

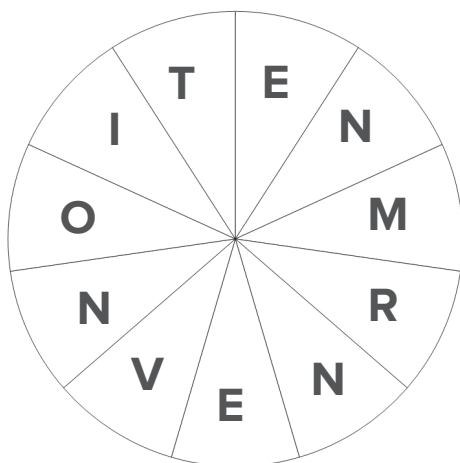
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Word Challenge

See how many words you can form from the below letters. The longest word you can make is 11 letters.



Requirement for a Certificate of Title

A copy of an up to date Certificate of Title (less than 3 months old) is required to be attached to any application for resource consent, with the exception of moorings and marine farms. Recently agents and applicants have not been consistently providing this information and there have been instances where resource consent has been issued contrary to a consent notice on the site. This has created issues for both Council and the applicant. The provision of the Certificate of Title is a basic requirement under Section 88. However we do not see any merit in completely rejecting an application for the reason that it does not include a Certificate of Title. To avoid rejection and to address the informational requirements, from 1 September if an application does not include an up to date Certificate of Title Council staff will provide a copy. Please note that there will be a charge for this service of \$20 per Certificate of Title.

Section 92 Requests for Additional Information

Section 92 of the RMA enables Council to request further information from the applicant. An applicant has the right to either agree to or refuse the request. Section 92 enables Council to request further information at any reasonable time before the hearing of an application, or if there is no hearing, before the decision is made on the application.

Ideally the applicant should receive the request from Council for further information within 10 working days of the application being received (or within 5 working days in the case of a fast track consent). This allows time for the statutory timeframe for making the decision on notification to be met. The notification decision must be made within 20 working days of the date that the application was lodged (or within 10 working days with respect to fast track consents), excluding any days the clock has been stopped.

Although there are no limitations on the number of further information requests that can be made, there are limitations on when the processing clock can be stopped. For both notified and non-notified applications (including fast track applications), the clock can only be stopped once by Council for a further information request and only when the request is made prior to the notification decision. This means that once the notification decision has been made, the processing clock cannot be stopped when/if Council asks for further information after this time.

Council Planners aim to minimise the number of times further information is requested, so prior to a Section 92 request, Planners consider all aspects of the proposal and undertake internal circulation with all relevant questions to accurately scope the potential effects of the activity and any potential information gaps. This enables all information requirements to be dealt with in one written request.

The purpose of the information request is to ensure sufficient information is available to provide a good understanding of what is proposed and the likely environmental effects from the proposal. This information provides the basis for making a decision on the application.

Further information cannot be requested under Section 92 in relation to:

- Deemed permitted activities;
- Section 128 review of consent conditions; or
- Section 125 Extension of lapse period.

In relation to Certificates of Compliance and Existing Use Certificates, further information can be requested, but only if Council considers the information is necessary to determine if it can issue the relevant certificate.

The applicant should not receive a Section 92 request for fees as that is a Section 36 matter. The applicant should also not receive a request for information that is beyond what is actually applied for in the application, or that is trivial or unreasonable. The request can also not be used as a means to unnecessarily 'stop the clock' or for written approval, which is a Section 95 matter.

A request for additional information should start with an initial contact from the Planner explaining what information is required and the reason the information is being sought. The phone call request should then be formalised through a clearly written letter detailing the requested information, the reasons for requesting the information and the options for responding to this request. **Response options include** providing the information, undertaking to provide the information within a certain timeframe or not providing the information. The applicant will have 15 days to tell Council what the response will be. If additional time to provide the information is needed Council will set a reasonable date by which the information must to be provided.

The application is placed on hold for the 15 days but comes off hold if the information is provided, or if the applicant refuses to provide the information before the time period. The application comes off hold and must continue to be processed if there is no response or if the information is not received within the timeframe set by Council. Council must publicly notify the application and then consider it under Section 104, where it may be declined on the basis of there being inadequate information to determine it.

Consent Notices (RMA) and Section 37 Notices (Building Act)

The purpose for this article is to raise awareness of **planning requirements that may affect building projects**. Some of those planning requirements affect Building Code compliance and others require a RMA planning process in addition to building consent.

When the consent notice directs minimum floor heights, maximum build heights, drainage or potable water supply requirements, such matters are governed by the Building Act 2004 (Building Act). Consent notices requiring residential sprinkler systems or similar are not enforceable by the Building Act, but failing to comply with the consent notice would be a breach of the Resource Management Act 1991 (RMA) and will be dealt with by Council's Compliance Team. Projects involving land disturbance or discharge to land (effluent disposal) are also examples of activities that may trigger a RMA planning process.

Consent notices identify specific conditions that were required under the RMA, or agreed to by Council and the property owner during a subdivision process. Consent notices are covered by Section 221 of the RMA and only apply to subdivision consents. Any consent notices imposed on subdivision consent will be registered on the Certificates of Title issued for the newly developed land parcels. The notices alert current and future property owners to obligations that must be complied with after the Certificate of Title has been issued. In some cases the obligation continues on an ongoing basis.

Consent notices registered on Certificates of Title will be checked at the building consent application stage for matters related to building. When a proposed structure is submitted for building consent Council will undertake a planning assessment along with the Building Code assessment. The planning assessment will identify any requirement for resource consent and a letter will be sent to the agent accordingly. The letter states that a Section 37 (Building Act) notice will be issued with the building consent. The notice prevents any building work from commencing until resource consent (RMA) for the activity is obtained. Later, the issued building consent documentation also includes a "Section 37" notice. In other words, there is no shortage of advice being given to the agent/applicant about the Section 37 notice or the requirements associated with it.

While not a compulsory requirement, applying for a **Project Information Memorandum (PIM)** prior to submitting a building consent application will highlight the consent notice requirements. The designer can then include those requirements in the design at the outset. This would avoid having to retrospectively address any such issues later on, which could cause delays to the building project.

It is worth noting, even though a consent notice is identified on the property title, many property owners are not aware of the requirements they have to meet when considering building. The consent notice requirements can also at times be missed by the designer for the project. For this reason it is very important that agents explain fully any existing resource consent requirements as they hand over consents to their clients. The message can be further lost when the property owners on-sell the newly created properties.

Sometimes conditions on or around the property may change over the years and the property owner or designer may feel that the consent notice is no longer applicable. An application may be lodged to vary or cancel the consent notice; however, the applicant would have to make a good case as to why the consent notice was no longer applicable.

As a consent notice is an agreement between Council and the landowner, it is the responsibility of the landowner and Council to check compliance. This past year has seen a number of instances when the consent notice requirements were not recognised. In some instances a decision was made on the building site that was compliant with the Building Act but did not comply with the requirements of the resource consent. The consent notice requirements came to everyone's attention when a Building Control Officer arrived on site to do an inspection. By this time there has usually been a lot of time, effort and money put in to the project. As a consequence the property owner may need to undo work and start again, or go for a variation to the consent notice. In most cases this is extremely expensive and time consuming, and causes an unplanned delay to the building project.

Resource Consent Hearings

A hearing may be required on an application for resource consent for a number of reasons. It may be the proposed activity is sufficiently contrary to the resource management plan and/or RMA that the Resource Management Officer must escalate the application to the delegated Decision Making Panel (the Panel) or Independent Commissioner. Alternatively, the application has attracted a submission and the submitter has stated a wish to be heard. In other instances the applicant may request the application be set down for hearing. A resource consent hearing is a public meeting to give all parties a fair opportunity for their views to be known on an application for resource consent.

The RMA covers the hearing process generally from Sections 100 to 103B. The RMA Hearings Facilitator is available to talk about hearings and respond to any questions about the resource consent hearing process.

Pre-Circulation of Evidence (Section 103B)

The **applicant's** evidence for a hearing is required to be pre-circulated to all parties no later than 10 working days before the hearing.

A **submitter** is only required to provide technical evidence for pre-circulation to all parties no later than 5 working days before the hearing. Technical evidence is produced by any expert witness appearing with or on behalf of the submitter.

The Hearings Meeting Notice (which advises of the hearing date) will provide the details of the due dates for providing evidence.

Council evidence at a hearing will also be pre-circulated to all parties no later than 15 working days before the hearing.

Section 103B of the RMA outlines the timeframes for the provision of evidence to hearing.

Hearing Proceedings

At the start of the hearing the Committee Chairperson or Independent Commissioner (the Decision Maker) will provide an introductory statement and ask the parties to identify themselves. At this point the parties should also state if they have time constraints, which the Decision Maker will try to accommodate, if possible.

The hearing then continues with the applicant and their witnesses presenting submissions and evidence, after which the Panel, and submitters through the Chair, are able to ask questions of clarification.

Then, the submitters and their witnesses present their submissions and evidence. When the Decision Maker has questioned them, the applicant will be given the opportunity to ask questions of clarification only through the Panel Chair/Independent Commissioner.

Remember the applicant's and submitter's technical evidence has already been circulated prior to the hearing. The Decision Maker may direct the parties to present a summary of the evidence, or confine themselves to outstanding matters, or to the remaining points of contention.

Cross examination is prohibited at the hearing.

The Resource Management Officer will have the opportunity to speak to their Section 42A report on the application and any other Council witnesses in attendance.

Finally the applicant has the right of reply to points raised by, or on behalf of, submitters and the Resource Management Officer. This should be limited to responding to outstanding matters raised during the hearing. The applicant cannot introduce new evidence in the final reply.

The Decision Maker will either adjourn or officially close the hearing at the end of the day's proceedings. If adjourned, the Decision Maker may simply want to take a day to assess whether enough information has been presented on which a decision can be made. If not, the Decision Maker may issue a Minute setting out a direction for the provision of further information and the timeframes for responses by the parties to the hearing.

Resource Consent Hearings continued ...

Decision on Applications

Parties to an application will be notified of the decision on the application, irrespective of whether they supported or opposed it, or whether they attended the hearing. A decision is required to be issued within 15 working days after the official close of the hearing.

Under certain circumstances the abovementioned timeframes can be extended if needed using Section 37 of the RMA.

Hearing Chambers

The Council chamber is a circular room and is located in the original section of the Council Building. The room is set up for a hearing in the arrangement shown in the photograph below.

Resource Consent Hearing Fees

Under Section 36(7) of the RMA, a hearing deposit fee will be required to be paid prior to the hearing to avoid the hearing and/or the decision release being delayed. An invoice for the hearing deposit fee will be forwarded to you on confirmation of a hearing date.

The final cost of processing the application is based on actual time and costs in accordance with Council's charging policy. If actual costs exceed the lodgement and hearing deposit fees paid an invoice will be issued to the applicant. If the actual costs are less than the fees paid a refund will be issued.

Lodging an Appeal

The status of applicant or submitter provides certain legal rights with regard to the decision.

Sections 120 and 121 of the RMA contain provisions describing who has a right to appeal and the procedure associated with that. Anyone wanting to exercise rights regarding a decision is strongly recommended to seek legal advice.



Staff Profiles

Emma Hunter

Emma joined the Regulatory Department Administration Team in May 2019, taking up the role of a Resource Management Administration Officer.

Emma has lived in Marlborough since she moved here from North Yorkshire, UK, with her husband and young family in 2008.

Working in an Education Department in the Admissions and Appeals Team was Emma's first introduction to Local Government. Prior to her role with Council, Emma worked for the Marine Farming Association in an administrative position. That role presented her with a great learning curve as she had very little prior knowledge about the aquaculture industry.

Emma has enjoyed her first few months with the Resource Consents Team and finds her new role varied and interesting.



Yvonne Lamb

Yvonne is a Blenheim local who before joining Council worked in the Land Information New Zealand office. When the Blenheim office closed Yvonne held the position of Personal Assistant in a local law firm.

In 2005 Yvonne joined Council as an administrator. She has specialised in the administrative process supporting subdivision of property.



Beate Gregory

Beate has been working for Council for five years. For the last three years she has been assisting the Resource Consent Team in an administrative role.

Beate is originally from Germany, but has lived in Britain and Australia, before finally settling on a lifestyle block in Marlborough.



Adriene Gravatt

Originally from the Bay of Plenty, Adrienne arrived in Blenheim via a circuitous route through Africa, Asia and the Pacific. During her travels she spent a number of years working within the development arena. Initially, this involved natural resource management, then organisational development and finally Results Based Monitoring and Evaluation.

With an academic background in Economics, Natural Resource Management and Heritage Materials Science, Adrienne is happy to have joined the Resource Consents Team where she can utilise her natural resource management background and supporting skills. Previously Adrienne has worked as an Environmental Policy Planner for Environment Waikato and the Whangarei District Council.



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