



Ministry for the
Environment
Manatū Mo Te Taiao

AN EVERYDAY GUIDE TO THE RMA → SERIES 2.1

Applying for a Resource Consent





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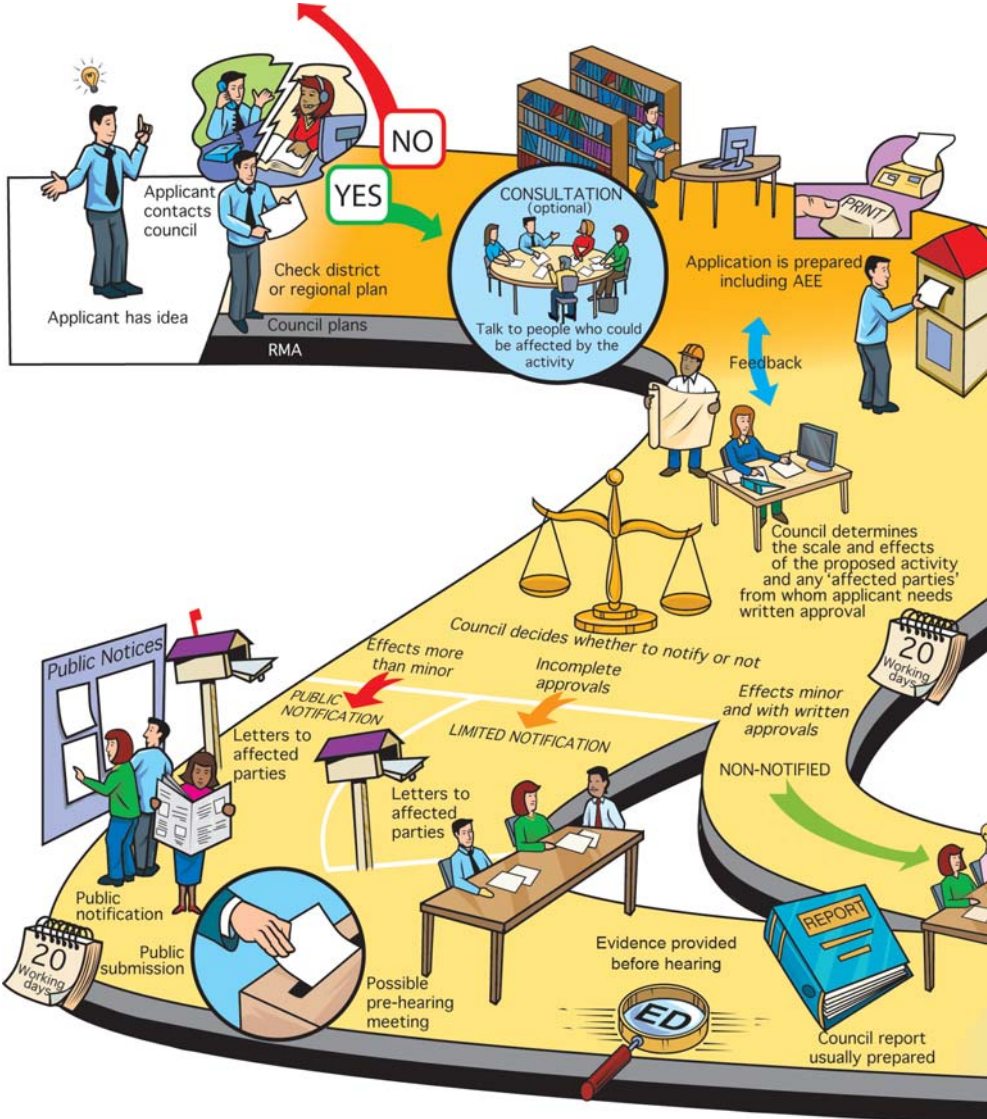
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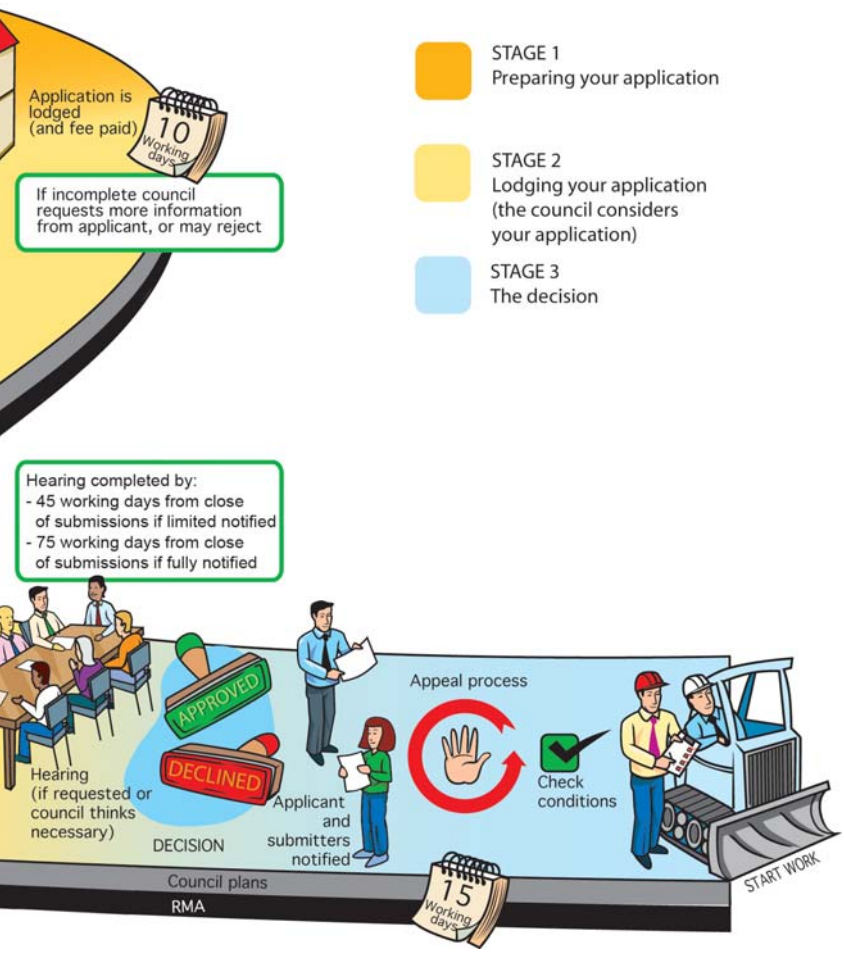
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APPLYING FOR A RESOURCE CONSENT



APPLYING FOR A RESOURCE CONSENT

This diagram represents the council process. Some applications may be referred to the Environment Court or a board of inquiry for a decision, instead of the local council. See 'An Everyday Guide to the RMA' booklet 1.4 *National Level Guidance and Processes* for more information.



Introduction

The Resource Management Act 1991 (RMA) requires local councils to ensure that effects on the environment are managed sustainably. One job for councils is deciding whether to grant resource consents to people wanting to undertake activities that might affect the environment.

Every day, people apply to their local council for resource consent to do things such as building a new house or garage, subdividing their property, discharging wastewater into a stream, moving earth, or discharging pollution into the air.

Applying for a resource consent does not have to be complicated. This guide is written for resource consent **applicants** – people who apply to their council for permission to do something that might affect the environment. It tells you:

- » how to find out whether you need a resource consent
- » what you need to do to apply
- » what you can expect from the council
- » what you can do to help the process along.

Some resource consent applications must be decided by a board of inquiry or the Environment Court instead of the local council. These applications include those directly referred to the Environment Court, or proposals of national significance that have been referred to the Court or a board of inquiry by the Minister for the Environment (these are said to have been ‘called-in’).

This RMA guide is intended for applicants who apply to the local council for consent. If you would like more information on the process for nationally significant applications, please refer to ‘An Everyday Guide to the RMA’ booklet *1.4 National Level Guidance and Procedures*.

Setting the scene: council plans

The RMA requires councils to create plans that help them manage the environment. These plans contain all sorts of rules and conditions for activities that might affect the environment.

Plans, usually through rules, state whether an activity is permitted, meaning you can do it as of right, or whether it requires a resource consent. When the

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council considers your application for resource consent, it follows the processes set out in the RMA.



A regional plan is created by a regional council. It concerns issues that affect the coast, air, water or land. Regional plan rules cover things such as the construction of jetties, and the discharge of wastewater from factories into waterways.

A district plan is created by a city or district council. It concerns the management of land use and subdivision in a city or district. District plan rules cover things such as noise, and the location and height of buildings.

Sometimes you'll need to apply for a resource consent from both the regional and district/city council.

How do I know whether I'll need a resource consent?

Whether you'll need a resource consent, and what type of consent you'll need, depends on the type of activity you want to do, and how it's classified in your local district or regional plan. Every council plan is different, so don't simply assume that just because you didn't need a consent in one town, you won't need a consent in another. There are also likely to be differences between areas within a district/city or region.

Before you start any activity that might affect your neighbours, your wider community or your environment, contact your local council or check out their website. Council staff will tell you whether you need to apply for a resource consent. They will also tell you if the activity is prohibited, which means that it is expressly not allowed and you can't even apply for a resource consent.

Activities that need a resource consent are classified as **controlled, restricted discretionary, discretionary** and **non-complying**. The council has to grant a resource consent for a controlled activity (with a couple of exceptions), but can refuse to grant a resource consent for a restricted discretionary, discretionary or non-complying activity.

There are five types of resource consent:

- » land-use consent
- » subdivision consent
- » water permit
- » discharge permit
- » coastal permit.

If you do need to apply for a resource consent, council staff will tell you:

- » how your activity is classified in the plan, and what kind of resource consent you need to apply for
- » whether you need to apply to both the district/city **and** the regional council for a resource consent (or they will refer you to the other council)
- » what information you need to supply in support of your application
- » how long the process is likely to take, and how much the council is likely to charge.

The amount of information the council requires will depend on the activity proposed and the kind of resource consent you need.

Council staff might also tell you whether you need to seek approval from affected people to avoid your application being notified. If so, they'll let you know who those 'affected persons' are once your application is lodged, and the initial assessment is complete.

The first step is always to contact the council to discuss the activity you want to do. If you're unsure whether your activity will affect your neighbours, community or environment, check with the council; don't just go ahead.

Once you've learned you need a resource consent, the council process has three main stages.

Stage 1: preparing your application (information gathering)

When you learn that you need to apply for a resource consent, you need to:

- » Get the application forms from the council or online from the council's website.

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- » Refer to Schedule 4 of the RMA for a comprehensive list of the information that must be provided with your application. This is available online: www.legislation.govt.nz.
- » Complete an assessment of environmental effects (AEE). Every resource consent application has to have an AEE. Refer to the district or regional plan or council website for a guide about what to include or see *A Guide to Preparing a Basic Assessment of Environmental Effects* available on the Ministry for the Environment's website: www.mfe.govt.nz
- » Identify who might be interested in or affected by the activity and how they might be affected (this might require consultation). Under the RMA, an 'affected person' is a person or organisation who the council thinks will experience an adverse effect from your proposal that is "minor" or "more than minor" (but not "less than minor"). Your council may give you affected party approval forms which, if signed by the people concerned, may allow your application to be assessed on a non-notified basis (see page 12).
- » Talk to the 'affected persons' and seek their written approval if you don't want your application to be 'notified' (see page 11). Alternatively, tell the council why you don't think they're affected or why you can't get their approval.
- » Provide an assessment of what you want to do against the matters set out in Part 2 of the RMA and any relevant provisions of the documents referred to in section 104(1)(b) of the RMA. The documents referred to in section 104(1)(b) include a district or regional plan, a national environmental standard, a national policy statement and a regional policy statement.
- » Get any other information the council has asked for. This is often identified in the council's plan or on the application forms.
- » Consider if you need to employ an expert (resource management professional) to help you prepare the information.

Some councils have checklists you can use to make sure you have all the information the council requires.

Send all the completed forms and relevant information to the council along with the application fee. Some councils prefer you to lodge your application in person, so they can discuss it with you and ensure you have all the relevant information.

Council staff can guide you with what to include in your application – but you might be charged for their time. Make sure you ask about any costs when you make an appointment, or ask for copies of documents.

The key to a good resource consent process is to get things started early, and make sure you provide all the information the council requires.

Prepare a thorough assessment of environmental effects

Every activity has some effect on the environment. These effects can be positive or negative. Redeveloping an old commercial area might produce a more pleasant shopping environment. A new building might cause loss of privacy for its neighbours and/or an increase in traffic.

An assessment of environmental effects (AEE) describes all the environmental effects of a proposed activity, and the ways that any negative effects are to be mitigated (reduced). Every resource consent application must include an AEE.

The amount of information you need to include in the AEE will depend on how significant the environmental effects of your activity will be. Sometimes the district or regional plan will tell you what and how much detail you need. Most councils want you to provide at least:

- » a description of the proposal
- » a description of the site and locality
- » a site plan that is drawn to scale and other plans such as elevations of new buildings
- » a description of the possible environmental effects of the activity
- » a description of ways in which adverse environmental effects can be avoided, remedied or mitigated
- » the names of people affected by the proposal
- » a record of any consultation you've undertaken, including with affected parties (if any)
- » a discussion of any monitoring of environmental effects that might be required.

To help you prepare your AEE, you can:

- » meet with council staff or check for information on the council website to find out what you need to include
- » look at the relevant sections in council plans
- » see *A Guide to Preparing a Basic Assessment of Environmental Effects* available on the Ministry for the Environment's website: www.mfe.govt.nz

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- » think about what changes you could make to the activity if the environmental effects cause too much concern to you, the council, or the people you consult with.

Taking the time to prepare a careful and thorough AEE will save you time and frustration later.

Depending on the scale of the activity, you may wish to get help from an expert to prepare your application.

Remember that any activity needing a resource consent will have some environmental effects. The council won't accept an AEE that says there are no environmental effects from the activity.

Consult the people who might be affected

When deciding whether to grant a resource consent, the council doesn't only think about effects on the natural environment. It also considers how the activity will affect other people's enjoyment of the environment.

Ask yourself: 'What effect will the activity have on neighbours or any other people?' and then talk to the people who might be affected.

Consultation lets you find out what people think about the activity, if they think it will have an effect on them, and whether there are any problems that can be solved. While you are not required by the RMA to consult anyone, it is often in your best interests to do so. Your AEE needs to include a record of any people you've consulted about the activity.

Consult early, and consult well. Early consultation can help you:

- » give people a clear understanding of what you want to do
- » get their support for your application
- » identify the effects and matters that will concern the council
- » make any changes that will solve people's concerns about the activity before lodging your application
- » get your application processed faster
- » save costs in the long run.

For more information see 'An Everyday Guide to the RMA' booklet 2.2 *Consultation for Resource Consent Applicants*.



Stage 2: the council considers your application

When you lodge your application, the council officer(s) dealing with it will check your application. They'll see whether you have paid your application fee and let you know if anything more is needed. Sometimes the council will approve or decline your application right away.

The council can reject the application and return it to you within 10 working days after the application was first lodged if the application is incomplete. The council may also ask you to supply further information once your application has been accepted.

A **working day** means any day except for a weekend day, public holiday, and those days between 20 December and 10 January. If Waitangi Day or Anzac Day falls on a Saturday or a Sunday, it also means the following Monday.

You can refuse to provide the additional information the council has requested, and ask it to proceed with the application on the basis of what you've already supplied. If the council hasn't decided whether to notify the application by this stage, it must then publicly notify the application, continue to process it, perhaps hold hearings, and either grant or refuse it based on the information they already have. When considering whether to provide information, bear in mind that the council is unlikely to grant an application for resource consent if they can't determine the likely effects of the proposal.

Regardless of whether or not any further information is requested or provided, the council may notify your application so it can hear other people's views (see over).

A council officer will most likely prepare a report on your application (called an officer's report). It will usually include recommendations about whether the council should grant a resource consent, and what conditions should be placed on it. You can ask council staff if you can provide informal feedback on the recommended conditions in the council officer's report.

If a council has a conflict of interest over an application, staff will arrange for someone who is not a council officer to consider it. This might happen, for example, when the council owns land next to an application site.

If your application is notified and a hearing is to be held, you have the right to request one or more independent commissioners to hear and decide your

application rather than councillors. Requesting independent commissioners to hear your application is likely to come at an additional cost – council staff should be able to provide details of these costs.

A **hearing** is a public meeting where a committee or a commissioner hears evidence for and against your application, and decides whether to approve it. Generally, only you or anyone who has made a submission is allowed to speak at the hearing. You'll have the chance to comment on an officer's report about your application, and on any submissions that have been made.

Notified applications

The council will decide whether or not to notify your application based on what a national environmental standard or the plan says, and the classification (activity status), scale and effects of the activity. Your application will generally be publicly notified if the council considers that the effects on the environment will be or are likely to be more than minor. The council must publicly notify your application if you request it to do so or if there are other rules or national environmental standards requiring it to be publicly notified. Council may also publicly notify your application if there are 'special circumstances'.

Public notification means that the council advertises the application in the newspaper and calls for written statements (submissions) from the general public. The council also sends copies of your application to all the people it thinks might be affected by the activity.

In some cases, the council may choose limited notification. This occurs when council decides your application does have adverse effects (whether minor or more than minor) for certain affected persons, but you haven't got written approval from all of them. If a person gives written approval, they are no longer considered an 'affected person'. The council will send notice of your application to all affected persons, along with details of how they can make a submission. If subject to limited notification, the application is not advertised in the newspaper.

Anyone can make a submission about a publicly notified application. Submissions on applications subject to limited notification can be made only by the affected persons. Whether notification is public or limited,



the applicant's trade competitors are unable to make submissions unless they are directly affected by an *environmental* effect of a proposed activity and their submission relates to those effects.

People making submissions can suggest conditions for the resource consent.

A hearing

A hearing allows you and anyone who has made a submission to explain their views about the application. The council usually holds a formal hearing about a notified application and can sometimes hold a hearing for a non-notified application.

A **pre-hearing meeting** can be a useful way to try and sort out issues before a hearing in a relatively informal setting. It can also help save time at the hearing itself, or even avoid the need for a hearing altogether. You can suggest to the council that a pre-hearing meeting may be useful.

The council can require or invite people to attend the pre-hearing meeting, including people who have made submissions on your application. The council officer will also be likely to attend. If you are required to attend a pre-hearing meeting, and don't, the council may refuse to process your application. If submitters are required to attend a pre-hearing meeting, and don't, the council can refuse to consider their submission.

Everyone at the hearing will get a copy of a report about what went on at the pre-hearing meeting, including the issues that were agreed on and those that are outstanding. The council must consider this report in determining the application.

As well as arranging a pre-hearing meeting, the council can also refer you and some or all of the submitters to **mediation**. Mediation can help you clarify issues, resolve conflicts and reach agreement without needing to go to a hearing. You can request the council to refer you to mediation.

Non-notified applications

If the council decides not to notify your application, it won't advertise it and won't call for submissions. The council's decision will be based solely on the application. Councils generally don't notify applications when the environmental effects of the activity will be minor, and all affected parties have provided their written approval.



On average, only about five per cent of resource consent applications are publicly or limited notified.

Is my application confidential?

No. Once you've sent your application to the council, it becomes public information. The council might agree to keep some material private if it is commercially sensitive. You need to identify that material clearly. Otherwise, if asked, the council will provide copies of any application to anyone who asks for it.

Do I have to pay?

Yes. Councils almost always charge for processing resource consent applications. If your application needs to be publicly notified or limited notified, you'll probably be charged more because of the extra costs and work involved (such as for hearings). You'll also have to pay for any advertising, printing or copying costs. Costs vary from council to council. You can contact your local council to get an idea of how much a particular consent may cost.

If the council grants the resource consent with monitoring and supervising conditions, you might have to pay an additional charge for those activities. These monitoring costs may also be ongoing.

Discuss costs with the council early on, and ask for a schedule of charges. Regardless of whether your consent is granted or declined, if you paid a deposit, you may still be charged additional costs. If you withdraw your application later on, you may not get your money back and may also be charged for the council's time and costs. You can help keep the costs down by making your application and assessment of environmental effects as thorough as possible.

Councils are required to refund part of your costs if the legal timeframe for processing your application has not been met and the council is at fault. The refund rate is 1 per cent for each day over the statutory timeframe, up to a maximum of 50 per cent of the total fee (unless a local authority has adopted a more generous policy).

How quickly does the council decide?

Councils need to comply with the timeframes set out in the RMA. If you've provided all the necessary information, the council should be able to make a decision on non-notified applications within one month (20 working days), a decision on notified applications within approximately six months (130 working days) and a decision on limited notified applications within approximately four and a half months (100 working days). The council will decide whether to notify your application within 20 working days of receiving it.

There might be a delay in processing your application if, for example:

- » you don't supply all the information the council needs
- » you need other consents for the activity, and the council decides to consider all the applications as a single package
- » special circumstances exist (for example, the activity is large and complex)
- » there's disagreement about the conditions for the resource consent.

If the council asks you to supply further information, the timetable for processing your application comes to a halt. The council can request additional information any number of times. However, the clock can be stopped for only the first request and only if that request is made before the council has made the decision on whether or not the application should be notified. You can help avoid delays by talking to council staff early in the process.

Stage 3: your resource consent is approved or declined

You'll get a letter in the mail telling you whether your application has been approved or declined. The time taken to inform you will depend on whether the application was notified and whether there was a hearing.

If your resource consent is approved

Your resource consent will tell you:

- » what conditions the council has put on the way you may carry out the activity – these conditions will aim to reduce the environmental effects of the activity, and may include administrative and monitoring charges
- » the reasons for the council's decision

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- » whether you or the council need to monitor the environmental effects of the activity (eg, if your resource consent lets you take water from a stream, you may be required to keep records of the amount you take)
- » whether your resource consent has an expiry date, and what it is. Some resource consents last forever, while others have a limited life. You have to apply to the council at least six months before the expiry date of your consent if you want to extend it.

For applications that were notified, you generally have to wait until an appeal period of 15 working days has passed before you start work on the activity. This gives people time to lodge an appeal with the Environment Court if they still oppose your application. The resource consent isn't officially issued until any appeals have been resolved. If there are no appeals, you can start work at the end of the appeals period.

Once a resource consent has been issued, in most cases you need to give effect to the consent within a certain timeframe, or it will lapse and you will need to apply again. Unless otherwise set out in a condition in the resource consent, the consent will lapse after five years. Make sure you understand what applies to your consent.

If your resource consent is declined

If you think the council's decision to decline the consent is unfair, you can formally object to the council or lodge an appeal with the Environment Court. You have to make your objection or appeal in writing within 15 working days of receiving the council's decision. You can also object or appeal if you don't like the conditions on a resource consent.

If you formally object to the council, you may be invited to a meeting of councillors and officers where you can explain your objections. If you appeal to the Environment Court, judges and commissioners must have regard to the decision that was made by the council in declining your application or imposing conditions. The Court will then confirm or overturn the council's decision.

Get professional advice before you lodge an appeal. It can be expensive and time consuming, and you might not win. A lawyer or other resource

management professional should be able to tell you whether your appeal is likely to be successful.

For more information on appeals, see 'An Everyday Guide to the RMA' booklet *6.1 Your Guide to the Environment Court*.

Can the conditions of a resource consent ever change?

The council has the right to review the conditions in your resource consent, but only under certain circumstances. In some cases, a council might also place a specific condition on the consent that will allow it to review the conditions at set times.

You can also apply to the council to change or cancel any condition (except the duration of the consent) at any time. You need to outline your reasons and the changes proposed. The council will be concerned about any additional effects and the effect on affected persons, including whether anyone new is affected (compared with when the consent was initially granted).

Can I transfer the resource consent?

This depends on the type of consent. Any consent to do something on the land (called a land-use consent) is attached to the land and transfers to any new owner when you sell the land.

Other types of consent (eg, a consent to take water) might be able to be transferred with the land to a new owner. Whether this applies depends on what the consent, and sometimes what the plan, says. It's not automatic. If you're not sure about whether your consent can be transferred, ask council staff.

You can also give up (surrender) your resource consent. This means you no longer have the right to do the activity, or the obligation to comply with conditions – and you no longer have to pay any monitoring or supervision charges to the council.

Doing everything properly at the start can save a lot of time, money and possible misunderstandings later on. Treat your application as the start of your project, not an obstacle to be dealt with at the last minute.



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Disclaimer

Although every effort has been made to ensure that this guide is as accurate as possible, the Ministry for the Environment will not be held responsible for any action arising out of its use. This includes the diagram on page 2 which is a very generalised overview of the resource consent process. The diagram is intended to be indicative only and should not be relied upon. Direct reference should be made to the Resource Management Act and further expert advice sought if necessary.

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