



Ministry for the
Environment
Manatū Mō Te Taiao

Discount Regulations

Issues and Options Paper

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Purpose

This document is designed to assist with consultation on developing discount regulations required by new section 36AA of the Resource Management Act 1991 (RMA). These regulations are intended to require local authorities to provide a discount on administrative charges when the local authority is responsible for applications for a resource consent or applications to change or cancel conditions not being processed within timeframes set in the RMA. The Minister for the Environment must recommend to the Governor-General that regulations be made by 1 July 2010.

This paper sets out the principal issues identified to date and the main options for dealing with those issues. It also puts forward a preferred option for addressing these issues in a number of cases, based on the work undertaken on the development of the discount regulation to date. The paper is designed to seek feedback on the options and help decide which option is the most appropriate for inclusion in the regulations. There may also be additional options that stakeholders would like to identify.

The Ministry for the Environment welcomes feedback on this Issues and Options Paper. Please email your feedback no later than 5.00pm 1 March 2010 to rmareview@mfe.govt.nz or post to:

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Executive Summary

Discount regulations are required to be prepared under section 36AA of the RMA. The regulations must provide for discounts on administrative charges when local authorities are responsible for applications for a resource consent and applications to change or cancel conditions not being processed within statutory timeframes. The Minister for the Environment must recommend to the Governor-General that regulations be made by 1 July 2010. The Minister must, before making the recommendation, consult with local authorities about the proposed regulations. This is the purpose of this Issues and Options Paper.

Four key issues have been identified around the development of the discount regulations. A range of more detailed matters are addressed under each of the issues. Options have been proposed for each issue, and in some cases a preferred option has been identified.

The issues that have been identified and the options for addressing these are:

Issue 1: Method of calculating a discount

- Option 1: Fixed percentage discount
- Option 2: Sliding scale percentage discount (preferred option)
- Option 3: Formula discount

Issue 2: Value of discount

- Preferred option: Sliding scale percentage discount on a daily basis up to a cap of 80 per cent (60 working days or more)

Issue 3: How is local authority ‘fault’ determined

- Option 1: Providing an explanation of what constitutes ‘fault’ for a delay within the regulations (preferred option)
- Option 2: Leaving ‘fault’ to the discretion of local authorities to determine
- Option 3: Allowing applicants and local authorities to discuss and agree ‘fault’

Issue 4: Identifying the timeframes after which a discount will apply

- Option 1: Individual timeframes
- Option 2: Sum of all timeframes (preferred option)

Background

History

In November 2008, the Government promised to introduce legislation into the House to amend the Resource Management Act 1991 (RMA) within 100 days of the formation of the new Government.

The Resource Management (Simplifying and Streamlining) Amendment Bill 2009 (the Bill) was introduced into the House on 19 February 2009. Among the proposed amendments, the Bill proposed a new section 36AA to be inserted into the principal Act. The new section required a local authority to adopt a policy in respect of discounting administrative charges imposed under section 36 in circumstances where a resource consent application is not processed within the timeframe(s) set out in the Act, and the responsibility for that failure rests with the local authority.

The intent of this change was to address concerns over late consent processing by providing a degree of compensation for the inconvenienced applicant. It was also considered that there was limited incentive for local authorities to process resource consents on time. In most cases the only sanction for late processing appeared to be adverse publicity. There were only limited legislative options, including the powers of the Minister for the Environment to investigate and make recommendations. Although these powers are relatively well provided for, the principal legislative sanction of appointing an administrator to perform functions, powers and duties in place of a local authority (under section 25) is considered appropriate only in the most serious cases of non-performance.

At the time the Bill was introduced, official statistics gathered by the Ministry for the Environment indicated that only 74 per cent of non-notified resource consents and 56 per cent of notified consents were processed within statutory timeframes and that performance had tracked steadily downwards over the past six years.

The subsequent release of statistics in the *Resource Management Act: Two-yearly Survey of Local Authorities 2007/2008* in June 2009 showed that overall 69 per cent of resource consent applications were processed on time. This was the lowest result for the past 10 years and was the continuation of a downward trend since 2001/2002.

The Bill proposed that a discount policy be set by each local authority using a process under the Local Government Act 2002, but did not specify the method to calculate the discount nor the minimum discounts that were to apply. In the departmental report to the Select Committee it was recognised that the Bill, as proposed, could result in wide variance between local authorities in interpreting when an applicant could become 'eligible' for a discount, and in the amount of the discount.

A significant number of submitters on the Bill suggested that such a policy should be set at the national level. As a result, when the Bill was reported back by the Local Government and Environment Select Committee, this provision was altered to propose that a 'default' discount policy be developed and introduced as a regulation. This was to ensure consistency across local authorities, and would avoid individual local authorities spending time and resources developing their own policy. The Select Committee suggested retention of the ability of local authorities to develop their own policies, if the local authority wanted to adopt a discount greater than that provided by regulation.

Legislative mandate for regulations

The Resource Management (Simplifying and Streamlining) Amendment Act was enacted in September 2009 and included new sections 36AA and 360(1)(hj) requiring regulations for discounting local authority administrative charges.

Section 360 – Regulations

- (1) *The Governor-General may from time to time, by Order in council, make regulations for all or any of the following purposes:*
 - (hj) *providing for discounts on administrative charges imposed under section 36 when local authorities are responsible for applications for a resource consent and applications to change or cancel conditions under section 127 not being processed within the time limits in this Act.*

Section 36AA – Local authority policy on discounting administrative charges

- (1) *A local authority may provide a discount on an administrative charge imposed under section 36 in accordance with regulations made under section 360(1)(hj).*
- (2) *The Minister must recommend to the Governor-General within 9 months of the commencement of section 32 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 that regulations be made under section 360(1)(hj) and the Minister must, before making the recommendation, consult with local authorities about the proposed regulations.*
- (3) *A local authority may adopt, in accordance with the special consultative procedure set out in section 83 of the Local Government Act 2002, a policy in respect of discounting administrative charges imposed under section 36 of this Act in the circumstances where—*
 - (a) *an application for a resource consent or an application to change or cancel conditions under section 127 is not processed within the time frames set out in this Act; and*
 - (b) *the responsibility for the failure rests with the local authority.*
- (4) *The policy must specify—*
 - (a) *the discount, or the method for determining the discount, that would be given for any application fees or charges paid or owing; and*
 - (b) *the procedure an applicant must follow to obtain the discount.*
- (5) *If a discount in a policy adopted under subsection (3) is more generous than that provided for in the regulations the local authority may comply with the policy instead of the regulations.*

The use of the word ‘may’ in section 36AA(1) has possibly caused confusion for some practitioners, leading to them believing that complying with any form of discount regulation is voluntary rather than giving local authorities the discretion as to by which means.

The wording of section 36AA(1) says that a local authority may provide a discount in accordance with the discount policy set through regulations. The use of ‘may’ is to allow there to be discretion as to whether the local authority follows the default policy set under regulations or adopts its own policy. This is made explicit in section 36AA(5).

Principles of legal interpretation (including those contained in the Interpretation Act 1999) dictate that sections must be read in their entirety. As such the apparent discretion provided in

36AA(1) must be read alongside 36AA(5) and would also have to consider the content of any regulations themselves.

Compliance with the ‘default’ discount regulations for processing of resource consents outside statutory time limits is mandatory unless a local authority introduces a more generous discount policy of its own.

Process

The RMA states that the regulations need to be recommended to the Governor-General by 1 July 2010 and developed in consultation with local authorities.

In preparing this Issues and Options Paper discussions have been had with a panel of local government representatives. The nine local authorities¹ represent a range of different size and types of local authorities, varying experience with discounting, and a geographical spread. Local Government New Zealand is also represented. These discussions will continue during this scoping phase.

The Issues and Options paper was out for consultation with local authorities between Monday 18 January and Friday 5 February 2010. Other interested parties are invited to provide feedback by 5:00pm 1 March 2010.

Following the conclusion of the scoping phase, including this consultation period, the process for developing the Discount Regulations is set out below.

- Scoping phase (including consultation) – current phase
- Policy developed by Ministry for the Environment and paper drafted for Cabinet committee decision
- Minister for Environment considers draft paper
- Paper submitted to relevant policy Cabinet committee
- Policy decision agreed by Cabinet
- Parliamentary Counsel Office draft regulations
- Ministry for the Environment drafts Cabinet Legislation Committee paper
- Paper submitted to Cabinet Office
- Cabinet Legislation Committee considers paper
- Cabinet confirms Cabinet Legislation Committee decision
- Regulations are made at Executive Council
- Regulations notified in Gazette (28 days before they take effect unless a waver has been agreed).

¹ Dunedin City Council, Waimakariri District Council, Selwyn District Council, Upper Hutt City Council, Hamilton City Council, Waitakere City Council, Environment Bay of Plenty, Franklin District Council, Northland Regional Council

Issues and Options

Issue 1: Method of calculating a discount

While new sections 36AA and 360(1)(hj) of the RMA outline the requirement for the development of regulations for discounting administrative charges, they do not specify the method to be used to calculate the discount within the regulations. In developing these regulations the appropriate method for calculating a discount needs to be identified. This should take into account the varying size and capabilities of local authorities and varying size and complexity of application types across New Zealand.

Background to the issue

A wide range of methods can be used to calculate a discount on administrative charges for resource consents not processed within statutory timeframes. However, there has been limited use of any such discounts within New Zealand to date. A small number of local authorities currently operate some type of voluntary discount.

Hamilton City Council has operated a 'Money-Back Guarantee' for non-notified resource consents not issued within the statutory timeframes since 2001/2002. This was originally a 50 per cent fixed percentage discount, however, since 2002/2003 it has been a 100 per cent fixed percentage discount. Between 2001/2002 and 2005/2006 the number of non-notified resource consents not processed within the statutory timeframes has varied between 0.18 per cent and 1.18 per cent (that is between 1 out of 668 and 10 out of 601 non-notified resource consents). In 2006/2007 and 2007/2008 all non-notified resource consents were processed within statutory timeframes.

Other local authorities, such as Environment Bay of Plenty and Wellington Regional Council, provide discounts on a case-by-case basis.

Rotorua District Council is currently consulting on the use of a fixed percentage discount (in this case 40 per cent) for all resource consents (notified and non-notified) processed outside the statutory timeframes.

Local authorities will be able to continue with the above approaches after 1 July 2010 only if they are more generous than that provided for in the new regulations.

Options to manage the issue

Introduction

Use of percentage or dollar rate discount

The following options could be applied as either a percentage discount or a dollar rate discount. It is considered that the use of a dollar rate is not appropriate as:

- different types of resource consent applications have different fees. If a dollar rate discount was used this would result in refunds being more generous for smaller applications and less generous for larger applications.

- each local authority charges different rates for processing resource consents. A fixed dollar amount would result in a different proportional amount for each local authority, therefore being inequitable.
- Would not adjust automatically for inflation.

Therefore, the options set out below all propose a percentage discount.

Non-notified and notified consents

Consideration has been given to whether a different method (and/or value) should be used for discounts associated with non-notified as opposed to notified consents. At this stage it is proposed to apply one method (and discount value) to all types of consents.

The existing differences in the statutory timeframes for processing non-notified (20 days) and notified consents (see Issue 4: Identifying the timeframes after which a discount will apply) assists with this approach, as it takes into account the additional time needed to process notified consents. The use of a percentage discount also assists as the discount that applies will be proportional to the total fee due from the applicant for the resource consent application. Applying one method will also keep the discount regulations from becoming overly complicated. Further discussion around timeframes is addressed under Issue 4: Identifying the timeframes after which a discount will apply.

Option 1: Fixed percentage discount

A fixed percentage discount of X% once the processing of a resource consent or application to change or cancel resource conditions goes over the statutory timeframes set in the RMA.

Pros

- Easy to administer for local authorities.
- Costs could be estimated and provided for in local authority budgets (based on previous years performance results).
- Easy for resource consent applicants to understand.
- Automatically adjusts to match the Consumer Price Index (CPI) or fee increases.

Cons

- As it applies irrespective of the number of days over the statutory timeframes a consent is processed, the incentive for a local authority to continue to process the consent in a timely manner is low once timeframes are exceeded.
- If the value of the fixed percentage discount is set very high then local authorities will have a strong incentive to meet the statutory timeframes but the cost of missing by one or two days could be seen as punitive.
- If the value of the fixed percentage discount is set very low local authorities will not have a strong incentive to meet the statutory timeframes.

Option 2: Sliding scale percentage discount

A sliding scale percentage discount of X% (up to a maximum discount amount) on a working day or weekly basis (five working days), or a combination of both, where the processing of a resource consent or application to change or cancel resource consent conditions goes over statutory timeframes set in the RMA.

Pros

- Relatively easy to administer for local authorities.
- Costs could be estimated and provided for in local authorities budgets (based on previous years performance results).
- Relatively easy for resource consent applicants to understand.
- Continues to incentivise the local authority to process the consent after the statutory timeframes have passed.
- Better reflects severity of impact of delay i.e. longer delays equal greater discount and compensation.

Cons

- More complicated to administer than Option 1.
- More complicated to estimate costs and provide for in local authority budgets than Option 1.

Option 3: Formula discount

A formula could be used to calculate the rate of discount to be applied to any applications for resource consent or applications to change or cancel consent conditions that are not processed within timeframes set in the RMA. Variables that could be included are:

- number of days over the statutory timeframes
- total days allowable for processing the consent
- proportionality of fault
- level of public versus private good determined through charging regime (for example, does the local authority run a 100 per cent cost recoverable approach or not).

This option could have a set formula but allow some flexibility for local authorities depending on their circumstances. In this option it would be important to accurately define values and apportion weighting within the formula.

Pros

- A fine tuned approach to providing discounts.
- A number of variables are included in the formula and therefore it is more fair and reasonable.

Cons

- Difficult to develop a formula that appropriately incorporates the different variables.
- Complicated to administer for local authorities.
- Complicated to estimate and provide for in local authorities budgets.
- Complicated for resource consent applicants to understand
- Can be difficult to proportion out fault without litigation.

Preferred Option: Option 2 – Sliding scale percentage discount

It is considered that Option 1: Fixed percentage discount, while being simple to administer, is a blunt instrument. Option 3: Formula discount is considered to be over complicated and difficult to develop accurately.

The preferred option recommended in this paper is the sliding scale percentage discount (Option 2).

Option 2 continues to provide an incentive to process a resource consent after the statutory timeframes have not been met.

The detail around how this method would work will be considered further through this consultation process. Feedback is also welcome from stakeholders on the other methods proposed in this paper, and any additional methods considered appropriate. The values would be associated with the preferred method are discussed under Issue 2: Value of discount.

Stakeholder comments *[Continue typing in box to create room, or continue on separate sheet if filling in a hard copy version of this document.]*

Issue 2: Value of discount

While new sections 36AA and 360(1)(hj) of the RMA outline the requirement for the development of regulations for discounting administrative charges, they do not specify the value of the discount to be used within the regulations. In developing these regulations the appropriate value of the discount needs to be identified. This should take into account the varying needs of councils across New Zealand.

Background to the issue

Methods that can be used to calculate a discount have been discussed under Issue 1. Option 2: Sliding scale percentage discount is identified as the preferred option. The possible values associated with this option are focused on below.

Some brief comments on the values that could be associated with a fixed percentage discount method (Option 1) are made here. The value of a fixed percentage discount could fall anywhere between one per cent and 100 per cent. The balance between incentivising and punitive approaches needs to be identified. It is considered that less than 10 per cent would not be enough of an incentive and that more than 100 per cent would be too punitive. It is noted that Hamilton City Council currently has 100 per cent fixed percentage discount (for non-notified applications only) and Rotorua District Council is proposing a 40 per cent fixed percentage discount for all applications.

A fixed percentage discount value is not proposed here in light of a sliding scale percentage discount (Option 2), being identified as the preferred method of calculating a discount. However comments on the value of any fixed percentage discount are welcomed if this is the preferred approach of a stakeholder.

Preferred option: Sliding scale percentage discount on a daily/weekly basis up to cap of 80 per cent (60 working days or more)

Purpose

The purpose of using a sliding scale percentage discount is to incentivise local authorities to meet the statutory times frames for processing resource consents. The increments and values associated with this approach have two key aims:

1. To incentivise local authorities to meet the statutory times frames.
2. Where statutory timeframes have not been met, to ensure there is a continuing incentive to process the resource consent application.

Use of a cap

The starting position for the total percentage of the application fee that can be refunded is that it should not be more than 100 per cent of the total cost of processing a resource consent application.

Consideration has then been given to whether there should be a cap on the discount at a level that is lower than 100 per cent. In this paper it is proposed that a cap should apply and the value that has been identified is 80 per cent which is seen as striking a reasonable balance between

competing values. The use of a cap gives some acknowledgment of the costs associated with processing resource consents for the local authority, whether within the statutory timeframes or not. If 100 per cent of a resource consent was refunded this would have an impact on ratepayers as in effect they would be penalised by over subsidising the local authority for not meeting its statutory timeframes.

Use of daily and weekly increments and associated values

To meet the two key aims behind using a sliding scale percentage discount identified above, it is proposed to use a combination of daily and weekly increments.

The use of daily increments for the first five working days provides a strong incentive for local authorities to not miss statutory timeframes by only a few days. It has been identified that many consents, particularly non-notified consents, which miss the statutory timeframes are only a few days late. This is a particular area of concern and should be able to be avoided by local authorities in many cases.

To provide strength to this approach the percentage discount proposed to be applied to each of the first five working days is five per cent. This means that an application that is not processed until the fifth working day after the end of the statutory timeframes would have a discount of 25 per cent applied.

To maintain an ongoing incentive to local authorities to process consents after the statutory timeframes have been missed it is proposed to apply a discount on a weekly (five working day) basis after the first five working days. The value associated with this is five per cent per week. Therefore, by four weeks (20 working days) after the end of the statutory timeframes, a discount of 40 per cent would apply; this increases to 60 per cent by eight weeks (40 working days), up to a maximum of 80 per cent by 12 weeks (60 working days) or more.

Table 1: Sliding scale percentage discount (days and weeks over total statutory timeframe)

| | | | | | | | | |
|-------------------------------|----|-----|-----|-----|-----|------|-------|-------|
| Weeks (5 working days) | 1 | | | | | 2 | 3 | 4 |
| Working days | 1 | 2 | 3 | 4 | 5 | 6-10 | 11-15 | 16-20 |
| Percentage discount | 5% | 5% | 5% | 5% | 5% | 5% | 5% | 5% |
| Sliding total discount | 5% | 10% | 15% | 20% | 25% | 30% | 35% | 40% |

| | | | | | | | | |
|-------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|
| Weeks (5 working days) | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12+ |
| Working days | 21-25 | 26-30 | 31-35 | 36-40 | 41-45 | 46-50 | 51-55 | 56-60 |
| Percentage discount | 5% | 5% | 5% | 5% | 5% | 5% | 5% | 5% |
| Sliding total discount | 45% | 50% | 55% | 60% | 65% | 70% | 75% | 80% |

Stakeholder comments *[Continue typing in box to create room, or continue on separate sheet if filling in a hard copy version of this document.]*

Issue 3: How is local authority ‘fault’ determined?

New section 360(1)(hj) requires the development of regulations where the ‘responsibility’ for the failure to meet statutory time limits rests with the local authority. This poses an interesting issue for both local authorities and resource consent applicants in determining where the ‘fault’ lies in delays incurred during resource consent processing. This issue is also linked to the manner in which local authorities utilise the revised consent processing procedures introduced as part of the Bill, eg, pre-lodgement meetings, s88 to s88E review of applications before accepting for lodgement and further information request processes. To what degree local authorities should be responsible for delays encountered during the processing of a resource consent needs to be clarified. In addition, the method by which ‘fault’ is determined requires clarification.

Background to the issue

The intent of requiring a discount of administrative charges has always been to encourage local authorities to be more accountable for their resource consent processing timeframes.

Although it is recognised that more than one party (or factor) can be attributable to resource consent applications being processed late, the intent was for the discount to only apply when the local authority is responsible for the delay. The following options consider methods by which ‘fault’ can be determined and explore areas of potential uncertainty.

Options to manage the issue

Option 1: Providing an explanation of what constitutes ‘fault’ for a delay within the regulations

This option would provide certainty to local authorities and applicants on how ‘fault’ for resource consent processing delays should be attributed. It would also help remove the potential for disputes that may arise where there is disagreement.

There are a number of potential instances where uncertainty may arise as to where responsibility lies for any delay that might be incurred during the processing of a resource consent. Examples include instances where delays are incurred as a result of requiring external input, or expert input/peer review, further information requests, publicly notified process, joint local authority hearings, and where both the local authority and applicant are at ‘fault’.

Addressing these matters within the regulations will help reduce this uncertainty and avoid subsequent disputes.

Option 2: Leaving ‘fault’ to the discretion of local authorities to determine

This option would result in local authorities having the discretion to determine who may be at ‘fault’ for any delays incurred during the processing of the resource consent application. This option would work well where it is clearly understood who is responsible for the delay. For example, if the applicant has clearly not provided further information within the required timeframe or the local authority has not made a decision within the required timeframe (assuming no other contributing factors).

Where there is uncertainty or disagreement about where the fault lies the applicant may feel uncomfortable with discretion being left with the local authority to determine. This may result in disputes arising and additional delays while such disputes are being resolved.

Option 3: Allowing applicants and local authorities to discuss and agree ‘fault’

This option would enable a consensus approach to determining responsibility for any delays that are incurred. This approach would be more consultative and would enable a forum within which both parties could submit their views as to who is at ‘fault’. Again with this approach, where it is clear who is at ‘fault’, few problems are envisaged.

However, this approach would potentially be cumbersome and would involve an additional process after a decision was made on the application. An additional delay of this nature would not be consistent with the overall intention of the Bill. Additionally, applicants who are unfamiliar with the process may utilise this option unnecessarily and create additional delays.

Also, where no agreement between the parties can be reached, disputes would arise that would result in further delays while such disputes are being resolved. This option may perpetuate s357 objections and create delays at the end of the resource consent process. A mediator may be required to resolve the dispute and add additional time and costs into the process.

Preferred option: Option 1 – Providing an explanation for what constitutes ‘fault’ for a delay within the regulations

This approach would provide the most certainty to local authorities and applicants and would help reduce the potential number of disputes that may arise in determining responsibility of ‘fault.’ Accordingly, there would likely be a lower number of disputes requiring potential mediation or s357 objections. This approach would also be consistent with the Bill intent and could be incorporated into the standard resource consent process.

Where it is clear who is responsible for creating the delay, there should be no issue with determining ‘fault’ and the regulations would make it clear that the discount policy only applies where the local authority is at ‘fault’.

There are a number of instances where uncertainty may arise as to where responsibility of ‘fault’ lies for any delays incurred. It would be appropriate for the regulations to set out how such instances should be dealt with. In instances where disputes arise it is considered that an independent mediator be appointed to resolve the dispute. Potential disputes and proposed solutions are outlined below.

Instances where delay is incurred as a result of external input into consent processing

Where delays are incurred whilst input from external parties (such as the New Zealand Transport Authority or Historic Places Trust) is received, local authorities have the opportunity to require this information from the applicant before ‘receiving’ the application under s88.

In other situations, delays may be incurred while input from local authority experts and peer reviewers is sought. A number of local authorities have implemented procedures that require initial feedback on an application (once submitted) within the five day timeframe set out in s88. Additionally, other local authorities have service level agreements (or similar) within internal departments/external experts to ensure feedback is provided in a timely manner. Such

approaches would ensure that delays are avoided or minimised whilst seeking expert input or peer reviews.

If delays were encountered in these instances, it is envisaged that they would be the ‘fault’ of the local authority.

Section 92 instances where delay is incurred as a result of further information requests

This issue is discussed under Issue 4: Identifying the timeframes after which a discount will apply as it is a matter that relates to both determining ‘fault’ and timeframes

Instances where delay is incurred at a joint hearing

In situations where a joint hearing is held and one of the local authorities creates a delay, it is envisaged that the local authority creating the delay would be at ‘fault’. If both local authorities created the delay it is envisaged that both would be at ‘fault’.

Instances where both parties are at ‘fault’

In situations where both the local authority and the applicant are responsible for creating delays, it is considered that neither party would be at ‘fault’ and no discount would be applicable.

Instances where delay is incurred during the notified/hearing process

In some instances delays are incurred while carrying out procedural aspects of notified consents or hearings (including commissioner appointments). It is envisaged that improved local authority processes would ensure any delays incurred could be avoided or minimised. Guidance notes on the Quality Planning website outline methods by which this might be achieved.

Accordingly, it is considered that any delays incurred in these instances would be the ‘fault’ of the local authority.

In certain circumstances, the local authority will also be able to utilise the s37 extension of timeframe provisions where special circumstances exist or the approval of the applicant is obtained.

The detail of any provisions within the regulations relating to the determination of ‘fault’ will require further consideration through the consultation process.

Stakeholder comments *[Continue typing in box to create room, or continue on separate sheet if filling in a hard copy version of this document.]*

Issue 4: Identifying the timeframes after which a discount will apply

New sections 36AA and 360(1)(hj) require a discount to be applied to administrative charges when local authorities are responsible for applications for resource consent or applications to change or cancel consent conditions which are not processed within statutory timeframes. In developing these regulations, how timeframes are calculated and provided for in the RMA will need to be considered. Matters which influence how timeframes are met will also need to be identified.

Background to the issue

It is recognised that the difference in times for processing non-notified and notified resource consent applications adds complexity to the regulations.

There is currently a total processing time of 20 working days (if a hearing is not held) for non-notified resource consent applications, however, the RMA does not currently explicitly state a total time value for the processing of notified resource consent applications.

Consideration of the potential time variations for notified applications is required for the development of the regulations. Adding the timeframes together for notified applications results in a nominal:

- 50 working days if no hearing is held
- 70 working days if a hearing is held
- 85 working days if the local authority directs pre-provision of evidence before a hearing

It is noted that hearing times are not classified as working days and that the processing clock effectively stops while an application is actually being heard. However, further consideration needs to be given to how hearing times are approached with regards to applying any potential discount. Comments from stakeholders on this matter, and the timeframes to be used before a discount is applied are welcomed.

Stakeholder comments *[Continue typing in box to create room, or continue on separate sheet if filling in a hard copy version of this document.]*

It is intended that further work to clarify/refine statutory timeframes in the RMA will be considered as part of the RMII-G – Generic workstream of the Phase II reform of the RMA.

Options to manage the issue

Option 1: Individual timeframes

This option would break the consenting process into its component parts. For example, 10 working days for decisions on notification (s95) and 20 working days time limit for serving submissions on a consent authority (s97).

Each individual part of the consenting process would be subject to a discount if the local authority exceeds the time limit specified in the RMA for that part of the process.

It is considered that using individual timeframes for each part of the consenting process would not be appropriate as:

- not all local authority databases track individual timeframes
- it would be complicated and timely for local authorities to administer
- it would require invoices to be broken down into the component parts of processing a resource consent application. Local authorities would need to determine how much each part of the process costs.

Option 2: Sum of all timeframes

This option adds all the individual timeframes in the resource consent process resulting in a total nominal value, for example, nominal 70 working days for a notified application or 85 working days if the local authority directs pre-provision of evidence before a hearing. (The values in both of these examples are if hearings are held and do not include the hearing time).

Preferred option: Option 2 – Sum of all timeframes

In discussions with local authorities on the ability to meet timeframes, it was raised that some timeframes can be challenging to meet, for example, the 10 working day period in section 95 for decisions on notification. Option 2 would enable local authorities to ‘make good’ in situations where some timeframes are particularly hard to meet, but where they have processed the application on time overall. It is viewed as more practical for local authorities to invoice for the entire processing costs of an application rather than breaking it down into its component parts.

A number of problems have been identified which can influence the ability of local authorities to meet statutory timeframes. These problems will need to be addressed in developing the regulations. Some of the problems and possible solutions that have been identified include (but are not limited to):

Definition of working day

The current definition of working day is limited as it only defines those days which do not count as working days.

Working day means any day except –

- (a) a Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and*

(b) a day in the period beginning on 20 December in any year and ending with 10 January in the following year.

It does not indicate at what time the working day starts or ends. Therefore, it does not give local authorities a guide to when a resource consent application is officially lodged and the processing clock should start.

Analysis of the definition of ‘working day’ in 10 statutes other than the RMA shows that there is great variability in the definition of working day. However, all of these other statutes still only define the exceptions of what days are not classified as working days.

Feedback from stakeholders is welcome on whether a more comprehensive explanation of working day is required in the regulations and any possible suggestions for what should be included in such an explanation.

What day is day one?

The lack of clarity in what a working day is, leads to confusion on what day is officially day one and when the processing clock should start. Different interpretations by local authorities have resulted in slight variations in the total time allowance to process applications. For example, for non-notified applications some local authorities either start the clock:

- the day an application is received, resulting in a total 20 working days
- the day after the application is received, therefore the first full working day in the processing of an application. This results in a total 21 days.

Further clarification is required to determine what day is officially ‘day one’. Suggestions are welcome from stakeholders on this.

Section 92 instances where delay is incurred as a result of further information requests

Amended section 92 of the RMA limits the number of times local authorities are able to stop the processing clock when requesting further information from an applicant. There are a number of potential issues in determining who is responsible for any delay in processing an application where further information is required depending on a number of scenarios.

Some of the potential scenarios identified include:

Where inadequate responses to further information requests are provided or no response is received, local authorities may utilise the revised s92 to s92B provisions to leave the application on hold until adequate information is provided or progress the application on a notified basis and subsequently potentially decline it. The clock would restart either when the applicant provided all the requested information or when the local authority determines that the application proceed on a notified basis. In such instances, the processing of the application should not be delayed, and any delays would not be the ‘fault’ of the local authority.

1. A local authority requests further information but neglects to cover everything that is required to be fully satisfied with the application.

In this situation it is considered the local authority would be at fault.

2. If information provided by a request for further information, slightly changes the nature of an application (although not significantly enough to warrant the local authority saying the application is now out of scope under section 88 requiring it to be re-lodged) or raises more issues that had not been covered by the initial request for further information.

It is considered in this situation neither party would be responsible for any delay incurred and therefore, there would be no discount.

Further to these scenarios, it needs to be determined if an applicant would be eligible for a discount for any additional requests for further information (where the clock is unable to be stopped).

It is considered that the discount would apply, however, other thoughts are welcome.

Sections 37 and 37A Powers and requirements for waivers and extension of time limits

Amendments made to s37A now limit the ability of local authorities to extend timeframes unless either –

- (a) special circumstances apply (including because of the scale or complexity of a matter); or
- (b) the applicant agrees to the extension.

Clarification will be required in the drafting of the regulations that accounts for the extension of timeframes, for example 20 working days for non-notified applications could become 40 working days. This would make it clear that a time extension (provided it meets the requirements to extend timeframes under section 37A(4)) is part of the official processing of an application.

Results from the *Resource Management Act: Two-yearly Survey of Local Authorities 2006/2007* illustrated reduced compliance with statutory timeframes and increasing use of s37 to extend timeframes. It was intended by the Amendment Act to limit overuse of s37A.

It is considered that if in processing an application, no special circumstances exist and the applicant does not agree to any time extension, a discount should still apply. This is to meet the intention of the amendments to s37A by limiting the overuse of time extensions. It is also considered that there are other provisions in the RMA which can be used to incentivise applicants to provide full applications and to work closely with local authorities in the processing of their applications.

When does the processing clock stop?

It is proposed that the processing clock stops when a notice on a decision on an application is given and that any discount will apply to any time beyond statutory timeframes specified in the RMA.

Stakeholder comments *[Continue typing in box to create room, or continue on separate sheet if filling in a hard copy version of this document.]*