

SOUTH WAIRARAPA DISTRICT COUNCIL

13 DECEMBER 2017

AGENDA ITEM C7

CHANGES TO RESOURCE MANAGEMENT ACT 1991; DELEGATIONS FOR DEEMED PERMITTED ACTIVITIES AND BOUNDARY ACTIVITIES

Purpose of Report

To delegate to officers the consideration and determination of deemed permitted activities and boundary activities under the Resource Management Act 1991.

Recommendations

Officers recommend that Council resolve to:

1. *Receive the Changes to Resource Management Act 1991; Delegations for Deemed Permitted Activities and Boundary Activities Report.*
2. *Delegate to officers the consideration and decision making in relation to exempt activities (deemed permitted) activities and boundary activities.*

1. Executive Summary

Council is aware that the Government enacted a series of changes to the Resource Management Act earlier this year. Two of these changes took effect on 18 October 2017. They related to exempt (or deemed permitted) activities and boundary activities.

While officers consider current delegations enable them to process such matters, it was decided that more certainty would be provided if Council considered and granted specific delegations on these matters.

This report has been prepared for that purpose.

2. Discussion

2.1 New consent exemption provisions (boundary activities)

Councils must now exempt 'boundary activities' from needing a resource consent if a neighbour's approval is provided.

District plan rules control the position or size of a structure in relation to the boundaries of the site where it is located (or proposed to be located).

Adverse effects from infringements to these rules are generally localised, and affect the property sharing the boundary where the rule is breached (that is, the neighbour).

Previously any infringement of a district plan rule required a resource consent, even if the only effects of that breach were on a neighbouring property and the owners of that property had given their written approval.

The effects on these persons would then be disregarded when considering the application.

The RMA has been amended to insert new section 87BA, which requires councils to treat boundary activities as permitted if written approval is given by the relevant neighbour(s), and certain information is supplied to the council.

2.2 **Detail of change**

The intent of this change is to create time and cost efficiencies, and improve the proportionality of the consenting system.

Boundary activities fall under Sections 87AAB(1) and (2). An activity is a 'boundary activity' if:

- Resource consent is required due to the infringement of one or more 'boundary rules'.
- No other district rules are infringed.
- No 'infringed boundary' is a 'public boundary'.

A 'boundary rule' is a district rule relating to the distance between a structure and a property boundary (or boundaries), or the dimensions of a structure in relation to its distance from a boundary.

Common examples include yard setbacks, recession planes (sometimes known as 'height in relation to boundary' rules) or fence rules where these relate to the boundary.

This definition excludes general land use rules that do not relate to a boundary (for example, overall building site coverage or maximum height restrictions).

For boundary activities, written approval is only needed from the owner of the property (or owners of the properties) with an 'infringed boundary', which is a boundary that the rule infringement applies to.

In these cases, councils do not need to undertake a wider assessment to determine if any other people are affected.

The definition of 'infringed boundary' also means, if there is an infringement to a boundary rule:

- When measured from the corner point of an allotment, written approval is needed from the owners of every property with a boundary that intersects with the point of that corner.

- Next to a 'private way' (defined in the RMA), written approval is required from the neighbour on the opposite side of that private way.

A 'public boundary' is a boundary between an allotment and any road, river, lake, coast, esplanade reserve, esplanade strip, other reserve, or land owned by a council or by the Crown. Boundary exemptions cannot be granted for rule breaches that affect these boundaries.

2.3 The boundary activity approval process

If a person proposing to undertake a project identifies that it meets the definition of a boundary activity, they need to supply the council with:

- A description of the activity.
- A plan (drawn to scale) of the site at which the activity is to occur, showing the height, shape, and location on the site of the proposed activity.
- The full name and address of each owner of the site.
- The full name and address of each owner of the allotment with an infringed boundary.
- Written approval from each owner of an allotment with an infringed boundary, including their signatures on the plan.

If a person applies for a boundary activity exemption and the council is satisfied that the activity is a boundary activity and all of the necessary information is provided, the council must provide a written notice to the person, stating that the activity is permitted.

The council has 10 working days to provide this notice.

Unlike a resource consent application, the council has no ability to request further information for boundary activity applications under section 92 of the RMA.

This means the 10-day 'statutory clock' cannot be stopped in this way, although timeframes may be extended under section 37 of the RMA (subject to the criteria set in section 37A).

A written notice for a boundary activity exemption lapses after five years if it has not yet been given effect to.

If a boundary exemption has been granted by a council, it is not eligible for a certificate of compliance under section 139 of the RMA.

If a person applies for a boundary activity exemption but fails to provide the correct information, or the council determines that other rules are infringed, then the activity does not qualify for a boundary activity exemption and the council must return the information to the applicant.

If a person has applied for a resource consent, but the council determines that the application actually includes all the necessary information to qualify

as a boundary activity, then the council must provide a boundary exemption and return the resource consent application.

If the resource consent application does not meet the definition of 'boundary activity', then the standard resource consent process applies.

2.4 Exempt activities for 'marginal or temporary' rule breaches

Previously any activity that breached a rule in a district plan required a resource consent, regardless of the scale of the environmental effects of the infringement.

New section 87BB, now provides a discretionary power for councils to treat an activity *as permitted* if there is only a 'marginal or temporary' rule breach.

The intent of this change is to address the issue that some consents are currently required for activities that have effects that cannot be discerned from those of permitted activities.

2.5 The marginal or temporary non-compliance process

The criteria for deciding whether to provide an exemption, is set out in section 87BB, and includes:

- The activity would be a permitted activity except for a marginal or temporary non-compliance with the requirements, conditions and permissions specified in the RMA, regulations (including any national environmental standard) or any plan or proposed plan for that area.
- Any adverse environmental effects of the activity are no different in character, intensity or scale than they would be in the absence of the marginal or temporary non-compliance.
- Any adverse effects of the activity on a person are less than minor. If these criteria are met, the consent authority has the discretion to provide written notice to the person that their activity is permitted.

The written notice must include a description of the activity, details of the site, and the council's reasons for deciding the activity is permitted.

The written notice lapses in five years if it has not been given effect to. A marginal or temporary noncompliance is not eligible for a certificate of compliance under section 139 of the RMA.

Unlike boundary exemptions, there is no time limit for this process.

It is intended that this process will be used as a discretionary tool for councils, for example, at the building consent stage when marginal or temporary planning infringements are identified, or when a resource consent application is received and the council determines that the activity meet the requirements of 87BB.

3. Conclusion

These two new processes introduced by the 2017 Amendment Act have been introduced to make a fairer, faster and more logical consenting system.

Officers consider that existing delegations may well cover these new provisions, but are asking Council to specifically confirm delegated authority to consider and determine such matters for certainty.

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