

2017

# Consent Steps

Assessing the Application and Assessment of Environmental Effects



## Assessing the Application and Assessment of Environmental Effects

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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](#).**

An application for resource consent requires the applicant to supply an assessment of environmental effects (AEE). The council's role is to assess the AEE to ensure it meets the requirements of the Resource Management Act 1991 (RMA). This guidance note provides information about assessing an application once it has been formally 'accepted' by the council and recording the assessment.

### Guidance note

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#### Assessment of completeness

**Have the appropriate consents been applied for?**

**Have the appropriate effects been identified and addressed?**

**Determining the extent of adverse effects**

**Are there any aspects of the application that need specialist advice?**

**Checking the computer freehold register, property file and computer records**

**Site visits by council officers**

**Notification**

**Report writing**

## Assessment of completeness

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Before an application is formally accepted for processing, it is necessary to check a number of matters to ensure it is complete. Particular emphasis should be placed on only accepting complete applications under s88 which are in the prescribed form and manner and include any prescribed information requirements, and/or an adequate AEE in accordance with Schedule 4. The details of this process are outlined in [Receipt of an application](#) guidance note.

Once the application has been formally accepted for processing, the application must be allocated to the appropriate planning officer. It is also good practice for the council officer allocating applications to allocate them to officers with the relevant level of competency for each application. For example, more complicated or contentious applications should be allocated to the more experienced officers with simpler applications going to those with less experience. It is also ideal for the application to be allocated to the council officer who dealt with the s88 completeness check if possible, as they will already be familiar with the application.

To familiarise themselves with the application, the processing officer should undertake an in-depth assessment of the completeness/thoroughness/ and accuracy of the information supplied in the application.

Much of the assessment outlined below should [in part] have been undertaken at pre-acceptance stage, however the processing planner needs to assess the application in greater detail.

The key functions of assessing the application include:

1. checking whether appropriate consents have been applied for
2. checking [whether all appropriate effects have been identified and addressed](#) and whether there are others that need addressing to meet the requirements for AEE's in Schedule 4 of the RMA
3. [determining the extent of the effects](#) and who may be adversely affected
4. Checking if it is a fast track application under s87AAC, or deemed permitted boundary activity under s87AAB and s87BA or a permitted activity under s87BB RMA

### Have the appropriate consents been applied for?

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The council officer needs to determine if all the necessary resource consents have been applied for (and whether all non-compliances have been addressed). In order to make this judgement, the council officer needs to check for compliance with the relevant plan(s) rules and relevant matters under the RMA. When undertaking this check, the council officer should also make note of:

- the degree of non-compliance
- whether the relevant rule(s) in a plan or national environmental standard (NES) precludes or requires notification
- Whether public notification is precluded by s95A(5) RMA
- the activity status of each non-compliance
- whether the plan requires any particular affected party's written approvals or conversely whether the plan expressly does not require written approvals
- whether written approvals have been obtained
- the type of activity and the associated environmental effects likely to occur from a permitted activity on the site.

If the applicant has not addressed all of the reasons for resource consent or non-compliances, the applicant should be requested to acknowledge any outstanding non-compliance(s) in writing. This ensures the applicant is aware of all of the reasons for resource consent and to ensure that any actual or potential effects arising from additional non-compliances are addressed. Section 91 allows the council to defer the notification or hearing of an application for a resource consent if it considers on reasonable grounds that additional resource consent(s) are required with respect to the proposal, and it is appropriate for the purposes of better understanding the nature of the proposal that those applications should be made before proceeding further. If this determination is made, then the applicant is to be notified forthwith of that determination. It should be noted that the applicant may apply to the Environment for the reversal of this decision.

The council officer should also check whether the proposal is a boundary activity (defined in s87AAB), and if so whether the applicant has provided all the necessary information (and relevant written approvals) outlined in s 87BA to be deemed as a permitted boundary activity. If it is determined that all the relevant information has been provided to qualify as a deemed permitted boundary activity, then the council must give notice to the applicant (within 10 working days of lodgement), stating the proposed activity is a permitted activity, and return the resource consent application.

Keep a record of the check against the plan rules on the consent file so it can be easily referred to throughout the processing of the application. This will also allow other council officers to answer queries about the application in the absence of the actual processing officer.

### **Have the appropriate effects been identified and addressed in the AEE?**

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The AEE should contain detail that corresponds with the scale and significance of the effects the activity may have on the environment. For example, a small development such as a garage within the required setback from a side boundary will generally only require a short and less detailed AEE. In comparison, a large development such as a proposed coal mine will have considerably more significant effects and therefore should have a much more comprehensive and detailed AEE.

The effects that must be addressed in an AEE are set out in clause 7 of Schedule 4 and as follows:

- effects on those in the neighbourhood and, where relevant, the wider community including any social, economic and cultural effects
- physical effects on the locality including landscape and visual effects
- effects on ecosystems including effects on plants or animals and the physical disturbance of habitats in the vicinity
- effects on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual or cultural, or other special value for present or future generations
- any discharge of contaminants into the environment, including any unreasonable emission of noise and options for the treatment and disposal of contaminants
- any risk to the neighbourhood, wider community or the environment through natural hazards or the use of hazardous substances or hazardous installations.

The requirement to address a matter in the assessment of environmental effects is subject to the provision of any relevant policy statement which may direct and/or restrict the assessment to certain matters.

The terms 'effect' and 'environment' under the RMA are broadly defined. It is the role of the AEE to identify and address actual and potential effects of a proposal on a particular environment. The term effect includes:

- **Positive and adverse effects** - both of these effects should be considered regardless of their scale and duration. It is also important to remember that the assessment is not about achieving a balance between the two but ensuring adverse effects are avoided, remedied or mitigated. **Temporary and permanent effects** -there are many effects associated with proposals that are often temporary, such as those relating to a temporary event. It is important to make the distinction in the assessment between effects that are temporary versus those that are permanent. If there is only a temporary non-compliance with rules in a plan or regulations, and the adverse effects of that aspect are not discernible from those of permitted activities, the council has the discretion to treat the activity as a permitted activity and issue a written notice to that effect, and return the application. See s87BB RMA. For further information on this process, refer to the MfE technical guidance on [deemed permitted activities](#).
- **Past, present and future effects** - in addition to past and present effects it is also important to consider forecast effects as some effects may take time to show and consideration should be given as to whether these effects are of high or low probability at any time in the future.
- Any **cumulative effects** regardless of degree or element of risk - an adverse cumulative effect is an effect, when combined with other effects, is significant only



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when it breaches a threshold. It should not be confused with matters relating to precedent.

- Any **reverse sensitivity effects** - situations where a potentially incompatible land use is proposed to be sited next to an existing land use.

Subject to the provisions of any policy statement or plan, all of these effects must be considered in the AEE regardless of their scale, intensity, duration, or frequency. It should also be considered whether potential effects are of high and/or low probability and could have a high potential impact.

The effects to be considered will depend on the type of application and the nature of the activity proposed. For **controlled** and **restricted discretionary** applications:

- List the effects that need to be considered in accordance with the matters over which the council has reserved control or discretion in its plan or proposed plan, or which control is reserved in national environmental standards or regulations.
- Check the assessment does not venture into other areas outside of those matters reserved in the relevant plan or proposed plan, national environmental standards or regulations. Do not be tempted to address other matters just because the applicant has chosen to do so.

For **discretionary** and **non-complying** applications:

- Identify all of the potential effects of the activities, not simply the non-conforming aspects.
- List the effects the AEE identifies and those it does not that are relevant for consideration.
- Use the relevant issues, objectives and policies in the plan to identify any effects that may need to be addressed.
- Assess the consistency of the effects of the activity against the matters in Part 2 of the RMA.
- Distinguish the nature, extent and magnitude of the effects and the significance of their effect on the environment.
- Identify the impact of the effects (eg, instantaneous, continuous or intermittent, of long or short term duration).

For each effect, summarise any assessment techniques used. Check:

- Has the effect been adequately assessed?
- Is the assessment accurate? (Is it based on sound predictions or just guesswork?)  
Are the anticipated results justified?
- In the particular environment, is the effect likely to combine with any other identified effect (be cumulative)?
- Are there any mitigation measures proposed?



## THE RMA QUALITY PLANNING RESOURCE

- Are there any measures proposed to ensure positive effects on the environment which off-set or compensate for any adverse effects on the environment? (not to be confused with mitigation)
- What is the effect's significance judged to be?
- If they are not minor, are the remaining effects acceptable?
- Are the effects confined to the site and adjacent land or do they extend to the wider environment?

### **Determining the extent of adverse effects**

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Determining the extent of any adverse environmental effects is a component in the decision as to whether the public notification of the application is required in some circumstances.

A more comprehensive effects-based assessment is undertaken under section 104 in determining if an activity is appropriate (and also under section 105 of the RMA which deals with discharge permit, coastal permits and reclamations and section 106 which deals with subdivisions).

When determining the extent of adverse effects, it is good practice to think about the level of effects along a continuum to ensure that each effect has been considered consistently and in turn cumulatively. This continuum may include the following effects:

- **Nil Effects**  
No effects at all.
- **Less than Minor Adverse Effects**  
Adverse effects that are discernible day-to-day effects, but too small to adversely affect other persons.
- **Minor Adverse Effects**  
Adverse effects that are noticeable but will not cause any significant adverse impacts.
- **More than Minor Adverse Effects**  
Adverse effects that are noticeable that may cause an adverse impact but could be potentially mitigated or remedied.
- **Significant Adverse Effects that could be remedied or mitigated.**  
An effect that is noticeable and will have a serious adverse impact on the environment but could potentially be mitigated or remedied.
- **Unacceptable Adverse Effects**  
Extensive adverse effects that cannot be avoided, remedied or mitigated.

Some councils use a similar scale to assess effects based on rating the extent of the effect with a number. Either approach to scale the significance of adverse effects could prove helpful provided there is some guidance on how to apply the scales to different types of activities.

## **Are there any aspects of the application that need specialist advice?**

The council officer needs to identify whether any further information and/or specialist advice is needed to process the application and assess the environmental effects further.

Specialist advice on applications is commonly obtained from internal council officers such as traffic engineers, structural engineers, landscape architects etc. However, when there is not the internal expertise or resources (including time) available to assess particular environmental effects, a council then needs to consider commissioning external experts.

The purpose of a commissioned report should be to: peer review or assess information supplied by the applicant or to undertake an assessment of certain effects that the applicant has not addressed in their application.

If an application is contentious this is not necessarily a reason to allow the commissioning of a specialist report. If the council is concerned that they need to be seen processing an application in an impartial manner, then possibly they could appoint someone outside the council to act on their behalf. For example, an external s42A reporting officer could be appointed which may provide the required impartiality.

Sections 41C(4) and 92(2) allow councils to commission a report from a specialist when:

- the activity may have a significant adverse environmental effect; and
- the applicant is notified in writing of the reasons for requesting the report; and
- the applicant agrees to the commissioning of the report.

Section 41C(4) allows for the commissioning of a report at the hearing stage and s92(2) allows for the commissioning of a report at any reasonable time before a hearing or, if no hearing is to be held, before the decision is made.

The applicant has 15 working days to advise the council in writing whether the commissioning of a report under s92(2) is agreed to. The council must continue to process and consider the application under s104 if the applicant does not respond or refuses to give their agreement to the commissioning of a report.

There is no time frame within which the applicant is required to reply with respect to a request for a report at the hearing stage under s41C(4). However, there is a general duty to avoid unreasonable delay. It may be appropriate in relation to notified/limited notified consents to obtain the agreement of the applicant to extend the statutory timeframes (outlined in s103A) under Section 37A. (Note: For non-notified resource consents where a hearing is held, the hearing days are excluded from the calculation of working days so extending timeframes would be unnecessary).

Helpful tips for involving specialists in the auditing of AEEs or providing specialist advice absent in the AEE:



## THE RMA QUALITY PLANNING RESOURCE

- Discuss the type of information the specialist, either internal or external, will provide.
- Where external specialist advice is being sought, give the applicant the opportunity to obtain the required information themselves if they want to. If this is not practicable, advise them of the anticipated cost of the specialist advice and potential involvement at a pre-hearing meeting and/or hearing and check that they still wish to go ahead.
- Select an appropriate specialist and ensure they have the skills required to do the job. If it is an external specialist, check that they have no conflict of interest.
- Brief the specialist about what is required of them (particularly if they are external to the council or the application is complicated, large, or unusual), setting out specifically what the objectives are and what their report is expected to include. A specialist should be provided with all the relevant information from the application, the relevant plan(s), copies of submissions and/or written approvals, a defined scope of work etc. The more relevant and complete the information given to them, the more relevant and complete their assessment will be. It is useful to alert the specialist to the relevant objectives, policies and plan rules the application is being assessed against.
- Set clear time frames and cost guidelines or fix a price.
- Ask the specialist to investigate at the outset if any research should be undertaken and get them to gain the council's approval before going ahead with it.
- Clearly specify the report to include any recommended mitigation measures and conditions of consent.
- Advise them if they will likely be required at a hearing and/or pre-hearing meeting.

### **Checking the Computer Freehold Register (certificate of title), property file and computer records**

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Checking the computer freehold register, property file and computer records for the site will familiarise you with both the history of the site and any particular restrictions that might apply to the use of the site. There may have been previous applications on the site, illegal buildings or activities, or restrictions on the title that might influence the AEE and subsequent assessment. In particular, the title may contain consent notices or covenants, and identify rights-of-way and easements that may affect how the property can be subdivided, used or developed.

### **Site visits by council officers**

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The site visit is a vital part of the assessment process as it allows an 'on the ground' check of the application's accuracy. It also helps to identify which parties may be adversely affected.



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Determining when to undertake a site visit is also important. It is good practice to do it as soon as possible after receiving and assessing the application and before any request for further information is made. This enables the council officer to have a clear understanding of the site and any further information that may be required to assess the environmental effects.

A site visit should be planned so that the council officer is certain of the particular aspects of the site that need to be investigated and recorded. Where necessary and practicable, site visit(s) should also be planned during times and conditions when it is considered best to assess the potential effects. For example, when considering a proposal such as a crèche which has an on-site parking shortfall, visits to the site should ideally be during the times of peak parking demand so that the effects, such as the impact on on-street parking, noise etc, can be more accurately assessed.

It is important that all pertinent information about the site is recorded as completely and accurately as possible to avoid having to visit the site again to check things. However, more than one site visit at different times of the day may be warranted for more significant proposals in order to thoroughly assess the effects.

It is also courteous to phone the applicant prior to going on-site to advise them when the site visit is planned. In addition there may be access restrictions or potential hazards on-site that need to be discussed with the applicant prior to the visit. Carrying identification on site is also advisable should anyone enquire about your reasons for being on the site.

In some cases the applicant may wish to be present at a site visit and this can in some instances help to clarify issues on site. Alternatively, the council officer can visit the site alone, particularly if the site is easily accessed and traversed and the proposal is relatively straightforward.

### **Consultation**

Section 36A of the RMA specifically states there is no duty to consult any person about resource consent applications and notices of requirement. This applies to both applicants and councils. Nevertheless, for many resource consent applications and notices of requirement, consultation will play an important role in assessing the effects.

### **What to tell the neighbours**

If neighbours approach to ask what is happening during a site visit, the council officer can discuss the proposal with them (the application is public information). These discussions can contribute valuable knowledge to the assessment. However, as the applicant is generally paying for the officer time spent on the site visit, conversation should be kept to a minimum and remain objective and factual.

### **Making a permanent record of the site**



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Photographs of the site can be particularly useful for identifying elements on the site or for discussing the potential effects with other people (including any peer reviewer). Individual photographs or montages can help in making recommendations, in decision making and monitoring. They are also a particularly good record of any unusual site features (eg, vegetation or topography).

Record exactly when the photo was taken, where it was taken from, and through what sort of lens.

### Notification

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Once all of the necessary information has been obtained to determine the extent of adverse effects and whether there are any potentially affected parties, the council reporting officer should then be in a position to determine if the application should be notified, limited notified or non-notified. Refer to "To Notify or not to Notify" guidance note.

### Report writing

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Report(s) on the application prepared by the council processing officer will help inform those making a decision on the application. Therefore it is important these reports are concise and well-reasoned and provide an accurate description of the scale and significance of the anticipated environmental effects from the proposed activity.

The s42A report (known as the planner's report) needs to provide an analysis of the information provided by the applicant or any person who made a submission against the considerations outlined in Section 104. When preparing the section 42A report, the planning officer does not need to repeat information that is included within the application but can adopt any or all of the information that has been provided by the applicant. This is not restricted to the information provided within the AEE but could, for example, include adopting the site description or the description of the proposal.

Further detail can be found in Making a Decision on the application.





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