs to outline the merits of the application, and analyse the information provided by the applicant against the considerations outlined in Section 104 and other relevant criteria.

What to include in a non-notified report

Councils may have a set format or templates for writing reports on non-notified consent applications. This can also help provide more efficiency and consistency in report writing.

The report should include an assessment of the proposal against all the relevant matters under all the appropriate sections of the RMA and the relevant plans. In general the report should include:



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- An description of the site and proposed activity;
- An assessment of the proposed activity in relation to the rules in the relevant plan/NES which determine the activity status of the proposal.
- An assessment under section 95 (notification analysis)
- As assessment under section 104 (substantive analysis).
- Proposed conditions (and reasons for conditions)
- Conclusion/recommendation (Decision)
- The report may also include the actual decision or approval, in accordance with the applicable council delegations

In accordance with s42A, the officer's report does not need to repeat information that is included within the application but can adopt and concur with any or all of the information that has been provided by the applicant. For example, if the description of the proposal, site description and/or AEE is correct and has been checked and agreed with by staff, any or all parts of these assessments can simply be adopted in the officer's report. These provisions help to avoid unnecessary duplication and provide for more efficiency in report writing. For fast track consents, adopting all or part of the applicant application could be particularly appropriate in order to speed up processing time and reflect the generally simpler nature of such applications.

The report needs to assess the effects of the activity and include a statutory assessment of the relevant matters required by the RMA and the relevant policy statements and plans. It should include a recommendation or decision regarding whether the application has or should be granted or declined. If the recommendation is to grant the application, then the report should also propose any conditions that may be required. The report should show a clear logical process from the assessment to the recommendation and conditions.

The scope, depth and length of a report on a non-notified application should reflect the scale and significance of the environmental effects of the proposed activity. The report should identify any parties that were considered to be adversely affected and have given their written approval. Consider attaching a plan to the report to show the location of these parties.

It is good practice and courteous to call or email the applicant before issuing a decision. Where there are proposed conditions of consent they may not be anticipating or which may be of concern to them, the applicant should be sent a draft for comment. Time for this should be allowed for in the overall process, or through the use of section 37A where the applicant agrees.

Conditions can only be imposed if:

- (a) the applicant for the resource consent agrees to the condition; or*
- (b) the condition is directly connected to 1 or both of the following:*
 - (i) an adverse effect of the activity on the environment;*
 - (ii) an applicable district or regional rule, or a national environmental standard; or*
- (c) the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.*

Note this does not limit the current ability to impose financial contributions under s108(10), or conditions of subdivision consents under s220.



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The officer's report should either be attached to the decision notice or form part of the decision notice.

If the report is a decision report (ie, the person writing the report also has delegated authority to make the decision) then this should be written accordingly. For example, if the decision report is the only report prepared in relation to the consent, it may be appropriate to combine the requirements of a report and a decision report (outlined in s 113) to ensure all the necessary information is included.

When should the report be sent out and who to?

If a non-notified application is not going to progress to a hearing there is no need to circulate the report other than to the applicant (attached to the decision notice) unless a copy is requested by another party.

If the application is to proceed to a hearing then a report on a non-notified application should be sent to the applicant, and the decision-maker(s), whether it be a hearing committee or commissioner(s). Section 42A(3) of the RMA requires that the report arrives with the parties it is sent to five working days before the hearing begins (or 15 working days before the hearing if the pre-provision of evidence is required under s41B). This requirement may only be waived if the council is satisfied there is no material injustice to any person who should have been sent a copy of the report under s42A(5).

Where an application is made for a significant project and it is to be heard, it is good practice to circulate the council officer's report considerably earlier than five days before the hearing. This allows all parties (ie, applicant and the commissioner or hearing committee) to consider the recommendations and assessments made, address them and potentially commission further evidence where required.

