

PART VI: ADMINISTRATIVE ISSUES

This Part provides details of the statutory resource consent process including notification, joint hearings, duration of consents, review of conditions and objection and appeal provisions.

The following administrative matters are also covered:

- (a) Council charges;*
- (b) Financial contributions (objectives, policies and methods), and Bonds; and,*
- (c) Transfer of powers.*

37. RESOURCE CONSENT APPLICATION PROCEDURES

37.1 INTRODUCTION

In preparing a regional plan, the Act provides flexibility in identifying how particular activities are considered, i.e. as permitted, controlled, restricted discretionary, discretionary, prohibited or non-complying activities. These are specified in Section 14.

For controlled, restricted discretionary or discretionary activities, a resource consent is required. Resource consents are also required for non-complying activities.

37.2 NOTIFICATION AND NON-NOTIFICATION OF APPLICATIONS

Resource consent applications can be processed with or without public notification according to the provisions of s.93 and s.94D of the Act.

37.2.1 Controlled Activities

Applications for a controlled activity will require full notification, or the written approval of, or service of notice on affected parties unless stated by a rule in the Plan. Where the approval of affected parties is required but has not been given by all parties the Council will require limited notification of the application. For limited notification, the application will be served on all affected parties including those who have not given their approval.

37.2.2 Restricted Discretionary Activities

When processing an application for a restricted discretionary activity where the rule waives both notification and service of notice of an application it will be non-notified.

Where a rule waives notification (but not service), the application will either be notified on a limited basis or non-notified depending on an assessment of whether there are affected persons:

- If there are no affected persons, the application will be processed as non-notified.
- If all affected persons have given their written approval, the application will be processed as non-notified.
- Where some affected persons have not given their written approval, the notice of the application will be served on all affected persons, including any who have given their written approval for the activity.

Where a rule in the Plan does not state whether or not notification or service is required if the activity will have more than minor adverse effects on the environment then it will be publicly notified. Where the adverse effects are considered by the Council to be no more than minor the Council will decide on whether or not to deal with the application on a limited notification or non-notified basis.

37.2.3 Discretionary and Non-Complying Activities

When processing applications for discretionary or non-complying activities, the Council must determine whether the application can be dealt with as a non-notified

application. An application for a discretionary or non-complying activity can only be non-notified if it meets the tests contained in s.93 to s.94D of the Act, specifically ss.93(1):

- (b) *The consent authority is satisfied that the adverse effects of the activity on the environment will be minor.*

To determine whether the effect of the activity will be minor, the Council will consider the activity as submitted in the application, including any further information that the Council may request under s.92 of the Act, and will apply the appropriate assessment criteria listed in Section 36 of this Plan. It must also consider s.94B of the Act regarding approval from persons who would otherwise be "affected". In assessing the level of effect on the environment, the Council will also consider how practicable any mitigation measures proposed by the applicant would be, and the long-term management and monitoring requirements of the proposed activity.

When considering whether or not to notify an application for an existing activity for which there is already a resource consent but which is due to expire, the Council will consider:

1. Any change in the scale of activity (either as proposed by the applicant or as required by a policy in this Plan),
2. The record of compliance during the term of the previous consent; and
3. Any adverse effects that may have occurred during the term of the previous consent.

Where there is doubt about whether the effects will be minor, the application will be notified.

Where it can be demonstrated that an application does meet the tests for non-notification, but the Council considers special circumstances exist in relation to the proposal, the application may be notified. While those special circumstances are specific to the application, the following proposed activities will be considered for notification:

1. Any discharges of contaminants which are toxic, persistent or bioaccumulative;
2. Any activity which may adversely affect the wider community including any socio-economic and cultural effects; and
3. Any activity which may be a risk to the neighbourhood, the wider community or the environment through the use of hazardous substances or hazardous installations.

Persons who may be adversely affected can only be identified on an application-specific basis. Where written approvals are required in order for an application for a resource consent for a controlled, restricted discretionary, discretionary or non-complying activity to be non-notified, the written approval must clearly identify the information provided to the affected person, upon which the assessment of the effects and subsequent approval was made.

37.3 ASSESSMENT OF EFFECTS

The Act identifies matters which should be considered when assessing the effects of an activity on the environment. These are set out in the Fourth Schedule of the Act.

For the purposes of implementing this Plan, the Assessment Criteria set out in Section 36 will be an additional guide for applicants preparing applications.

37.4 JOINT HEARINGS

A number of proposed developments include activities which may require consents from both the Regional Council and the relevant District Council. In these circumstances, joint hearings are usually held, in which all consent applications are heard together, thus avoiding unnecessary duplication of effort and delay for the applicant and any other interested parties.

Under s.102 of the Act, the Council is responsible for notifying the hearing, setting the procedure and providing administrative services unless the consent authorities involved in the hearing agree that another consent authority should be so responsible.

A joint decision is required from the Hearings Committee unless:

1. One of the resource consent applications is for a restricted coastal activity; or
2. The consent authorities agree that the applications are sufficiently unrelated that a joint hearing is unnecessary, and the applicant agrees that a joint hearing need not be held.

37.5 DURATION OF RESOURCE CONSENTS

The Act provides the consent authority with the power to determine the duration of a consent. The maximum period for a resource consent is 35 years.

In determining the term of a particular consent, the Regional Council may have regard to matters including:

- (a) The sustainable nature of the resource affected by the proposed activity;
- (b) Extent of knowledge of the environmental effects associated with the activity;
- (c) Northland Regional Council's Regional Monitoring Strategy;
- (d) The period of the operative Regional Water and Soil Plan and the extent of possible changes to it;
- (e) The capital costs of the development and the anticipated "life" of any structure which is the subject of the application;
- (f) The expiry date of other resource consents in the same catchment area where comprehensive reviews of all resource consents within that area are desirable;
- (g) History of satisfactory compliance with the terms and conditions of the expired consent for the same activity.

As a general guide, a Land Use Consent for a land disturbance activity, or a structure or works in, on, under, or over the bed of a river or lake, is given an expiry date determined by the likely date of completion of the works. New Water or Discharge Permits are generally granted for five years or in line with the expiry date of other resource consents in the same catchment area. Water Permits which replace a recently expired water permit may be granted for a ten year period.

37.6 REVIEW OF RESOURCE CONSENT CONDITIONS

Section 128(1)(a) of the Act provides the circumstances when consent conditions can be reviewed, as follows:

- (1) *A consent authority may, in accordance with Section 129, serve notice on a consent holder of its intention to review the conditions of a resource consent -*
- (a) *At any time or times specified for that purpose in the consent for any of the following purposes:*
 - (i) *To deal with any adverse effects on the environment which may arise from the exercise of the consent and which is appropriate to deal with at a later stage; or*
 - (ii) *To require a holder of a discharge permit ... to do something that would otherwise contravene section 15 [or 15b] to adopt the best practicable option to remove or reduce any adverse effect on the environment; or*
 - (iii) *For any other purpose specified in the consent; or*
 - (b) *In the case of water ... or discharge permit, when a regional plan has been made operative which sets rules relating to a maximum or minimum levels or flows or rates of use of water, or minimum standards of water quality ... or ranges of temperature or pressure of geothermal water, and in the regional council's opinion it is appropriate to review the conditions of the permit in order to enable the levels, flows, rates, or standards set by the rule to be met; or*
 - [(ba) *in the case of a water ... or discharge permit, when relevant national environmental standards have been made under section 43; or]*
 - (c) *If the information made available to the consent authority by the applicant for the purposes of the application contains inaccuracies which materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions.*
- ...

37.7 OBJECTIONS AND APPEALS

Once a decision has been made by the Council on an application, there is provision in the Act for either the applicant, or any person who made a submission, to contest the decision. These provisions are briefly summarised below.

37.7.1 Objections

Generally, for resource consents which were non-notified or did not attract submissions, the applicant has a right of objection to the decision. The objection is either formally heard by the Council's Hearings Committee or is resolved through variations to the conditions if this is agreed to by all parties involved. If unresolved, appeal provisions then apply.

37.7.2 Appeals

For non-notified applications where the objections to the decision have not been resolved, and for notified resource consent applications, Section 358 of the Act provides rights of appeal to the Environment Court of the Justice Department against the Council's decision. The determination of the Environment Court on an appeal is generally final, although it may be challenged in the High Court on points of law.

38. OTHER MATTERS

38.1 REGIONAL COUNCIL CHARGES

Section 36 of the Act provides for the Council to fix charges in respect of:

1. Applications for resource consents, including:
 - (a) Applications for controlled, discretionary or non-complying activities;
 - (b) Applications for changes to, or cancellation of, resource consents; and
 - (c) Applications for an extension of the period for a resource consent which has lapsed because the holder has failed to exercise it.
2. Administration, including:
 - (a) Applications to the Council for a change to this Plan;
 - (b) Providing information in respect of this Plan or resource consents;
 - (c) Issuing of compliance certificates; and
 - (d) Copies of Plans.
3. Monitoring functions, including:
 - (a) Monitoring and supervision of resource consents;
 - (b) Carrying out state of the environment monitoring; and
 - (c) Monitoring the effectiveness of this Plan.

However, when fixing charges such as these, the Council must have regard to the criteria in ss.36(4) of the Act. These are as follows:

- (a) The sole purpose of the charge is to recover the reasonable costs incurred by the Council in respect of the activity to which the charge relates.
- (b) A particular person or persons should only be required to pay a charge:
 - (i) To the extent that the benefit of the Council's actions to which the charge relates is obtained by those persons, as distinct from the region as a whole; or
 - (ii) Where the need for the Council's actions to which the charge relates is occasioned by the actions of those persons; or
 - (iii) In a case where the charge is in respect of the Council's monitoring functions under ss.35(2)(a) (which relates to 'state of the environment' monitoring), to the extent that the monitoring relates to the likely effects on the environment of those persons' activities, or to the extent that the likely benefits to those persons of the monitoring exceeds the likely benefits of the monitoring to the region as a whole.

38.2 BONDS AND FINANCIAL CONTRIBUTIONS

38.2.1 Introduction

Section 108 of the Act provides for financial contributions and bonds to be included as a condition on a resource consent.

“Financial contributions” are defined in the Act and may include not only money but also land, works and services for the purposes specified in a plan. The principal reason for including financial contributions in this Plan is to provide a mechanism to avoid, remedy or mitigate and/or offset adverse effects on the environment that may result from discharges to water or land, or from land disturbance activities. Financial contributions are aimed at meeting the costs to the public and the environment.

Bonds provide a mechanism for the recovery of costs of cleaning up or completing failed or incomplete projects, where the effects on the environment are unacceptable. Similarly, a condition can be included which requires a consent holder to take out adequate insurance to cover clean up costs in the event of equipment or structure failure.

38.2.2 Objectives

1. **The securing of fair and reasonable financial contributions on activities involving surface water takes, dams and diversions, groundwater takes, discharges of contaminants to water or land, and the disturbance of land, which represent a justifiable proportion of the public costs, including irreversible losses of environmental values, generated by any such activity.**
2. **The securing of adequate financial resources to cover costs of avoiding, remedying or mitigating adverse effects on the environment resulting from incomplete or failed works and structures.**

38.2.3 Policies

1. To provide for financial contributions to be a condition of a resource consent where:
 - (a) Quantifiable adverse effects on the environment cannot be expressed as environmental standards, except as provided for under controlled, restricted discretionary and discretionary activities, and a financial contribution is required to meet the public cost of avoiding, remedying or mitigating and/or offsetting the adverse effects.
 - (b) Indirect effects cannot be dealt with through project design and a financial contribution is required to offset adverse effects.

Explanation: *Financial contributions can only be required if they are specifically provided for in a Regional Plan. This policy outlines the criteria where financial contributions may be warranted.*

2. To ensure that the assessment of environmental effects for an activity shall:
 - (a) As far as possible identify any adverse effects for an activity which are not readily quantifiable; and
 - (b) Indicate how these have been addressed; and
 - (c) As far as possible indicate any residual effects for which a financial contribution shall be appropriate.

Explanation: *This policy ensures that sufficient information is supplied with an application to determine whether it fits the criteria in Policy 1.*

3. To ensure that the maximum amount of the financial contribution shall not exceed the actual cost of fully avoiding, remedying or mitigating the adverse effects and/or providing environmental compensation necessary to offset the adverse effects caused or likely to be caused by the activity.

Explanation: *The Act requires that the financial contribution does not exceed the maximum amount specified in the plan. This policy specifies that the actual cost of addressing the adverse effects or providing environmental compensation will be the maximum amount.*

4. To determine the amount of the financial contribution by the justifiable proportion test –

Justifiable – The financial contribution must directly relate to avoiding, remedying or mitigating adverse effects on the environment and/or contribute to a positive effect which provides some compensation/relief for the adverse effect caused or likely to be caused by the activity.

Proportion – The amount of the contribution shall take into account:

- The significance of the adverse effect; and
- The extent to which the activity causes or is likely to cause the effect identified above; and
- The positive effects of the activity on the environment.

Explanation: *This policy provides the test of the reasonableness of a financial contribution. The Justifiable Proportion test is made up of two parts. The first part requires that a connection be demonstrated between the financial contribution, the adverse effect of the activity, and the benefit (to the activity or the community) which is proposed to offset the effect. The second part states that the developers of the new activity pay only his or her proportional share of the cost of new facilities.*

5. To use bonds to enable recovery of the Council's costs where it is necessary for the Council to undertake any of the following action(s) in the event of a consent holder's failure to avoid, remedy or mitigate adverse effects of the consent holder's activity:
 - (a) Completion of any works or structures;
 - (b) Operation of any works or structures;

- (c) Alteration or removal of structures and any restoration works following any works or activity being completed or ceasing; and
- (d) Completion or compliance with any other conditions of the consent granted.

Explanation: Section 108(2)(b) of the Act provides for a condition to be placed on a resource consent, requiring that a bond be given in respect of the performance of any one or more conditions of the consent, including any condition relating to the alteration or removal of structures on the expiry of the consent. The Council will assess the likelihood of its needing to undertake the actions specified in the Policy 38.02.03(6) when considering and deciding on any application for a resource consent.

- 6. To provide for a bond as a condition on a resource consent to ensure that there are adequate financial resources for remediation and mitigation to be undertaken in the event of equipment breakdown or structure failure.

Explanation: Where a significant adverse effect may occur as a result of equipment failure, such as the failure of a dam wall or failure of an effluent pump resulting in an overflow of effluent into water, a bond in the form of an insurance indemnity may be required.

38.2.4 Methods of Implementation

For Policies 1 to 4

- 1. The Council may impose a condition on a resource consent requiring a financial contribution subject to the circumstances, purposes and assessment criteria specified in Section 38.02.05.
- 2. In determining whether to impose a condition requiring a financial contribution, the Council shall take into account whether reasonable effort has been made to avoid, remedy, or mitigate and/or offset adverse effects through project design and negotiation with affected parties, and whether overall the benefits outweigh the residual effects.
- 3. Financial contributions on particular activities for resource consents shall take the form of money, works, land or services, or any combination thereof.

For Policies 5 and 6

- 4. The Council may impose a condition on a resource consent requiring a bond subject to Method 38.02.04(5).
- 5. In determining whether to impose a condition requiring a bond in the event of the Consent Holder being unwilling or unable to carry out the conditions of the consent, the Council shall take into account the actual and potential effects on the environment, and the likely costs (inflation adjustable) of carrying out the works.
- 6. In determining whether to impose a condition requiring a bond to cover the costs of remedial works in the event of equipment or structure failure, the

Council shall take into account the risk of failure, and the potential effects on the environment, should failure occur.

38.2.5 Circumstances where Financial Contributions may be Required

Circumstances where a financial contribution may be required include where a use or development authorised under a resource consent will cause adverse effects on the environment including:

- Damage to riparian vegetation;
- Disturbance or re-alignment of river channels;
- Sedimentation of water;
- Nutrient enrichment of water;
- Riverbank erosion;
- Damage to river control or drainage works;
- Restriction of public access to or along the water body;
- Disturbance or damage of archaeological, culturally or ecologically significant sites.

38.2.6 Purposes for which Financial Contributions may be Required

The purposes for which a financial contribution may be required to avoid, remedy or mitigate and/or offset the adverse effects listed above, may be applied by:

- Planting, replanting, transplanting or maintaining new and existing plantings either at or adjacent to the water body;
- River alignment and bed stabilisation;
- Land retirement;
- Erosion control, restoration of river or drainage control works;
- Protecting, maintaining, restoring or enhancing water quality of affected bodies;
- Protecting, maintaining, restoring or enhancing archaeological or culturally significant sites;
- Protecting, restoring or enhancing lake and wetland habitats and margins including (without limitation) maintenance and planting of vegetation, erosion protection works, fencing, margin and wetland protection;
- Restoring or enhancing public access to or along lakes or rivers;
- Works required to avoid, remedy or mitigate any adverse effects on the environment resulting from an activity for which a consent is required.

38.2.7 Financial Contribution Assessment Criteria

In deciding whether or not to impose financial contributions, the types of contribution and their value, the Council will have particular regard to the following matters:

1. The extent to which any adverse effects resulting from the activity can and should be mitigated by way of works carried out on or near the site.

2. The extent to which a financial contribution may offset or provide compensation to the community or environment for adverse effects caused or contributed to by the activity and not otherwise mitigated by the consent holder.
3. The extent to which a contribution is required to achieve objectives and policies of this Plan.
4. In deciding the actual value of the financial contribution required, the Council shall have particular regard to:
 - (a) The significance of the effects attributable to the activity;
 - (b) Where such effects are contributed to by other activities, the extent to which those effects can be reasonably attributed to the activity for which consent is granted;
 - (c) The extent to which any positive effects of the activity offset any adverse effects.
5. Financial contributions should relate to the effects of the activity for which consent is granted and be reasonably proportionate to the significance of any adverse effects.
6. Financial contributions may not be appropriate in every case even where there are adverse effects.

38.3 TRANSFER OF POWERS

Both the *Resource Management Act* 1991 and the *Building Act* 1991 provide local authorities with the ability to transfer their functions, powers, and duties to other authorities. Section 25 of the *Building Act* gives the Council the ability to transfer its powers, duties and functions under that Act to a territorial authority in the interests of efficiency and technical or special capability or expertise.

Under Section 33 of the *Resource Management Act*, regional councils can transfer their functions, powers and duties to other public authorities which include other local authorities, iwi authorities, government departments, statutory authorities or joint committees. However, such transfer can only be exercised by the Council if:

1. The special consultative procedure specified in s.83 of the *Local Government Act* 2002 is used; and
2. Before using the special consultative procedure, notice is given to the Minister of the Environment of the proposal to transfer the function, power, or duty; and
3. Both the Council and the authority to which the transfer is being made, agree that the transfer is desirable on all of the following grounds:
 - (a) The authority to which the transfer is made represents the appropriate community of interest relating to the exercise of the function, power or duty;
 - (b) Efficiency;

(c) Technical or special capability or expertise.

In any event, the Council still retains responsibility for the exercise of the function, power or duty, and the transfer has effect only within the statutory boundaries of the agency concerned.

