

Discount Regulations

The 2009 Amendments to the RMA included provisions for the Minister for the Environment to impose regulations requiring councils to discount consents when processing timeframes are not met.

The Resource Management (Discount on Administrative Charges) Regulations 2010 have now been made and come into force on 31 July (a Saturday so effectively the start date is 2 August). The regulations will provide for a default policy – councils are able to have individual policies provided they are more generous to the applicant.

The regulations only apply to resource consent applications to councils and include s127 variations and s124 replacement consents. The regulations apply to council timeframes for applications that are either called-in or referred to the Environment Court. The regulations do not apply to the Environmental Protection Agency's timeframes for a called-in application. The Minister had indicated that discount regulations would apply to the Environmental Protection Agency so these may be provided in a separate regulation.

A sliding scale percentage discount will be applied whereby a discount of 1% will be given for every day. The maximum discount will be 50%. The regulations establish the amount of working days for a range of applications. The discount will automatically apply to the total administrative charge imposed on the applicant for the days beyond the time limit. Importantly there are "excluded days" that do not count towards the time limit. Excluded days include:

- Any time where an applicant has not paid the full amount of an administrative charge required by the council;
- Time extensions under s37. A council is able to double timeframes for resource consents if special circumstances exist (s37A(4)) and can extend timeframes further with the applicant's agreement (s37A(5));
- The period where a council is waiting for further information (note that 2009 amendments limited the amount of times the processing clock stops for further information requests); and
- The time taken in a hearing.

The statutory timeframes will be assessed cumulatively and are given as:

- Non notified consents with no hearing – 20 working days;
- Non-notified consents with hearing – 40 working days;
- Notified consents with no hearing – 50 working days;
- Notified consents with hearing – 70 working days;
- Notified consents with hearing and where pre-provision of evidence is required – 85 working days.

Where councils hold a joint hearing and the time limit is not met the discount applies and the councils can allocate the discount amongst themselves.

The Government had signalled the content of the regulations in various press releases and by releasing the relevant cabinet paper. The discussion paper relating to these regulations

discussed the option of the discount not applying where the delay was not the fault of the council. The regulations provide no such relief for councils that are not at fault for a delay.

Councils will have to ensure that contracts with external consultants and independent commissioners provide for on time delivery provision of decisions and processing to avoid incurring financial penalties.



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