



RESOURCE MANAGEMENT AMENDMENT ACT 2009

Fact Sheet 4: Direct Referral, Independent Commissioners and Restricted Coastal Activities

This is one of a series of fact sheets giving an overview of the amendments to improve the Resource Management Act (RMA). This fact sheet outlines the new mechanisms for direct referral, requests for independent commissioners, and decisions on restricted coastal activities.

WHAT WERE THE ISSUES?

These reforms address concerns of applicants, submitters and decision-makers about:

- the duplication of process, substantial costs, and time delays as a result of applications going through the council hearing process and then being heard again in the Environment Court
- the objectivity, skills and knowledge of elected decision-makers and the inability to request the appointment of independent commissioners to hear resource consent applications
- the Minister of Conservation's coastal management and consenting of restricted coastal activities roles.

HOW HAS THE RMA BEEN IMPROVED?

Direct referral to the Environment Court

Sections 87C to 87I allow applicants to make a request to the council for resource consent applications, and applications to change or cancel conditions of consent, to be decided by the Environment Court instead of by the council. A requiring authority or heritage protection authority can also make such a request with respect to requirements for a designation or heritage order under sections 198A to 198M.

This process is known as direct referral and applies to notified applications and requirements only. If a matter is called in under section 142(2), then the direct referral process ceases to apply.

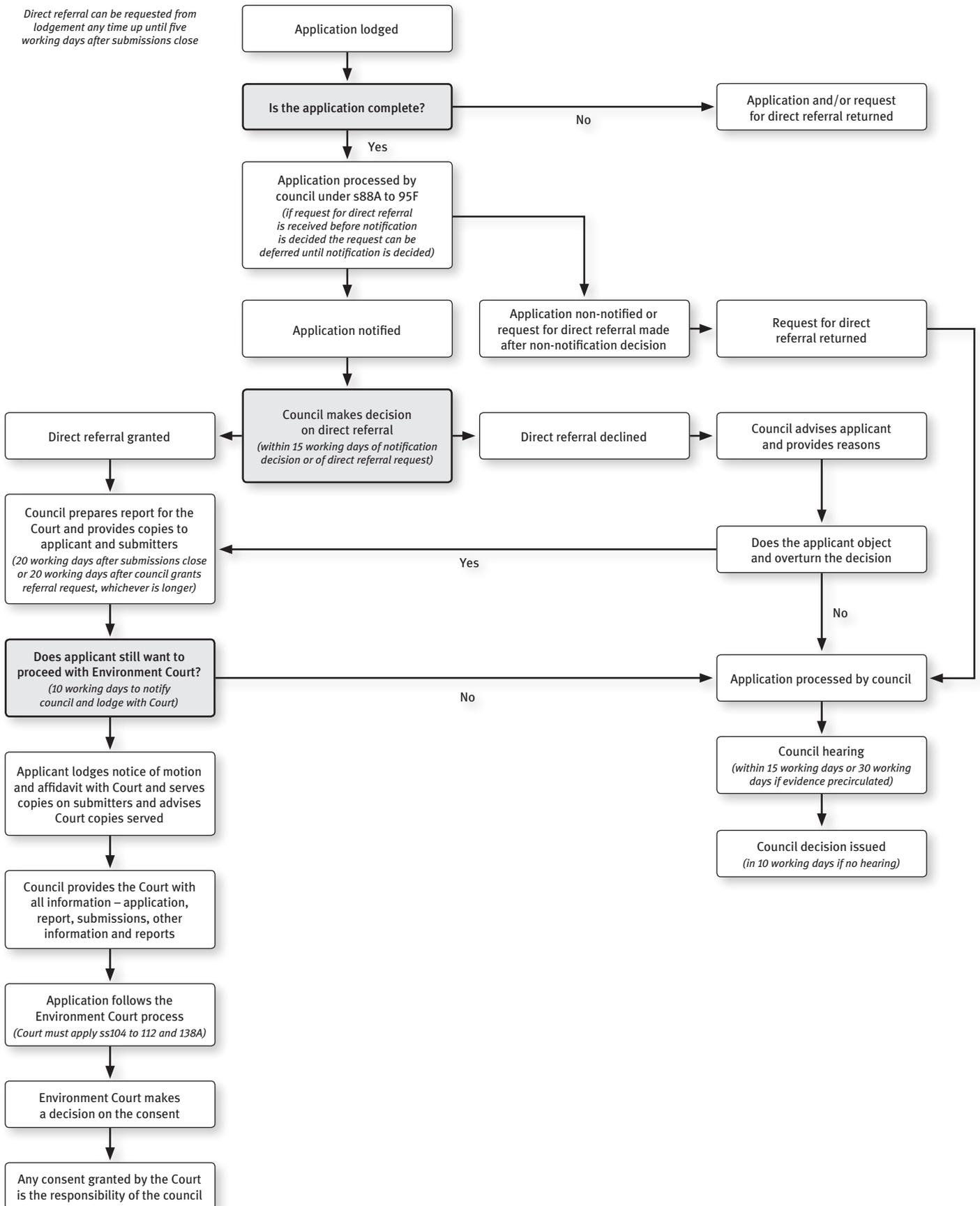
The direct referral process applicable to resource consents is summarised by the flow chart on the following page. Other key points relevant to the process include:

- a request for direct referral must be made electronically or in writing on a form prescribed in the new regulations
- no submitter has a right to be heard by the council about a request for direct referral
- the council may apply sections 104 to 112 in preparing its report on the application and may suggest any conditions that it considers should be imposed by the Environment Court if the application is granted
- the council and submitters can become a party to the direct referral proceedings before the Environment Court. Notice must be given to the Court and all other parties within 15 working days from the lodgement of the notice of the direct referral proceedings with the Court
- the council has all the functions, duties and powers in relation to the resource consent granted by the Court. For example, the council is responsible for monitoring and enforcing consent conditions
- the council can recover costs for its time under section 36.



DIRECT REFERRAL PROCESS FOR RESOURCE CONSENTS

Direct referral can be requested from lodgement any time up until five working days after submissions close



Hearing by independent commissioner(s) if requested by applicant or submitter

Section 100A allows for an applicant or a submitter to a notified resource consent application to request the council to appoint at least one independent hearing commissioner to hear and decide the application.

The request must be made in writing to the council and can be made any time up to five working days after the closing date of submissions.

If the council receives such a request, it must delegate its functions, powers and duties required to hear and decide on the application to one or more independent hearing commissioner(s) who are not members of the council.

A party does not have the right to oppose or object to another party's request for independent commissioner(s), and the council has the discretion to decide on the number and composition of panel members.

The applicant and/or submitters are responsible for the costs associated with request(s) for independent commissioner(s), depending on who made the request. If the applicant made the request, regardless of whether one or more submitters also requested, the applicant is responsible for costs. However, if submitter(s) made the request and the applicant did not, the applicant is responsible for the council's charges if the application was decided by the council, and the submitter(s) are responsible in equal shares for the balance of the costs.

In the case of joint hearings by two or more councils, if a council appoints independent hearing commissioner(s), the commissioner(s) must represent the council in the joint hearing on the matter. In the case of a combined hearing, the commissioner(s) must hear and decide on all of the matters together before them.

These provisions will apply with all necessary modifications to notices of requirement.

Applications and decisions on restricted coastal activities

The Minister of Conservation's power to make decisions on applications for coastal permits in relation to restricted coastal activities (commonly referred to as 'ministerial veto') is removed (ie, section 28(c) is repealed).

Regional councils are now responsible for making decisions on coastal permits previously issued by the Minister of Conservation, unless the application is considered nationally significant and an application is made to the Environmental Protection Authority.

The council must publicly notify the application and provide a copy to the Minister of Conservation and relevant territorial authority. In hearing and deciding the application the council must delegate its functions, powers and duties to one or more persons permitted by section 34A(1), including one person nominated by the Minister of Conservation. There is no ability for an applicant or submitter to request that an independent commissioner be appointed under section 100A. The decision notice must then be served on the Minister of Conservation who does have a right of appeal under section 120(1)(c).

A coastal permit granted for a coastal marine area (CMA) is to be treated as if it were granted by the regional council within which the CMA lies. This applies from 1 October 2009, or the date the coastal permit is granted, whichever is the later.

Although the Minister's decision-making power has been removed, the Minister will still monitor the effect and implementation of coastal permits. The Minister is able to require a regional council to supply monitoring information in relation to a coastal permit, regional coastal plan, or a customary activity. This information must be supplied to the Minister free of charge within 20 working days or a longer time set by the Minister of Conservation.



OTHER INITIATIVES TO IMPROVE DECISION-MAKING

Refer to the Quality Planning **Use of commissioners** guidance note. This note provides best practice guidance on matters such as appointing independent commissioners and the accreditation requirements under the RMA.

Refer to the Ministry's Everyday Guide to the RMA booklet 6.1 ***Your Guide to the Environment Court***. This general guide outlines the role and functions of the Environment Court.

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