



Notice to Interested Persons - Extension to Statutory Timeframes Following Covid-19

This notice is provided to all interested persons to inform them of the approach to be taken by Marlborough District Council (MDC) with respect to the facilitation of Resource Consent and Objection Hearings held pursuant to the Resource Management Act 1991 (RMA).

From 22 March 2020, MDC will be applying extensions to the statutory timeframes to enable the proper and fair administration of its Resource Consent/Objection Hearings in the current climate.

MDC will be granting extensions pursuant to section 37A(4) and s37A(5) of the RMA. Please note MDC is taking a case by case approach to each extension and you will be contacted by your Planner and/or Hearing Facilitator to discuss what these extensions may mean for you.

The relevant section of the RMA is 37(4) which enables MDC to grant an extension of no more than twice the statutory provided timeframe, without agreement of the applicant, so long as the threshold of 'special circumstances' is met.

The Select Committee Report which provided commentary as to Parliaments intention in making the amendment to include 'special circumstances' confirms such a circumstance includes a pandemic. Attached to this notice is a copy of section 37A of the RMA and exert of the Select Committee Report.

As a result of the current Covid19 pandemic, MDC will be extending timeframes in respect of applications set down for hearing pursuant to section 37(4)(b)(i) of the RMA. Where necessary an extension for greater than twice the statutory timeframes will be granted subject to the applicant providing their agreement.

At this stage (22 March 2019) the intention of an extension is to enable online hearing attendance to be arranged and to take account of the increased difficulties for parties and Council in preparing for a hearing, attending site visits and conducting a hearing.

When determining a priority order for setting hearings, post extension granting, MDC will take account of the following factors:

- Section 124 affected applications to ensure where possible the order for determining applications remains as it would have been had no extensions been granted as a result of Covid19.
- Whether there will be a change in the Plan rules and policies (or legal status) which will apply to the application (for example the Proposed Marlborough Environment Plan is currently within its lodgement of appeal period).
- The vulnerability and practical ability of parties (including experts, submitters, applicant and legal representatives) to prepare their case and/or attend a hearing online (for example, where domestic travel has been prohibited by Government or the person has a health matter which requires them to self-isolate).

**BARBARA MEAD
SENIOR RMA LEGAL & HEARINGS OFFICER**

37A Requirements for Waivers and Extensions

- (1) A consent authority or local authority must not extend a time limit or waive compliance with a time limit, a method of service, or the service of a document in accordance with section 37 unless it has taken into account—
 - (a) the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and
 - (b) the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement or plan; and
 - (c) its duty under section 21 to avoid unreasonable delay.
- (2) A time period may be extended under section 37 for—
 - (a) a time not exceeding twice the maximum time period specified in this Act; or
 - (b) a time exceeding twice the maximum time period specified in this Act if the applicant or requiring authority requests or agrees.
- [[3] Instead of subsections (1) and (2), subsections (4) and (5) apply to an extension of a time limit imposed on a consent authority in respect of—
 - (a) an application for a resource consent; or
 - (b) an application to change or cancel a condition of a resource consent; or
 - (c) a review of a resource consent.]]
 - [[4] A consent authority may extend a time period under section 37 only if—
 - (a) the time period as extended does not exceed twice the maximum time period specified in this Act; and
 - (b) either—
 - (i) special circumstances apply (including special circumstances existing by reason of the scale or complexity of the matter); or
 - (ii) the applicant agrees to the extension; and
 - (c) the authority has taken into account the matters specified in subsection (1).]]
 - [[5] A consent authority may extend a time period under section 37 so that the extended period exceeds twice the maximum time period specified in the Act only if—
 - (a) the applicant agrees to the extension; and
 - (b) the authority has taken into account the matters specified in subsection (1).]]
 - [[6] A consent authority or a local authority must ensure that every person who, in its opinion, is directly affected by the extension of a time limit or the waiver of compliance with a time limit, a method of service, or the service of a document is notified of the extension or waiver.]]

Resource Management (Simplifying and Streamlining) Amendment Bill 2009 - Stage 2(New Zealand)

Extension of statutory time-frames

Under the current provisions of the RMA, councils may extend time-frames by not more than double, or, providing the applicant agrees, by more than double the current time-frames - currently 20 working days for non-notified applications and up to 70 days for notified or limited notified applications.

The recently published two-year survey of local authority performance under the RMA draws attention to the way different councils use section 37A for extending resource consent and other processing times. We are concerned that councils are regularly extending time-frames for relatively simple resource consent applications, and in some cases overuse the extension provisions as a way of dealing with large numbers of applications, or staffing and other resource issues.

We are not convinced that the measures in the bill as introduced will speed up processing while councils can avail themselves of the opportunity to grant themselves extensions of time. We therefore recommend amending section 37A of the principal Act (new clause 25A) by inserting a new subsection limiting further the ability to extend time-frames under section 37(1)(a) in the case of applications for resource consent and changes to consent conditions. The current provisions for extending time-frames for processing other matters would continue to apply. For consent applications the ability to extend time-frames up to double the statutory maximum would be limited to either special circumstances or to the applicant's agreement to the extension. The intent is to ensure that lack of staffing capacity or access to expertise would not justify an extension without the applicant's agreement unless this amounted to "special circumstances" such as might obtain during a **pandemic**. For a period to be extended beyond twice the statutory maximum, the applicant's agreement would be required. In both cases the consent authority would also have to take into account the matters in sections 371(1)(a) to (c) of the principal Act.

The provision made in section 37A of the principal Act for the granting of waivers would remain the same, except that we recommend amending section 37A(3) of the principal Act to require an authority to notify directly affected persons of waivers as well as extensions to correct an omission. We also recommend amending section 35(5) through clause 23 to require decisions under section 37A to be documented.