

2017

Consent Steps

Receipt of an Application



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.

Receipt of an Application

The receipt of an application is the first important step in the resource consent process, which starts the statutory 'clock' ticking. Section 88 and Schedule 4 of the Resource Management Act 1991 (RMA) state what information an application and supporting Assessment of Environmental Effects (AEE) must contain to be considered complete and therefore acceptable to be processed. The RMA includes comprehensive information requirements in Schedule 4 and 10 working day timeframe to assess the application to determine whether it is complete or return it as incomplete. These requirements reflect the importance of councils only accepting complete applications to avoid delays in the long run.

This guidance note provides guidance for consent lodgement, pre-acceptance completeness checks, incomplete applications, receiving applications, and how to formally notify applicants of the receipt of their application

Guidance note

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Receiving the Application

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Consent Lodgement

The date that the local authority receives an application is the date that the resource consent clock starts ticking. It is therefore important for a local authority to have a consent tracking system that begins from the time a document or information enters its building so that applicants are not penalised by a local authority's internal procedures.

The first statutory 'working day' for an application should be the first full day after the application is received (ie the date that the application enters the local authority, either physically or electronically). For example, if an application is lodged/received at any time after 9am on a Monday, the first statutory working day will be the Tuesday.

If an application is received for the same activity/proposal that 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).

When entering the resource consent information into the council's consent tracking database, it is important that the applicant's description of the proposal is adequate. The description should correlate with how the activity would be described in the resource consent if it was granted/refused. It must be worded in a manner that should this information be picked up in 5 years' time by someone who was not involved in the application, they can clearly understand what the proposed activity was (whether it was authorised or not). Just stating "Land use consent" for example is not an adequate description of an activity.

Once the application has been lodged with the council, it is considered good practice for councils to send an acknowledgement letter/email to applicants informing them of the receipt of the application. This letter/email should outline the lodgement date, and inform the applicant of the next step in the process i.e. that the application will be going through a completeness check in accordance with section 88(3), and that they will hear from council within the next 10 working days as to whether the application is going to be formally accepted for processing (or not).

Pre-Acceptance Completeness Check

Before an application can be formally accepted for processing, it needs to be checked to ensure it is complete. Checking the applications at the outset will help identify and clarify early on in the process if any necessary information is lacking and help to avoid delays once the application is formally received.

The completeness check needs to be thorough. However, the check should not examine the accuracy of the information, or be an assessment under ss95 or 104 of the RMA; however it should ensure that the application is in the prescribed form and includes all information required by any relevant regulations (including national environmental standards) and/or an adequate Assessment of Environment Effects (AEE) in accordance with Schedule 4 of the RMA. .



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This initial check might also highlight whether the proposal is eligible to be a 'deemed permitted activity' (ie boundary activity, or a marginal or temporary activity):

- If the council receives a resource consent application which meets the criteria of sections 87AAB and 87AB, it must be treated as a deemed permitted boundary activity, rather than a resource consent as per section 87BA(4). In this instance, the resource consent must not be further processed and must be returned to the applicant, once the consent authority is satisfied it meets the requirements to be a deemed permitted boundary activity.
- If the council receives a resource consent application and they determine that the proposed activity meets the requirements of s87BB (marginal or temporary activity), the council then can decide whether to issue a notice specifying the proposal is a deemed permitted activity instead of continuing to process the resource consent application. If the consent authority decides to issue the notice, then they must return the resource consent application (section 87BB(4)). Please refer to the MfE technical guidance for [Deemed Permitted Activities](#) for further information.

The check is for completeness in terms of the requirements for an application specified in s88(3) of the RMA which states that an application can be determined as incomplete if it does not:

(a) *include information prescribed by regulations* (including national environmental standards); or

(b) *include the information required by s88(2)(b) or (c):*

- Section 88(2)b) relates to fast track applications that have prescribed information requirements (ie information requirements prescribed by regulations made under s360G). Such applications need to include any prescribed information requirements.
- Section 88(2)(c) requires that any other application (including a fast track application where there are no prescribed information requirements) must include information relating to that activity including an AEE in accordance with Schedule 4.

As lodging the application starts the statutory clock ticking, it is critical for councils to only accept applications that are complete and contain all the information that the council requires in order to make a decision. This is particularly important as:

- there is no ability for consent authorities to stop the statutory clock for section 92 requests following submissions on notified applications. While any number of section 92 requests are still able to be made, the authority may only stop the clock for the first section 92 request and only if it is made prior to notification decision being issued
- time frames can only be extended by section 37A if special circumstances apply or if the applicant agrees to the extension



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- councils must give a discount on resource consent charges where the consent is not processed within statutory time frames in accordance with the Resource Management (Discount on Administrative Charges) Regulations 2010.
- RMAA17 has introduced new fast-track process for certain resource consent applications, which must be processed within 10 working days, instead of the standard 20 working days.

It may be helpful to have a checklist that staff can use that outlines all the information that may be required for an application to be considered to be complete and therefore to be accepted by the council. For over-the-counter applications it can be helpful to go through the checklist with the applicant. The applicant, not the council officer, is responsible for providing complete, accurate and appropriate information with an application.

It will generally be appropriate to accept an application as being complete if the following information is provided:

- completed resource consent application form [\(Form 9\)](#) including:
 - the applicant's name and contact details
 - a description of the proposed activity which will generally include site plan and supporting plans, elevations, cross-sections and any other plans required by council
 - the location of the site, including the address and legal description with certificate of title(s) where relevant
 - a site description which should assess the natural and physical characteristics of the site and surrounding area
 - the site owner/occupier's name and contact details (if different from the applicant details)
 - description of any other activities that are part of the proposal, including any permitted activities or activities addressed by other authorities or under other legislation
 - details of any other resource consents required and whether they have been applied for. Refer to guidance notes on Assessing the application and AEE – Have the appropriate consents been applied for
 - an AEE in such detail that corresponds to the scale and significance of the effects from the proposed activity and which addresses the matters outlined in clauses 6 and 7 Schedule 4. Refer to guidance notes on Assessing the application and AEE – Have the appropriate effects been identified and addressed
 - an assessment against Part 2 matters.
 - an assessment against any relevant provisions of a document referred to in section 104(1)(b), which includes NES, other regulations, NPS, NZCPS, RPS and district and regional plans
 - any information prescribed by relevant regulations
 - date and signature of the applicant or whoever is acting on the applicant's behalf.

There are also specific information requirements for certain types of applications that need to be addressed as follows:



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- if the application involves permitted activities, a description of those activities to demonstrate they comply with the relevant requirements and conditions.
- if the application is for the same activity (using the same natural resource) as an existing resource consent, of which is due to expire, an assessment of the value of the investment of the existing consent holder.
- if the proposal falls within an area covered by a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, an assessment of the activity against the document must be provided.
- for subdivision proposals, plans showing: the position of all new and existing boundaries; the area of all new and existing allotments; any new or existing reserves including esplanade strips/reserves; any areas of any part of the bed of any lake or river to be vested in a territorial authority; any land within the coastal marine areas; any land to be set aside as new roads and the existing and proposed services on site such as water and stormwater.
- for reclamation proposals, plans showing: the area and location of land proposed to be reclaimed; the position of all new boundaries; the portion of area (if any) to be set aside as an esplanade reserve or strip.

Pre-Acceptance checks for Fast-Track consents

Section 87AAC states that an application is to be processed as a fast track application if it is a **district land use consent for a controlled activity**; and/or an activity prescribed by regulations made under s360G(1)(a); and the application includes an electronic address for service. Until such time that regulations are made under s360G(1)9a), the only applications that are eligible to be fast track applications are those that are district land use consents with a controlled activity status and with an electronic address for service provided.

A fast track consent must be processed within 10 working days, instead of the normal 20 working days for a non-notified resource consent application. The council must therefore undertake the initial completeness check as soon as they possibly can after consent lodgement.

The council must therefore (expediently) check whether:

- the application is eligible to be fast tracked (including the provision of an electronic address for service);
- the applicant has not opted-out of the fast track process;
- the application includes the relevant information outlined in s88(2)(c) (unless it is an activity with prescribed information requirements, whereby the application must include those requirements in accordance with s 88(2)(b).

If the applicant has not provided an electronic address for service it means that the application is not eligible to be a fast track application and the normal 20 working day resource consent process applies. However, it is considered good customer service to quickly contact the applicant informing them of the process, and give them an opportunity to provide the relevant information. It should be noted that not providing an electronic address for service is not a matter to which the council determines that the application is incomplete under s88(3).



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If the applicant has not indicated whether they wanted to opt-out of the process or not (and is eligible), then the application must be processed as a fast-track application (but it might pay to quickly check with them).

If the applicant has not provided the relevant information outlined in s88(2), then this is grounds for determining that the application may be incomplete under s88(3).

Incomplete Applications

Section 88(3) of the RMA states that, if an application does not include the information required by regulations or outlined in section 88(2)(b) or (c) (as applicable), a council may determine that the application is incomplete. It should be noted that councils still have the discretion to decide an application is complete where some of the information in Schedule 4 has not been provided (i.e. when the information is not considered relevant or necessary to assess the effects of the activity on the environment).

This determination must be made within ten working days of the lodgement of the application (or as quickly as possible for fast-track applications). If it is considered that an application is incomplete, the application must be immediately returned to the applicant with written reasons for the decision. This reflects the fact that applications should be fit for purpose at lodgement and incomplete applications should not be accepted under any circumstances. Should the application be lodged again with the additional information then it is treated as a completely new application (i.e. with a new consent identifier and new lodgement date).

Under s357(3) of the RMA the applicant can object to a determination made under s88(3) that an application is incomplete. Therefore it is important to use practical judgment to determine whether the information supplied is complete and to explain that judgment in writing to the applicant.

It is important to remember that accepting incomplete applications does not promote efficient consenting, as costs and delays are incurred later on due to extensive additional information requests. This is not in the consent authority's best interests, as applications are on their books for longer and require more resources to be processed through to completion. It is also not in the applicant's best interests to provide inadequate applications as by doing so, consent authorities send a signal to applicants that their applications are 'in-train', even though further (and perhaps significant) additional information is needed before the application can proceed. This can be a source of frustration for applicants, emphasised by a perception that the process is fully in the consent authority's hands at that point and any delays are due to the consent authority's actions.

If there is a minor information deficiency only, it is good practice to contact the applicant and provide an opportunity for providing the missing information as soon as possible. This can avoid the administrative burden and time delay involved in returning the application.



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Ways to ensure that adequate information is provided in the application include:

- clearly specifying information requirements in the relevant plan
- having a checklist or other guidance available for applicants and ensuring that any checklists have been completed by the applicant
- providing different application forms for different consent types (eg, subdivision, stormwater discharge) so that the specific information required for that type of consent is known to the applicant
- using support structures such as internal guidelines, group discussions, meetings and independent auditing to ensure a consistent approach to checking for completeness
- arranging a pre-lodgement or pre-application meeting with the applicant to assist both the planner and applicant's understanding of the application and information requirements
- ensuring the applicant understands the pre-acceptance check does not assess the merit of the application but ensures the required information is provided and the AEE is adequate
- giving the pre-acceptance check an appropriate amount of resourcing and priority in the resource consent process as the pre-acceptance check is often likely to save time later on once the application is accepted for processing
- providing a written statement of what is missing, so the pre-application check does not have to be repeated when the application is re-lodged.

In some instances an applicant may lodge more than one resource consent application concurrently in a 'bundle' for one particular project. If one or more of the applications is deemed to be incomplete this presents an issue for council about how to treat the other applications that are complete. Refer to the notes on 'Bundling' section in the guidance note on To notify or not to notify for further information.

Formal Acceptance of the Application

Once the application has been lodged, checked and determined to contain adequate information, it is formally 'accepted for processing'. The RMA allows ten working days to check an application for completeness and adequacy. However, it is best practice to check the application as soon as practicable and ideally within one full working day of it arriving at the council office because the time taken to check the application is fully included in the total working days allowed to determine the application. It may not be possible for more complex and detailed applications to be checked in one working day but it should be sufficient with respect to most minor (and particularly fast track) applications.

Advising the Applicant of Formal Acceptance and the Process From this Point

It is good practice to advise the applicant the consent application has been formally accepted and that processing has commenced as soon as possible and no later than ten working days after lodgement. This should be in writing and include the date on which the application was lodged and the date that it was formally accepted for processing. Note that the statutory clock begins ticking from the first **full day** after the information



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enters the local authority building. This may not be the day it is received by the councils consent department.

The letter could also inform the applicant of the process from this point, in particular stating the difference in processing times between a fast-track application or an application that is publicly notified, limited notified and non-notified. This letter could also advise the applicant that:

- further information may be required and that the processing clock will stop for the first request (if it is made prior to the notification decision)
- council may decide to commission a report on any matter relating to an activity which the council considers may have a significant adverse environmental effect
- if a further information request or request to commission a report is ignored or refused then the application may be publicly notified
- when additional fees may be charged and how this will be calculated
- in the event of the application not being processed within statutory time frames, what discount on administrative charges will be given
- if the application is notified, a request for the application to be directly referred to the Environment Court can be made from the date the application is lodged up to five working days after submissions close. The process and time frames for the council decision on such a request should also be outlined.

Finally, it is helpful to give the applicant a council contact name and contact details (phone number and email address) should there be any questions. Where possible, the contact details provided should be of the council officer processing the application.

