

2017

Consent Steps

Requesting Further Information



Requesting Further Information

This guidance has been updated to include the changes made to the consenting provisions of the RMA as a result of the Resource Legislation Amendment Act 2017 (RLAA17) which came into effect on 18 October 2017. For more information about the amendments refer to the RLAA17 Fact Sheets available from the Ministry's website.

Section 92 of the Resource Management Act 1991 (RMA) allows councils to request further information from an applicant and/or commission a report, at any reasonable time before the hearing of an application or before the decision to refuse or grant consent if there is no hearing.

Additional information should only be requested where it is required in order to allow a council to make a decision on a proposal. Generally this information is needed to better understand any potential adverse effects on the environment from the activity.

The applicant has the right to refuse to provide further information or for a report to be commissioned, but in any event, must respond within 15 working days of the request stating what they intend to do. When an applicant does not respond, refuses to provide information, or refuses to agree to the commissioning of a report, then councils must notify the applications in accordance with s95C and then make a decision on the application under section s104.

Section 88C sets out when further information requests and commissioning of reports stop the processing 'clock' for resource consents. The clock can only be stopped once when further information is requested and only if the request is made prior to notification. The clock cannot be stopped between notification and the decision unless the applicant requests processing be suspended. The clock can be stopped any time a report is commissioned provided the applicant agrees.

This guidance note provides good practice advice on requesting further information, commissioning reports and dealing with applicant's responses to such requests.

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When Should Further Information be Asked for?

Section 92(1) of the RMA enables a council to request further information from the applicant. Section 92(2) enables a council to request an applicant agree to the commissioning of a report. An applicant has the right to agree or refuse either request. Section 41C of the RMA allows these requests to be made at hearings; s41C reports can only be commissioned when the hearing panel or commissioner considers the proposal may have a significant adverse environmental effect, the applicant is notified and does not refuse to agree to the commissioning of the report.

Section 92(1) enables a 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. However, the earlier in the process the request is made, the better.

It is good practice to make a request for further information within 10 working days of receiving the application (or within 5 working days in the case of a fast track consent). This should allow time for a site visit and allows the statutory time frame 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 (s95), 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 (s88C). For both notified and non-notified applications (including fast track applications), the clock can only be stopped once by the 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 the council asks for further information (under s92(1)) after this time. This also applies to fast track consents where the (unusual) decision has been made to notify the application (and as such the application ceases to be a fast track application). If the previously fast-tracked application contained only the information as prescribed by any relevant regulations made under s360G(1)(a), the council may request any of the information referred to in section 88(2)(c) from the applicant under s 92(1). However, due to the fact that this further information request is after the notification decision, the processing clock cannot be stopped.

The clock however can be stopped any number of times in relation to reports commissioned under s92(2) in the RMA. Such reports can only be commissioned before a

hearing of an application, or if there is no hearing, any time up until a decision is made on the application, and must meet the criteria in s92(2)(a) to (c).

To minimise the number of times further information is requested, the processing officer should consider all aspects of the proposal and discuss with all relevant internal departments to accurately scope the potential effects of the activity and any potential information gaps. This will enable all information requirements (eg, traffic, engineering, planning) to be dealt with in one combined written request.

The information request should seek to ensure sufficient information is available to provide a good understanding of what is proposed and the likely environmental effects that from the proposal. This information should provide the basis for making a decision on the application. For more complex applications where the effects adverse effects will be minor or more than minor, the information requested should allow a notification decision to be made and the application to be notified or limited notified if appropriate so that submitters can understand the effects of the proposal.

Under the Resource Management (Discount on Administrative Charges) Regulations 2010 (Discount Regulations) councils are required to give a discount on consent fees if an application is not processed within the RMA's statutory time frames. Therefore any information requests should be thorough and as complete as possible to help the statutory time frames to be met.

For more information on the Discount Regulations and how they are administered refer to the [Resource Management \(Discount on Administrative Charges\) Regulations 2010 Implementation Guidance \(PDF\)](#).

Further information cannot be requested under s92 in relation to:

- Deemed permitted activities;
- S128 review of consent conditions;
- S125 Extension of lapse period.

In relation to certificates of compliance, and existing use certificates, further information can be requested under s139(4) and s139A(3) respectively and only if the council considers the information is necessary to determine it can issue the relevant certificate.

What should further information requests relate to?



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It is important further information requests are focused on getting all of the information required to make a notification decision and determine the application under s104.

Therefore, a request for information should:

- directly relate to the actual and potential effects of the proposed activity on the environment and how any adverse effects may be avoided, remedied, mitigated, or offset/compensated for.
- be focused and lead to a better understanding of the nature of the proposed activity
- consider the implications of affected persons excluding trade competitors or the effects of trade competition (s104(3)(a)(i))
- where necessary, clarify aspects of the proposal to understand its likely effects and ensure that conditions are reasonable.

It could be helpful to use a standardised check list to assess applications in terms of their compliance with the information requirements in the RMA and relevant plan(s). This will highlight any gaps in the information provided which were not picked up through the initial 10-day completeness check under section 88(3).

When deciding if further information is required and what information is required, councils needs to consider how essential the missing information is to allow a decision to be made. Key aspects to consider include whether:

- the effects of the activity are likely to be more than minor
- the effects can be adequately assessed from the information currently available
- potential effects can be mitigated through the use of conditions
- there are affected parties who should be involved
- notification and submissions may provide additional information which is necessary to make a decision.

Any further information sought should not be:

- a request for fees (this is a s36 matter)
- beyond what is actually applied for in the application
- used to rectify deficiencies in the regional/district plan
- trivial and unreasonable
- used to obtain information on minor matters that are not essential to determining the application, although information on minor matters might be sought as part of a wider request for substantive information
- used as a means to unnecessarily 'stop the clock'
- a request for a written approval which is made under s95, although it may often be practical to combine a s95 written approval request with a s92 further information request.

Ideally some agreement should be reached between the council and the applicant to provide the necessary information which can then be formalised through a clear written s92 request. However, where information is required on minor matters, the council should contact the applicant directly to see if this information can be provided easily and



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efficiently without resorting to use of the formal written s92 process. This may help reduce processing time and costs.

How Should Further Information be Asked for?

Further information requests under s92 are required to be made in writing and must state the reasons for making the request. Council officers may also like to follow up the written request with a phone call to the applicant to ensure they are aware of the request, the information required and the reason the information is being sought.

Requests for further information should inform the applicant of how they can respond to the request and the implications of not responding or refusing to respond. In particular, the s92 request should:

- advise the applicant of the 15 working day time frame within which they need to either:
 - provide the information; or
 - confirm in writing that they agree to provide the information; or
 - give a written notice that they refuse to provide the information
- inform the applicant of the consequences of not responding within 15 working days or a time frame prescribed by council or refusing to provide the information (ie, the application will be notified under s95C and considered under s104 and the application may be declined on the basis of insufficient information (s104(6)))
- provide a consent reference number and contact person for follow-up discussions and correspondence.

It is important that the further information request is worded clearly and unambiguously so that the applicant can understand the information required and their options, and respond accordingly.

Responses to a Request for Further Information

Applicants have three options when responding to a s92(1) further information request. They can:

- provide the information
- agree to provide the information
- refuse to provide the information.

Applicants must tell the council what they intend to do in writing within 15 working days from the date of the request. If an applicant agrees to provide the information, the council must set a reasonable date by which the information needs to be received and advise the applicant in writing of this date (s92A(2)).

When setting a reasonable date for applicants to provide information, councils should consider:

- Would the type of information requested require expert input to be obtained? What is the likely availability of persons with that particular expertise?



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- How extensive is the further information request? Does it cover a number of matters?
- Would the information requested require some form of testing that may take some time?
- Is there any particular urgency that would necessitate setting a tight time frame? For example, the application may be retrospective for unauthorised works which, unless addressed, could have adverse environmental effects.

When setting the time frame, it is important to remember the duty under s21 to avoid unreasonable delay. Remember that often there are other persons affected by the application and long delays in its processing can result in uncertainty for them.

It is good practice to discuss the new time frame for providing the information with the applicant, before issuing the extended time frame in writing.

Section 88C states an application comes off hold on the earlier of either:

- the date when the applicant provides the requested information (either within the initial 15 days or by the new date prescribed by council)
- the date when the applicant refuses to provide the requested information
- when the 15 working day time period expires.

At the time the application comes off hold, the processing 'clock' must be re-activated to the statutory day the request was made not reset to zero working days.

The council officer should contact the applicant just before the expiry of the time frame with a reminder of the need to respond and the implications of not responding. The council must continue to process the application if the applicant:

- does not respond to the information request within 15 working days, or refuses to provide further information
- agreed to provide information but it is not received within the time frame set by council.

If the applicant refuses to provide the information, does not respond to the request, or does not provide the information within the prescribed time frame (when they had agreed to do so), the council must publicly notify the application (s95C). The council must then consider the application under s104 and may decline the application on the basis of there being inadequate information to determine it (s104(6)).

If the requested information is provided after the deadline but before the authority has notified the proposal (pursuant to s95C), then it would be good practice to continue to process the application on the basis of the new information provided and to not automatically notify it. Rather than automatically notify the application, it may be appropriate to ask the applicant if they agree to s37A being used to extend the statutory time frame to consider the information provided and then determine if notification is required.



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If the further information is provided and a hearing is to be held, this must be made available for public inspection no later than 10 working days before the hearing. A council must give notice to submitters that the information is available as soon as is reasonably practicable to do so.

Commissioning reports from other people

In addition to requests for further information under s92(1), s92(2) and s41C(4) allows councils to commission reports on matters relating to an application if:

- the council considers the activity may have a significant adverse environmental effect; and
- the applicant is notified before the report is commissioned; and
- the applicant does not refuse to agree to the commissioning of the report.

The commissioning of reports should be confined to matters that are critical to making an informed decision on a proposal, focusing on any aspects that may have significant adverse effects (eg, exacerbating the risks from natural hazards).

Generally, reports are commissioned for larger-scale or complex projects where specific expertise is required or when council does not have in-house expertise in a particular area. For example, a proposed new mining activity may have significant adverse effects on ground stability on surrounding properties and the council may commission a report by a qualified geologist to evaluate the applicant's information provided.

Where a proposal may have a significant effect on Māori cultural values, such as those covered in RMA Part 2 matters, it may be appropriate to commission a cultural impact assessment (CIA). See the FAQs on cultural impact assessments for more information.

For reports commissioned under s92(2), the applicant must be notified in writing of the reasons for commissioning a report, advised they have 15 working days to respond, and made aware of the implications of refusing the request or not responding. Applicants should also be advised of the estimated cost of commissioning a report and the time needed to prepare it.

The processing clock is stopped from the date of the request until the date the report is received, where the applicant agrees to the report. If the applicant does not agree, the processing clocks resumes from the earliest date of the following:

- 15 days after the request was made
- the date the applicant refuses.

If the applicant does not agree to the commissioning of a report under s92(2), or fails to provide the information by the deadline concerned, then the application must be publicly notified in accordance with s95C and a decision made under s104.

If the request for a report is agreed to and commissioned and a hearing is to be held, the report must be available for public inspection no later than 10 working days before the



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hearing. A council must as soon as is reasonably practicable after receiving the report, give written or electronic notice to every person who made a submission that the report has been commissioned and is available for public inspection.

If during the course of a hearing the hearing panel or commissioner(s) considers that further information is required in order to adequately assess and evaluate an application for an activity that is considered to have significant effects on the environment, they may commission a report under s41C(4). This report must be provided to the applicant and every submitter who wishes to be heard and be made available at council offices for submitters who do not wish to be heard.

S41C does not 'stop the clock' and the timeframes to make a decision for notified, and limited notified applications still apply. Where a report is commissioned under s41C, council may need to consider seeking the applicant's permission to extend the time frames under s37 in this circumstance. This would not be necessary for non-notified consents where a hearing is held, as hearing days are excluded from the calculation of working days.

What to do When the Applicant Refuses to Provide Information, does not Meet Time Frames, or Refuses for a Report to be Commissioned?

Section 95C requires that applications must be publicly notified, if the applicant:

- fails to respond to a further information request within the time specified
- agrees to provide the information, but then does not supply the information within the time limit
- refuses to provide the information.

This also applies where a council wants to commission a report (s92(2)). Councils must then continue to process the application and consider it under s104.

The applicant needs to be made aware of the consequences of not providing the requested information or agreeing to a report being commissioned. This is important as there is likely to be additional costs and time for the applicant associated with public notification that could be avoided. Some applicants may wish to withdraw their application rather than have it notified and potentially declined because they failed to respond or refused to provide information. It is therefore, good practice to clearly communicate the options to the applicant before notifying the application.

Under s36AAB(2) the council does not have to perform an action until a charge related to that action is paid in full. So if an application must be notified because further information has not been provided, the council does not have to carry out the notification until any relevant fee is paid. In these circumstances the clock does not stop but the days are excluded for the purposes of calculating a discount under the Discount Regulations.



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The following means could be used to advise an applicant about the further information provisions in the RMA and their options for responding:

- application information packs
- pre-lodgement and lodgement meetings
- information sheets that outline the notification and decision making processes and provide an indication of the additional costs and time involved
- follow-up phone calls and/or a letter before the deadline expiry, or after the applicant advises of refusing the request.

Where an applicant has been informed of their options but chooses to refuse or not respond to a request for further information or a report, the applicant should be made aware that:

- the application will be publicly notified and that this will involve additional costs and time
- any hearings panel/commissioners might also request that further information be provided during the hearing, with hearing adjournment and consequential delays the likely result
- if the information in the application is so deficient that the effects cannot be adequately determined, then it is likely to be declined
- that council must have regard to the applicant's response to requests for information or reports when assessing the adequacy of information.

Where there is inadequate information to determine the application then the application may be declined. When taking this step, it is important to take into account the applicant's response to requests for further information and to consider who may be affected by the application. These findings should be clearly documented.

Objection rights (s357 to s357B)

Applicants do not have a right to object to the council in relation to s92 further information requests, however if the application is subsequently declined due to lack of information (in accordance with an assessment under 104(6)), the applicant may make an objection in relation to the council's decision (under and subject to s357A(2)) refer to "Issuing a decision" for further guidance in relation to objections.

Appeal rights on a council decision to decline an application (s120)

In addition to the objection rights noted above, the applicant may also appeal the decision (under s120) to decline the application on the basis of lack of information under s104(6) (as long as the decision does not relate to a [boundary activity](#) or a subdivision or a [residential activity](#) (unless they are non-complying activities) (s120(1A) refers). The Environment Court will hear and decide the application and may also decline the application on the grounds that it has inadequate information under s104(6).

Is the further information received adequate?



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An application comes off hold on the date the applicant provides the further information and it is deemed to meet the requirements of the request. Therefore it is important to promptly check the further information for adequacy upon receipt to ensure it meets the requirements of the request.

The information received should be checked to ensure all the matters in the request have been adequately addressed. Where further clarification and/or minor detail is required, the council should contact the applicant to request/clarify the information directly. However, where the information provided is clearly deficient, a more formal approach may be required.

If the applicant has not satisfactorily covered all matters in the request, council should inform the applicant the information does not meet the requirements and outline what additional information and/or clarification is required in order to satisfy the s92 request. The applicant should be provided with clear deadlines and advised that, if the information is not provided by the specified date, the application may be subject to notification under s95C and subsequently declined on the basis of insufficient information. The processing clock should not be started again until all information requested is received.

Ensuring that all further information requested is provided is important in light of the Discount Regulations and the fact the clock can only be stopped once for a s92(1) request.

