

have been complied with. The section 224 certificate must be applied for within 3 years of receiving the section 223 certificate (unless an extension is granted by the local authority).

8 What is the Building Act and why do I need to know about it?

The Building Act 2004 (BA) covers the construction, alteration, demolition and maintenance of new and existing buildings throughout New Zealand. The BA covers how work can be done, who can do it and when it needs to be consented and inspected. It also sets standards and procedures for people involved in building work (including licensing of building practitioners) to ensure buildings are built correctly and safely. Under the BA, the Building Code defines the minimum standards buildings must meet throughout the whole of New Zealand.

9 What is a Building Consent?

A building consent is a formal approval from the applicable local authority that allows a person to carry out building work on a property. "Building work" includes the construction, alteration, demolition or removal of a building. A local authority will issue a building consent only when it is satisfied the proposed building work will meet the requirements of the Building Code as set out in the BA. Once the work is complete pursuant to the consent, then the local authority issues a code of compliance certificate.

10 What Happens if I Do Not Obtain Resource/ Building Consent?

Failing to obtain a resource or building consent can result in prosecution and/or payment of fines and fees.

(a) Resource Management Act

Pursuant to section 339 of the RMA, a natural person

can be prosecuted for not obtaining a resource consent and the Court may impose fines of up to \$300,000 or a term of imprisonment not exceeding two years for more serious violations. In the case of a corporate entity (such as a company), the entity can also be prosecuted for not obtaining a resource consent and the Court may impose a fine of up to \$600,000.

(b) Building Act

If a person constructs, alters, demolishes, or removes a building without the consent of the applicable local authority then that person is liable pursuant to section 40 of the BA on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.

11 Conclusion

We strongly recommend you keep us informed throughout the resource consent application process. This is because we may be able to assist with the wording of certain conditions and/or the prevention of certain conditions from being required by the local authority prior to the consent being issued. If you want to object to certain conditions imposed by the local authority, we are able to assist you with this process.

The risks of prosecution and the costs/fines that may be incurred as a result of not obtaining consents are considerable and could be easily avoidable. Therefore, if you are ever in doubt, we strongly recommend you contact us at as earlier stage as possible.

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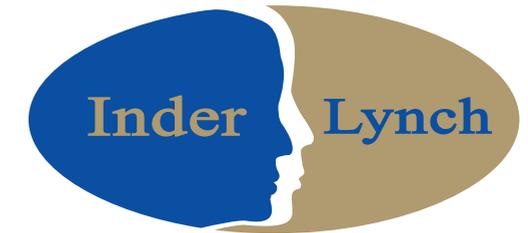


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Resource Management Land Development & Building Work



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Important facts about the Resource Management Act 1991 and the Building Act 2004

1 What is the Resource Management Act?

The Resource Management Act 1991 (RMA) is an Act that protects land and the environment. The RMA promotes management of natural and physical resources such as land, air and water.

2 What is a Resource Consent?

Resource consents are permits issued by the applicable local or territorial authority (such as City or District or Regional Council) for activities that affect the environment. Examples include subdividing land, building a new house, discharging wastewater or stormwater, moving earth or releasing discharges into the air. The consents are usually granted subject to certain conditions. A resource consent provides permission to carry out an activity so long as it complies with any conditions attached to the consent.

There are five different kinds of resource consents:

- **land-use consent;**
- **subdivision consent;**
- **water permit;**
- **discharge permit; and**
- **coastal permit.**

3 What is a District Plan and a Regional Plan?

Each City or District has its own different rules. Those rules are set out in the district plan and a regional plan for the area. The applicable local authority prepares the district plan and the applicable regional council for the area prepares the regional plan. The purpose of those plans is to assist that local authority and regional council in carrying out their functions under the RMA. Copies of the district/regional plans can usually be found on the applicable local authority's website.

4 When do I need to apply for a Resource Consent?

To determine whether your proposed activity requires resource consent, you will need to determine what category the activity you are undertaking falls within as set out in the applicable district/regional plan. Those activities are as follows:

- (a) **Permitted:** - means an activity is allowed without the need for any consent;
- (b) **Controlled:** – means the activity requires a resource consent and the local authority must grant the consent. The consent may be granted subject to certain conditions;
- (c) **Discretionary:** – means the activity requires a resource consent and the local authority has the discretion to refuse consent or grant consent subject to conditions;
- (d) **Non-Complying:** – means the activity requires a resource consent but will only be granted if any adverse environmental effects are no more than 'minor' and the activity is not contrary to the objectives of the relevant plan; and
- (e) **Prohibited:** – means a resource consent will not be granted for the particular activity.

One factor to take into account when applying for a resource consent is the zoning of the property. District plans have various zones such as residential, business, industrial and rural zones. Which zone your property belongs to will determine which rules are applicable to it. For example, being able to run a chicken farm is likely to be a non-complying or a prohibited activity in a residential zone but it may be either a permitted or a discretionary activity in a rural zone (depending on the circumstances and the size of the land).

5 What is a Subdivision?

A subdivision of land includes any of the following:

- **Boundary adjustments;**
- **Creation of any new freehold titles;**
- **Creation of cross-leases; and**
- **Creation of a unit title development such as a block of flats.**

If the land meets the criteria for subdivisions as set out in the district/regional plan, then the local authority will grant the subdivision consent subject to certain conditions. Examples of conditions may include meeting certain requirements for engineering designs, construction of a walkway, footpath or vehicle crossing, obtaining a geo-technical report from a geo-technical engineer, landscaping requirements and payment of the local or territorial authority's costs for monitoring compliance by the consent holder.

There may also be various legal conditions required by the local authority, such as:

- **Easements**
An Easement gives others the right to do something or use a part of your land for a particular purpose e.g. right of way, right to convey water, electricity, gas etc.
- **Consent Notices**
A Consent Notice is registered on a title in order to restrict the landowner from undertaking a particular activity on the land e.g. a prevention from being able to build two dwellings on the land.
- **Encumbrances**

An Encumbrance is a charge registered on the applicable title(s) that protects a right or restricts the land owner from being able to do something with the land without

the prior written consent of the encumbrance holder (also referred to as an "encumbrancee"). For example a local authority may require an encumbrance be registered in their favour to prevent two adjoining parcels of land from being transferred separately. Another example is where the local authority may use an encumbrance to set certain restrictions on how the land is to be used e.g. setting the maximum height of any building structure on the land.

- **Amalgamation of Land**

The local authority may require certain parcels of land owned by the consent holder to be held together in one certificate of title as a condition of the subdivision consent.

- **Certain Parcels of Land becoming Road or Vesting in the Local Authority as Reserve**

The applicable local authority may require a part of the land to be taken for a particular purpose upon the deposit of the subdivision plan. For example, part of the land may be taken for public road or as a reserve pursuant to the Reserves Act 1977.

6 What is a section 223 certificate?

This is a certificate issued by the local authority approving the survey plan which outlines the subdivision. The subdivision plan is prepared by a registered surveyor on behalf of the land owner. The plan sets out everything that needs to be registered on the particular parcels of land being created by the subdivision such as an easement for a right of way or the vesting of a certain parcel of land as road or reserve. The section 223 certificate must be applied for by the land owner within 5 years of the date of the resource consent (unless an extension is granted by the local authority).

7 What is a section 224 certificate?

This is a certificate issued by the applicable local authority confirming that all the conditions of the resource consent