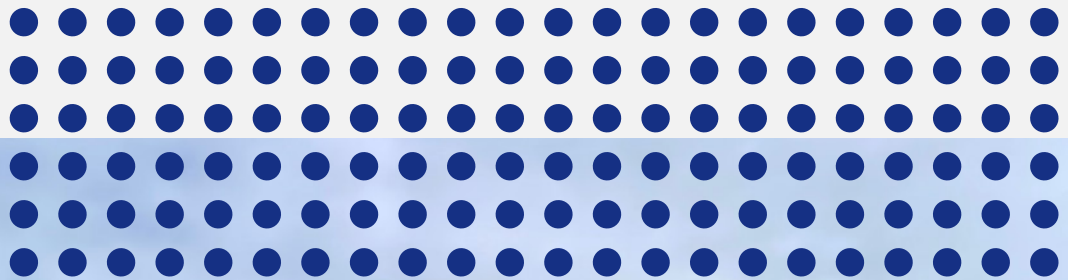


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PLANNING

Land Use & Subdivision Resource Consent guide

Your experts in planning and obtaining
resource consents.



Welcome to our Land Use and Subdivision Resource Consent guide

By the time you've finished reading you should have a good understanding of the resource consent process and the things you'll need to think about (or your Planner will need to think about!) for your development.

Contents

1. STATUTORY FRAMEWORK
2. THE RESOURCE MANAGEMENT ACT AND DISTRICT PLANS
3. THE BUILDING ACT AND THE BUILDING CODE
4. OTHER CONSIDERATIONS
5. THE DEVELOPMENT STAGES
6. SCOPE & FEASIBILITY
7. DESIGN & LAYOUT
8. RESOURCE CONSENT

First things first – a timeline

We suggest you ballpark 3-12 months from pushing go to obtaining resource consent based on the scale of your development.

This timeline will allow for plans to be prepared, consent documents to be prepared (i.e. Assessment of Environmental Effects (AEE), lodgement to happen, council to request further information, and for a decision on your application to be made.



Statutory Framework

The nitty gritty you need to know up front



The Resource Management Act and district plans

The Resource Management Act 1991 (the RMA) deals with the use of land and its effects on both people and the environment.

The RMA requires local and regional councils to prepare plans to manage the use of land and resources to ensure they're used in a sustainable manner – ensuring they're available for future generations, retain their life-supporting capacity, and avoid, remedy or mitigate their adverse effects.

District and regional plans set out the objectives, policies and rules for their respective areas. Most plans are written in a way that enables certain activities to be undertaken within limits and without needing any further approval.

Other activities, and activities that are outside the limits specified, normally require some sort of approval. This is called a resource consent. The need for a resource consent doesn't mean an activity or its effects are bad. It simply means it needs specific consideration. To subdivide land, a resource consent is required in most instances.

The RMA sets out how the resource consent process works. Applications for resource consent are submitted to the relevant council who process them on a non-notified or notified basis. 'Notified' means people can make submissions to the council on your proposal. 'Non-notified' means there will be no public submissions made against your proposal. They then decide whether to grant or refuse the application.

The Building Act and the Building Code

The Building Act 2004 is concerned with the construction of buildings and their ongoing performance to ensure they're healthy and safe.

To achieve this, the Building Act sets out a consenting process for checking building work and a warrant of fitness process for ensuring buildings remain in good condition.

The Building Act also establishes a licensing regime for building practitioners.

The Building Act enables the creation of nationwide regulations, called the Building Code, that prescribe functional requirements for buildings and performance criteria for particular uses. All buildings must be designed and built in accordance with this code. With some exceptions (such as garden sheds and ground level decks) all

building work must get a building consent from the local council. The building consent process enables the local council to check that the design and construction complies with the Building Code. Where buildings are expected to be visited by the general public (for example, commercial buildings) there is also an ongoing requirement for these buildings to have a warrant of fitness, to ensure the buildings remain compliant for the course of their life.

The building consent process follows on from the resource consent process.

Other considerations

Development contributions

Under the Local Government Act 2002, local councils are able to impose levies on development in their areas to recover a proportionate cost of the infrastructure necessary to service growth in the area (such as sewer pipes, roads, parks, etc.). Most councils charge a development levy for new development. The amount varies between councils and even varies within each council depending on the location of the development and what infrastructure is needed in that area.

*A development contribution estimate can be obtained from council upon request to assist with budgeting purposes.



The Development stages

Let's get started!

Scope & feasibility

New Site Feasibility

For new sites, it is important to undertake a feasibility assessment to review whether it's suitable and what any likely consenting issues would be. Your planner can also identify any other specialist input that would be required to support an application, such as a surveyor, engineer, arborist, acoustic consultant, ecologist, etc.

As part of this service, draft plans can be prepared showing the proposed lot sizes (for subdivision); mass and location of future buildings, accessways and other site features. This allows you to identify key development matters very early on and gives you the confidence to make informed decisions about the purchase of the site i.e. does it stack up?



Design & layout

Existing Site Feasibility

If you already own a site, your planner can help you understand its development potential and how to unlock it. Our team is experienced in assessing sites and can advise on appropriate land use and subdivision activities such as vacant lot subdivision; subdivision around existing and approved land use; residential dwellings, workers' accommodation, community services, commercial, industrial and more. We'll also identify potential site constraints, bulk and location controls, relevant policies and anticipated zone outcomes so you know exactly what's possible before digging in. The feasibility stage often takes place during the due diligence stage of land purchase if you do not already own the site.

Assuming a favourable outcome at the feasibility stage and a site is purchased (or placed under offer) the next step is to develop the design and layout depending on your purpose with an architect and/or surveyor and manage the preparation of all specialist reports and information to support a resource consent application.

A basic application for both land use and subdivision normally requires expertise in:

- Planning
- Traffic
- Surveying
- Civil Engineering

Depending on the issues identified during the feasibility stage, further input may be needed from experts in:

- Urban Design
- Landscaping
- Contamination
- Geotechnical
- Acoustic



Resource consent

The need for consent

Land use, development and subdivision often require a resource consent from the local council. The rules of the relevant district or regional plan set a number of triggers and limits that, if exceeded, require an application for resource consent.

There are a wide range of reasons why consent may be required touching on environmental and amenity issues, but the most common reasons are:

- The intensity and density;
- The number of on-site vehicle parking spaces (not enough provided);
- The amount of traffic being generated (exceeding a trigger level);
- The size of the building (in relation to its height, proximity to a boundary, or amount of site area being covered);
- The amount or area of earthworks; and
- Disturbing land that carries the risk of being contaminated due to past uses (eg. lead painted buildings, former horticulture use, etc.).

The process

The resource consent process involves a combination of factual matters, judgment and expert opinion. The process benefits from careful management from preparation stages to lodgment to a decision being issued. Resource consent normally involves a lot of interaction with council staff and experts, so it pays to know what you're

doing to ensure the most efficient path through.

The first step is ensuring the application is accepted for processing. It is important that a high-quality application is prepared because councils may reject an application at lodgment if it does not properly address all relevant issues.

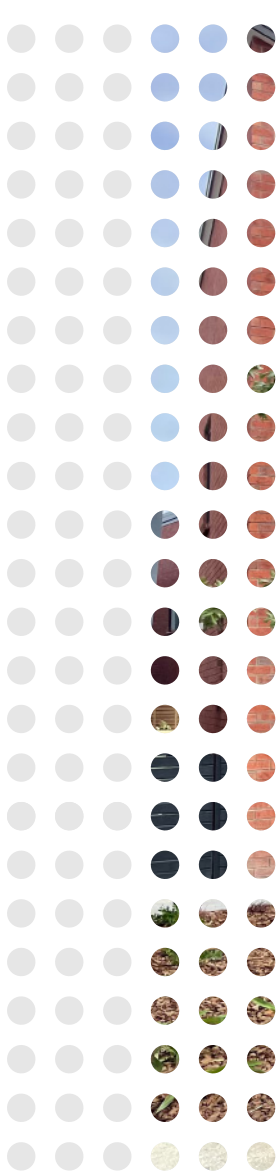
Further information

The council can also place the application on hold if it decides, after reviewing the information submitted, that it requires further information to assess the effects. The risk of a further information request can be mitigated by ensuring a comprehensive, high-quality application is submitted that fully addresses all foreseeable issues.

Notification

The first decision the council must make is whether an application will be processed with some form of notification. There is a strict process that must be followed when making this decision and most terms have very specific definitions. Put simply, the first step is to decide whether the adverse effects on the environment would be minor or more than. If they are more than minor then the application is public notified, which means any person or organisation can make a submission to the council telling it what they think of the proposal.

If the application is not publicly notified, then the council must decide whether any



particular persons would be adversely affected. The bar for being affected is relatively low: effects only have to be “minor, but not less than minor”. If there are any affected persons, then the application is notified only to them (limited notification) and only they can make submissions.

If the application does not meet the requirements for public or limited notification, then the council gets on with processing the application without any form of notification (non-notification). This is the most desirable outcome as it’s the fastest, least costly, and most certain route. To maximise the likelihood of achieving this, it’s important to find an appropriate site and design the development in such a way that minimises or avoids adverse effects on both the environment and on people nearby.

To grant or refuse

The second decision is whether to grant or refuse the application. The council makes an assessment of the effects of the proposal (both positive and negative) and takes into account the relevant objective, policies and rules of its district or regional plan. If a resource consent is granted, it usually comes with a number of conditions that must be complied with. These can range from how earthworks are managed, to the materials used in the appearance of the building.



Hearings

Some resource consent applications are determined after they have been to a public hearing. Hearings are most common for notified applications because submitters have a right to be heard if they wish. Hearings are also sometimes held because the applicant has requested one (usually because the council officers are recommending the application be declined) but these are less common.

Timeframes

Different stages of the resource consent process have timeframes, which, when added together, give a total overall timeframe for a decision to be issued. All going to plan these are:

- **Non-notified application**
 - within 20 working days from being accepted for processing
- **Limited notified applications**
 - 100 working days
- **Publicly notified applications**
 - 130 working days

Please note, time spent on hold awaiting further information is not counted here.

The timeframes for different stages can also be extended by the council either due to special circumstances or by agreement with the applicant. The applicant can also put a notified application on hold if they wish.

Sometimes it is desirable to extend the timeframe as it gives an applicant the chance to address concerns identified during processing and increase the likelihood of a positive outcome. For example, if the council thinks an application should be publicly or limited notified, it gives an applicant the chance to make changes or advance arguments that persuade the council to proceed down a non-notified path.

Despite the timeframes set out in the RMA, councils often exceed them due to workload or other issues outside an applicant's control. There is a financial penalty imposed on the council when they do exceed the timeframe (see next section), but this does not prevent it from occurring.

Due to council delays we recommend allowing approximately six to ten weeks from the day of lodgment for a decision on a non-notified application.



Conditions of consent

Conditions include standards, terms, restrictions, or prohibitions that are specified in a consent after the written decision to grant the consent. Section 108 of the RMA allows councils to include conditions on all resource consents while Section 220 of the RMA relates to conditions of subdivision consents.

Conditions can only be imposed on a resource consent if:

- the applicant agrees to the condition;
- or the condition is directly connected to an effect of the activity on the environment;
- or the condition is directly connected to an applicable rule in a plan, NES, or wastewater environmental performance standard;
- or the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.
- Conditions may relate to the design or appearance of structures, landscaping, hours of operation, restrictions on the amount of resource use, the layout of a site, or any number of other things.

Getting the conditions right is essential - specifying conditions of consent that are effective and enforceable is essential to the operation or development of an activity. Conditions also ensure any adverse effects on the environment are avoided, remedied, or mitigated and ensure that any measures proposed by an applicant to offset any adverse effects are implemented.

For subdivision the conditions often involve completing physical works such as infrastructure supply, earthworks and access. The conditions will also include the requirement for a licensed surveyor to define the lots and prepare a title plan for submission to the council under Section 223 of the RMA. At this stage, the council may approve the plan under Section 223 notwithstanding that some or all conditions of subdivision consent have not yet been satisfied.

To allow the survey plan to be deposited with the Registrar General of Land, the council is further required under Section 224 of the RMA to provide a certificate stating that all or any of the conditions of the subdivision consent have been complied with to its satisfaction.



The plan and appropriate documentation are then ready for lodgement with Land Information New Zealand for approval, deposit, registration and issue of new titles.

Should you need to vary or change consent conditions, our planners can apply to a change or cancel a condition of consent in most situations.

Timeframes to give effect to a consent

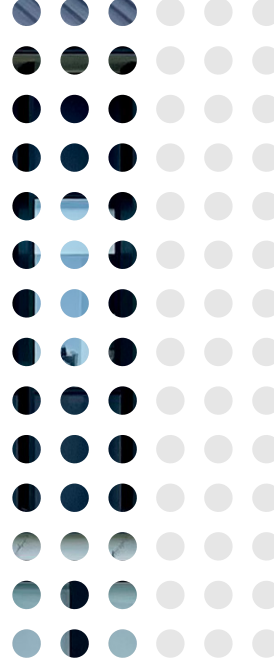
Depending on the resource consent you obtain, there will be different timeframes that need to be met in order to give effect to your consent. For a standard land use consent, councils generally allow up to five years under Section 125 of the RMA. Within this five-year period, the consent needs to be given effect to; or an application made to the consent authority to extend the period after which the consent lapses. When considering an application to extend the timeframes, a consent authority will assess whether substantial progress or effort has been made and continues to be made towards giving effect to the consent; and whether the applicant has obtained approval from persons who may be adversely affected by the granting of the extension; and the effect of the extension on the policy framework of any plan or proposed plan.

With regards to a subdivision consent, once subdivision consent is issued an applicant has five years to lodge a Survey Plan with council. This plan is a detailed plan prepared by a registered surveyor showing the boundaries, areas, and if relevant any easements and covenants that need to be prepared. If the plan is in accordance with what was approved by council as part of the subdivision consent then a Section 223 certificate approval will be signed. Once this has been signed by council the plan may then be lodged with Land Information New Zealand (LINZ) for approval.

Once a 223 certificate has been signed by council, an applicant then has a further three years from the date of signing to obtain a Section 224(c) certificate.

The 224(c) certificate must be lodged with LINZ prior to the lapsing of Section 223 approval (three years from the date of signing); otherwise an applicant's subdivision consent will lapse.

Applicants should allow a minimum of 15 working days for processing of a 224(c) certification application. This time frame will be extended where an application is incomplete, or further works are required to achieve compliance with consent conditions.



Costs

Under the RMA councils are not allowed to make a profit on processing consent applications, but they are allowed to recover their costs – effectively making the process a user-pays scheme. Application charges are set by each individual council.

Using Auckland Council as an example, its charges are based on the time spent by staff at an hourly rate between \$150 and \$200 per hour, depending on the specialists involved. For a bundled land use and subdivision application lodged on a non-notified basis, the council would require a \$9,500 deposit at the time of lodgement, which is credited against the processing costs.

Auckland Council performs monthly billing so depending on when an application is lodged and how long it takes to process, an applicant can expect to receive interim invoices for costs incurred to date and before the decision is issued and final total charges calculated.

If the council decides to notify an application, it will require a further deposit of \$20,000 (public notification) or \$10,000 (limited notification). There is also a \$3,000 deposit required if a hearing is necessary.

As each application is different the fees will depend on what transpires once it has been submitted for processing.

It is worth noting that for every day the council exceeds the statutory processing timeframe, it must apply a discount of 1%, up to a maximum of 50%. Non-payment of processing fees does not prevent the council issuing its decision on the application. The council's fees can also be challenged formally where they are considered to be unreasonable.

Choosing expert help

We appreciate that all you've just read is a lot to take in and you might be thinking it would be wise to engage the help of experts. You're right, but who? When? And how do you find the right ones?

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