

Discounts on Fees for Late Consent Processing

The 2007/2008 *Resource Management Act: Two-yearly Survey of Local Authorities* identified that, across the country, 31% of resource consent applications were processed late and a further 28% of applications involved an extension of time. Partially as a result of this, the Government included within last year's Resource Management (Simplifying and Streamlining) Amendment Act sections 36AA and 360(1)(hj). These sections allow the Government to make regulations imposing discounts on council charges for resource consent and variation applications.

The wording of section 36AA(1) might at first glance seem to give discretion to discount processing fees to a local authority, which "may" provide a discount on an administrative charge in the fashion described. However, section 36AA(5) clarifies that this is to allow for voluntary discount schemes that are more generous than one made by regulation. Some councils already offer discounts (in some case, following the McDonalds approach, up to a 100% discount if they are late). Those councils may adopt their current policy under section 36AA rather than relying on the regulatory default.

In consulting with local authorities over this issue, the Government prepared an *Options Paper*^{*}, which suggests a "sliding scale percentage discount" of 25% for a consent which is up to one week late, with an additional 5% per late week, up to a maximum 80% discount. This structure is designed to discourage councils from missing the statutory timeframes by only a few days, and to maintain an ongoing incentive to ensure the consent is processed after the 25% threshold is passed. The discount is capped at 80% to acknowledge that local authorities will incur costs in processing consents, whether within the statutory timeframe or not.

The proposal is that a local authority will only be required to discount its application fees when the delay is the "fault" of the council concerned. Rather than leaving the determination of "fault" up to the local authority in question, the *Options Paper* suggests that the regulations set out criteria for determining "fault". In doing so, the *Options Paper* notes situations where a council should not be responsible for a delay, such as:

- Delay incurred at a joint hearing with a number of authorities.
- Delay where external input is required (such as the Historic Places Trust).

The *Options Paper* suggests that where both parties are at fault, no discount will apply, and notes potential areas which might trip up councils.

* "Discount Regulations Issues and Options Paper" 2010.

The newly amended section 92 of the RMA limits the number of times that local authorities are able to "stop the clock" when requesting further information from an applicant. As such, a council must ensure that it asks for all the information it needs to process the application properly when it makes a section 92 request, or else the delay may be the fault of the authority itself and the penalty applied. The *Options Paper* also notes that the use of section 37A to extend the processing time period has been limited, but that account needs to be taken of this process in drafting the regulations.

The Government sought feedback from local authorities earlier in the year and is currently in the process of seeking feedback from other stakeholders - who have until 1 March 2010. You have the opportunity to comment on the proposed regulations, by email to rmareview@mfe.govt.nz. We suggest that you need not be deterred by the above deadline, or the fact that feedback has already been sought from councils. If you have concerns about the proposed regulations make them known as soon as possible so that they can be taken into account before the regulations are drafted.

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