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RESOURCE CONSENTS AND DISCOUNTS
FOR LATE PROCESSING: WHAT CAN YOU
EXPECT?



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As councils have gotten progressively worse at processing resource consents within timeframes set by the Resource Management Act, the Government is pressing ahead with plans for a discount system for delays.

As part of the Government's initiatives to make decision-making processes under the Resource Management Act (RMA) more efficient, the Resource Management (Simplifying and Streamlining) Amendment Act requires regulations to be introduced to provide for a discount on administrative charges where a resource consent application, or application to change or cancel consent conditions, is not processed within the timeframes set by the RMA. However the discounts are not mandatory with the Act stating that a "local authority may provide a discount". Section 36AA and the proposed regulations will however apply to all the administrative charges made under s 360(i)(hj) that a local authority can impose on an applicant, including charges for carrying out the local authorities' functions in relation to the receiving, processing and granting of resource consents.

The proposed regulations are detailed in the Resource Management Discount Regulations Cabinet Paper approved by the Government in March. Details of the

regulations have just been released to the public.

The approved framework for the regulations are:

Method of calculating a discount

A sliding scale percentage will be used to calculate discounts, as the Minister considers that a sliding scale will encourage local authorities to process applications within statutory timeframes. If timeframes are missed, the scale provides an increasing incentive for local authorities to process the application as quickly as possible, to minimise their financial losses. Of the 45 local authorities, 80% supported this approach.

Value of the discount

The discount will accrue at 1% per working day, for up to 50 working days, on both notified and non-notified applications. There will be a cap set at 50%. The daily discount is seen as a way to apply constant pressure on councils, and incentivise quicker processing of applications. An 80% cap was proposed as an option but was considered too punitive based on the core administrative costs that Councils need to cover, such as lodgement and decision costs and site visits. The Minister considered that a 50% cap would allow for

these core costs and ensure ratepayers and businesses would not be unfairly burdened by the regulations through increased rates and/or application fees.

Responsibility of the local authority

Councils wanted the regulations to prescribe when responsibility will fall on local authorities to provide discounts. The Minister didn't favour this approach but recommended that the regulations define two circumstances where a discount will not apply, these being where there is:

- an unforeseen circumstance which results in a change to the statutory timeframe. For example, the withdrawal of the only submission means that a hearing is no longer needed and the processing timeframe is reduced from 70 working days to 50 working days; and
- a delay resulting from an applicant's non-payment of a fixed fee.

There may also be some other circumstances, such as s37 timeframe extensions (allowed in special circumstances or when agreed by the applicant), which do not need to be specified in the regulations.

There will also be guidance material to sit alongside the regulations to assist local authorities in considering when and how they should apply discounts.

How the time period will be calculated

Timeframes for calculating discounts will be the sum of individual timeframes for notified and non-notified resource consent applications, resulting in a total nominal number of working days. This approach was considered less complicated than calculating a discount for each stage of a resource consent application.

Other issues

The Cabinet Paper also clarified that the:

- process for obtaining discounts will apply automatically and mechanisms should be put in place to ensure fairness. For example, there could be a right of review as to whether a discount should be applied;
- regulations will provide guidance for calculating working days;
- regulations will not apply when a consent holder is able to continue to operate under s124 of the RMA (continuation of operations until replacement consent is determined);
- regulations will not apply to any timeframe which is altered through the use of sections 37 or 37A of the RMA (council's ability to waive timeframe requirements). These sections could provide a release valve for councils that were inclined to rely upon the power to waive time limits in certain situations. It will be interesting to see how this recommendation is converted into regulation form; and
- regulations will not specify a minimum amount, under which no discount would apply.

How effective will the discounts be?

Time will tell how effective the regulations are in speeding up the processing of consents, particularly as it is not mandatory for local authorities to provide a discount. However, the Minister is proposing to have Ministry staff work with local authorities to develop systems and procedures for implementing the discount regulations, therefore actively encouraging council buy-in to the process.

On major applications the total value of the discount required could be significant. Large scale proposals often require more

detailed assessment by the council, resulting in additional processing costs, meaning these applications are also more likely to lead to councils exceeding the statutory timeframes. Ultimately if the council is unable to recover its processing costs, funds will need to be sought from other sources. This could mean increased consent fees for applicants or increased rates, which would spread the burden to all ratepayers.

It was noted in the Cabinet Paper that local authorities have expressed their view that the current timeframes in the RMA, particularly for notified applications and combined/joint hearings are inadequate, and that the resource consent processing timeframes will be considered as part of the Phase II RMA reforms. As the Government wants to make decision-making processes under the RMA more efficient to help stimulate the economy, there would need to be good reason to warrant increasing the processing timeframe – as this would in effect take away the gains sought by the regulations.

The Minister also proposes to require all local authorities to complete the 2010/2011 RMA survey, and subsequent surveys, to assess the impact of the regulations. The Ministry for the Environment's uses its biennial RMA surveys to measure resource consent processing delivery.

The proposed regulations are likely to be considered by Cabinet in June. If approved and signed off by the Governor-General the regulations will be notified in the Gazette by 1 July 2010 and come into force 28 days later.

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