

RESOURCE LEGISLATION AMENDMENTS 2017 – FACT SHEET 8

New consent exemption and fast-track processes

This is part of a series of 16 fact sheets that give an overview of recent resource legislation amendments.

This fact sheet outlines changes to the Resource Management Act 1991 (RMA) introducing:

- resource consent exemptions for boundary activities and marginal or temporary rule breaches
- fast track processes for more straightforward applications.

All changes in this fact sheet come into effect on 18 October 2017.

Councils must exempt ‘boundary activities’ from needing a resource consent if neighbour’s approval is provided

Many district plan rules control the position or size of a structure in relation to the boundaries of the site where it is located (or proposed to be located). Adverse effects from infringements to these rules are generally localised, and affect the property sharing the boundary where the rule is breached (that is, the neighbour).

Previously any infringement of a district plan rule required a resource consent, even if the only effects of that breach were on a neighbouring property who had given their written approval. The effects on these persons would then be disregarded when considering the application.

The RMA has been amended to insert new section 87BA, which requires councils to treat boundary activities as permitted if written approval is given by the relevant neighbour(s), and certain information is supplied to the council. Detail of this process is provided below.

The intent of this change is to increase time and cost efficiencies, and improve the proportionality of the consenting system. For councils the reduced workload means they can focus resources on more substantive applications.

Definitions related to boundary activities

Sections 87AAB(1) and (2) define certain terms as follows.

An activity is a ‘boundary activity’ if:

- resource consent is required due to the infringement of one or more ‘boundary rules’
- no other district rules are infringed
- no ‘infringed boundary’ is a ‘public boundary’.

A ‘boundary rule’ is a district rule relating to the distance between a structure and a property boundary (or boundaries), or the dimensions of a structure in relation to its distance from a boundary. Common examples include yard setbacks, recession planes (sometimes known as ‘height in relation to boundary’ rules) or fence rules where these relate to the boundary. This definition excludes general land use rules that do not relate to a boundary (for example, overall building site coverage or maximum height restrictions).

For boundary activities, written approval is only needed from the owner of the property (or owners of the properties) with an ‘infringed boundary’, which is a boundary that the rule infringement applies to. In these cases, councils do not need to undertake a wider assessment to determine if any other people are affected.

The definition of ‘infringed boundary’ also means, if there is an infringement to a boundary rule:

- when measured from the corner point of an allotment, written approval is needed from the owners of every property with a boundary that intersects with the point of that corner
- next to a ‘private way’ (defined in the RMA), written approval is required from the neighbour on the opposite side of that private way.

A ‘public boundary’ is a boundary between an allotment and any road, river, lake, coast, esplanade reserve, esplanade strip, other reserve, or land owned by a council or by the Crown. Boundary exemptions cannot be granted for rule breaches that affect these boundaries.

The boundary activity process

If a person proposing to undertake a project identifies that it meets the definition of a boundary activity, they need to supply the council with:

- a description of the activity
- a plan (drawn to scale) of the site at which the activity is to occur, showing the height, shape, and location on the site of the proposed activity
- the full name and address of each owner of the site
- the full name and address of each owner of the allotment with an infringed boundary
- written approval from each owner of an allotment with an infringed boundary, including their signatures on the plan.

If a person applies for a boundary activity exemption and the council is satisfied that the activity is a boundary activity and all of the necessary information is provided, the council must provide a written notice to the person, stating that the activity is permitted.

The council has 10 working days to provide this notice. Unlike a resource consent application, the council has no ability to request further information for boundary activity applications under section 92 of the RMA. This means the 10-day ‘statutory clock’ cannot be stopped in this way, although timeframes may be extended under section 37 of the RMA (subject to the criteria set in section 37A).

A written notice for a boundary activity exemption lapses after five years if it has not yet been given effect to. If a boundary exemption has been granted by a council, it is not eligible for a certificate of compliance under section 139 of the RMA.

If a person applies for a boundary activity exemption but fails to provide the correct information, or the council determines that other rules are infringed, then the activity does not qualify for a boundary activity exemption and the council must return the information to the applicant.

If a person has applied for a resource consent, but the council determines that the application actually includes all the necessary information to qualify as a boundary activity, then the council must provide a boundary exemption and return the resource consent application.

If the resource consent application does not meet the definition of 'boundary activity', then the standard resource consent process applies.

Councils may exempt activities from needing a resource consent for 'marginal or temporary' rule breaches

Previously any activity that breached a rule in a district plan required a resource consent, regardless of the scale of the environmental effects of the infringement.

The RMA has been amended to include section 87BB, which provides a discretionary power for councils to treat an activity as permitted if there is only a 'marginal or temporary' rule breach. Details of this power is provided below.

The intent of this change is to address the issue that some consents are currently required for activities that have effects that cannot be discerned from those of permitted activities.

The marginal or temporary non-compliance process

The criteria for deciding whether to provide an exemption, as set out in section 87BB, includes:

- the activity would be a permitted activity except for a marginal or temporary non-compliance with the requirements, conditions and permissions specified in the RMA, regulations (including any national environmental standard) or any plan or proposed plan for that area
- any adverse environmental effects of the activity are no different in character, intensity or scale than they would be in the absence of the marginal or temporary non-compliance
- any adverse effects of the activity on a person are less than minor.

If these criteria are met, the consent authority has the discretion to provide written notice to the person that their activity is permitted.

The written notice must include a description of the activity, details of the site, and the council's reasons for deciding the activity is permitted.

The written notice lapses in five years if it has not been given effect to. A marginal or temporary non-compliance is not eligible for a certificate of compliance under section 139 of the RMA.

Unlike boundary exemptions, there is no time limit for this process. It is intended that this process will be used as a discretionary tool for councils, for example, at the building consent stage when marginal or temporary planning infringements are identified, or when a resource consent application is received and the council determines that the activity meet the requirements of 87BB.

Councils must process certain resource consent applications within 10 days

Previously all non-notified resource consent applications were subject to the same 20-working-day process, regardless of the scale of the application. While the 20-working-day process is appropriate

for the majority of non-notified applications, it can result in undue time and financial costs for applicants seeking consent for the simplest proposals.

The RMA has been amended to introduce a new 'fast-track' process for resource consent applications that are district land use activities with controlled activity status, if an electronic address for service has been provided.

If other types of consents are also needed as part of a resource consent application, the application will not qualify for the fast-track process. The fast-track pathway does not apply to consents required due to infringement of regional rules. An applicant can also choose to opt out of the fast-track process at the time of lodgement.

Fast-track applications must be processed in 10, instead of the standard 20, working days.

The intent of this change is to improve the proportionality of the consenting process.

The fast-track process

For fast-track applications, councils have 10 working days to:

- accept or reject the application
- make the notification decision (if needed, noting the preclusions on notification detailed in Fact Sheet 9)
- decide whether to grant or decline consent (noting that currently only controlled activities requiring consent under a district plan are subject to the fast-track process so cannot be declined, but new activities may be added to the process through regulations).

An application ceases to be fast track if:

- a hearing is necessary
- the council decides to notify the application
- the applicant chooses to opt out of the process.

Fast-track activities may be prescribed by regulations

The RMA has been amended to insert section 360F, which enables regulations to be made that prescribe the:

- additional activities or classes of activities subject to the fast-track process
- methods that a consent authority must use to identify additional activities or classes of activities that could be subject to the fast-track process
- information that must be included in a fast-track application (instead of the information requirements set out in Schedule 4 of the RMA for general consent applications).

If regulations are not made that specify the information requirements for fast-track applications, then the information requirements set out in Schedule 4 apply.

Fact sheets in this series

This is one of a series of 16 fact sheets providing an overview of amendments to the:

- Resource Management Act 1991
- Conservation Act 1987

- Reserves Act 1977
- Public Works Act 1981
- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

The full set of fact sheets is available on our website:

www.mfe.govt.nz/publications/rma/resource-legislation-amendments-2017-fact-sheet-series

Find out more

Contact the Ministry for the Environment by emailing info@mfe.govt.nz, or visit www.mfe.govt.nz/rma.

Disclaimer

The information in this publication is, according to the Ministry for the Environment's best efforts, accurate at the time of publication. The information provided does not alter the laws of New Zealand and other official guidelines or requirements. Users should take specific advice from qualified professional people before undertaking any action as a result of information obtained from this publication.

The Ministry for the Environment does not accept any responsibility or liability whether in contract, tort, equity or otherwise for any action taken as a result of reading, or reliance placed on the Ministry for the Environment because of having read any part, or all, of the information in this publication or for any error, or inadequacy, deficiency, flaw in or omission from the information provided in this publication.

Published in April 2017 by the
Ministry for the Environment
Publication number: INFO 784i



*Making Aotearoa New Zealand
the most liveable place in the world*

New Zealand Government