

## Reform of resource consent application processes

As of 3 March 2015, Resource Management Amendment Act 2013 reforms take effect to honour government promises to speed up council decisions on "medium sized" projects. The reforms clarify and add to requirements for information to be included within a resource consent application and the maximum time for the decision-making process on notified and limited notified applications is now limited to six months. All applications lodged *before* 3 March 2015 will avoid the new timeframes and information requirements.

This article summarises the reforms and provides detail about a few aspects of the changes.

### Summary of reforms

The changes in a snapshot are:

- Councils have *10 working days* to consider and accept applications (previously 5 working days).
- All incomplete applications *must* be returned to the applicant immediately, with reasons why it was incomplete (previously there was a discretion to return applications).
- Councils can only 'clock stop' once for further information, and only before a decision is made on notification (previously the clock could be stopped twice – once before notification and once after).
- Councils have *20 working days* to decide whether to notify the application (previously 10 working days).
- Councils may close the submission period early for limited notified applications if all affected persons have submitted, given written approval or notice that they will not be giving a submission.
- Time limits for the completion of hearings following the notification and submission periods are fixed at 75 working days for fully notified consents, and 45 working days for limited notified consents.
- The council cannot adjourn hearings (previously hearings could be adjourned for a maximum of 10 working days).
- Applicants may put their application on hold for up to 130 working days anytime between notification and the close of hearing or, if no hearing is held, the final decision. Councils will suspend processing if such a request is received. After 130 days councils must continue processing or return the application. Applicants can object to the return of the application, but if the objection is rejected and if the application is lodged again it must be treated as a new application.
- All evidence briefs and any s42A report from council must be pre-circulated: Council reports and evidence 15 working days before the hearing, applicant evidence 10 working days before the hearing, submitter's expert evidence five working days before the hearing.
- Resource consent applications are required to be in the prescribed form and manner and meet all content requirements in the new schedule 4.
- Assessment of Environmental Effects (AEEs) are required to be more comprehensive than before.

### Detail of reforms

#### *New resource consent application requirements*

Making an application for a resource consent will require more detail than ever before. In particular, all applications now require an assessment of the activity against Part 2 of the RMA, against the objectives, policies and rules of any relevant planning document, and to have a more comprehensive AEE. Consent authorities have been given more time, 10 working days instead of 5, to consider whether an application is complete or if it should be sent back to the applicant. Given the 6 month decision-making time frame councils will be incentivised to reject any incomplete applications.

#### *Six-month time frame*

Consent authorities are now required to process fully notified or limited notified resource consent applications within a new maximum time frame of six months. Even though the six month time frame was explained by former Environment Minister Amy Adams as applying to medium sized consents, the time frame applies to *any* consent notified by a council. While "large" projects have the option of the one stop EPA process or direct referral to the Environment Court, many of these applications remain at council level for the first instance decision.

The timeline for each type of application depends on its notification status: fully notified applications with a hearing have a deadline of 130 working days (6 months); limited notified applications with a hearing have a deadline of 100 working days (4.5 months); and, fully or limited notified applications with no hearing have a deadline of 60 working days (2.7 months). The ability to adjourn a hearing has been removed, but applicants have the power to suspend the process for up to 130 days if they need more time to prepare for the hearing. The requirement for pre-circulation of evidence briefs and reports means that all evidence will be available to the parties before the hearing and brings the RMA process into line with many other areas of law. The strict timeframes will place additional pressures on applicants and submitters in an already tight process.

*What does this mean for councils?*

The effect of the reforms means that councils have a prescriptive and complex threshold test to check applications against. Councils need to be ready to give a comprehensive assessment of the adequacy of the application within 10 working days. Councils have less flexibility - after notification councils can only stop the clock once and the ability to call for an adjournment during a hearing has been removed. However, councils do still have the power to extend timeframes under section 37.

*What does this mean for applicants?*

Applications will need to be more comprehensive at the first step. Applicants are able to suspend the application if they need more time to prepare information. As a result, the elements of risk and accountability lie with the applicant.

*What does this mean for RMA practitioners?*

Practitioners will need to understand the changes, and in particular the information requirements in Schedule 4 that apply to all resource consent applications. That detail is not provided here because it is comprehensive. We recommend practitioners refer to the Act.

Prepared by Rachel Brooking, Associate and Sophie Peat, Summer Clerk at Anderson Lloyd.