



**Local Government New Zealand**  
*te pūtahi matakokiri*

**Submission to the Ministry for the Environment on  
Discount Regulations - Issues and Options Paper**

**From *Local Government New Zealand***

**5 February 2010**

## Introduction

1. *Local Government New Zealand* thanks the Ministry for the Environment (MfE) for the opportunity to comment on the Discount Regulations Issues and Options Paper (2010), hereafter referred to as “the Discussion Document” and “the Discount Regulation”. This submission outlines a general local government view on the Discussion Document.
2. *Local Government New Zealand* makes this submission on behalf of local authorities of New Zealand. It is the only organisation that can speak on behalf of councils in New Zealand. The submission was prepared following consultation with local authorities. Where possible their various comments and views have been synthesised into this submission. In addition, many councils will choose to make individual submissions. The *Local Government New Zealand* submission in no way derogates from those individual submissions.
3. The final submission was endorsed under delegated authority by:
  - Lawrence Yule, as President of National Council
  - Kerry Prendergast, as the Vice President of the National Council
  - Stephen Cairns, as the Environment portfolio holder of the National Council.

## Overview

4. *Local Government New Zealand* does not support the Discount Regulation as proposed. *Local Government New Zealand* considers that the regulation may be at the expense of “best practice” by resource management practitioners and that it may unfairly penalise smaller local authorities and impose a heavy financial burden on those local authorities dealing with large, complex consents. Alternatively the proposals will result in significant increases to fees for councils who seek to recover all costs from applicants. *Local Government New Zealand* is also concerned that the regulation will set a precedent where financial penalties are imposed on local authorities for non-compliance with statutory timeframes.
5. *Local Government New Zealand* wishes to emphasise that timeliness is only one component of “best practice” and it will be necessary to ensure that timeliness is not achieved at the expense of, for example, consultation with third parties, joint processes, well drafted consent conditions and pre hearing meetings. Local Government New Zealand’s position is that the regulation is not necessary and that “timeliness” can be achieved through other means. *Local Government New Zealand* encourages MfE to work closely with those councils which have difficulties meeting the statutory timeframes.
6. The regulations as proposed are based on the premise that the timeframes contained within the RMA are fair and reasonable. The data collected by the MfE indicates that for the 2007/2008 period, 69% of all resource consents were processed on time. For this period only 52% of notified applications were processed on time. *Local Government New Zealand* considers that notified applications (and limited notified applications) need to be considered differently. This is backed up by many local authorities who commented directly to *Local Government New Zealand* on the Discussion Document. *Local Government New Zealand* considers that the statutory timeframes for notified applications (and

limited notified applications) are inadequate to achieve quality outcomes for these applications. We understand that the need to review these timeframes has been acknowledged and included in the work on Phase II of the RMA review. While this work may confirm the current timeframes, *Local Government New Zealand* considers that given the review of timeliness for notified applications, at this time the discount regulation should not apply to notified applications.

7. *Local Government New Zealand* considers that a “sliding scale” discount approach (issue 2) is the most appropriate as it is the easiest to administer. However the proposed discount for the first week (25%) is too high. *Local Government New Zealand* considers that any impediment to an applicant caused by an application being one week late is minimal.
8. The determination of “fault” will be difficult and potentially result in significant time arguing this point. Detailed examples are required as well as broad principles to be applied in determining fault so that councils and applicants do not rely on the examples. In addition, specific guidance should be prepared to accompany the regulation. Areas where guidance could usefully be provided are discussed later.
9. Clarification on a number of matters is required and *Local Government New Zealand* considers that the RMA should be amended to address some of these matters.
10. MfE should undertake specific monitoring and ensure the base data is collected to enable comparison pre and post the regulation commencing. It does not appear that robust data is available to assess the impact of the proposals.
11. *Local Government New Zealand* considers that any regulation should also apply to the Environmental Protection Authority (EPA). An amendment would be required to the Resource Management Act to enable this. If the regulation does not apply to consents processed by the EPA, a consequence is likely to be that there will be an incentive for an applicant to have their application processed by the local authority.
12. *Local Government New Zealand* is concerned that the opportunity for input into this process has been very constrained by the tight timeframes set by MfE. *Local Government New Zealand* is concerned that the regulation will have far reaching consequences as it has the potential to impose considerable costs onto the general ratepayer. Accordingly, sufficient time should have been provided to enable elected representatives to be briefed and make comment on the paper.
13. Overall, we believe that the proposals are neither robust nor reasonable. The government is passing on costs where the “fault” is primarily in shortfalls with the government legislation, not council practice. The regulation is not consistent with the government’s “better regulation, less regulation” policy. While we do not support the approach or effect of the proposals, this submission provides general comments and then follows the structure of the Ministry’s discussion paper with specific discussion of each issue.

### General Comments

14. It is hoped that councils and MfE will have had time to undertake the costings and projections associated with implementing the proposed regulation. Any discount

payable to a consent holder (usually for private gain) will be paid by the general ratepayer. Some councils will choose to increase application fees or increase the chargeout rate for officer time to cover the shortfall.

15. MfE should also appreciate that most councils have already prepared their 2010-2011 budgets - including fees and charges - for council consideration under the Local Government Act. Councils are required to project the amount which may be payable to applicants (develop a contingent liability fund) under the regulation which is yet to be finalised. Councils will also find it difficult to project timeliness as the RMA has introduced a new statutory framework (eg for further information requests and “stopping the clock”). As a consequence, it will be difficult to develop a contingent liability fund based on last financial year’s performance.
16. *Local Government New Zealand* considers that the proposed discount regime is likely to increase the timeliness for those consents which are non-notified and less complex. These are the consents where a council retains control over the process and comprise the bulk of consents which councils process. *Local Government New Zealand* also comments that many councils now more closely monitor timeframes as a response to the focus of the national government. This has occurred without the discount regime being in place.
17. *Local Government New Zealand* considers, however, that the discount regime will create very real problems for the processing of notified consents where a council either does not have the control over the process or seeks to balance the opportunity for input into the process. Many councils have raised the possibility that a timely consent may be at the expense of ‘best practice’ and a well reasoned decision. The flexibility a council currently has in the organising of a hearing will certainly be lost as an applicant may not agree to extend the timeframes, for example, to enable a later start date for a hearing to allow a submitter to appear.
18. *Local Government New Zealand* considers that the RMA should be amended to allow an applicant to “stop the clock”. An applicant may have many reasons to request the council to stop processing an application and it is a common request. It is not, however, explicit in the RMA. There are some ambiguous processes associated with consent processing which are not covered by the existing provisions and would be most simply dealt with by an applicant requesting the council to “stop the clock”. Some examples are: an applicant wants to consider draft conditions prior to the issue of the consent decision (good practice as it reduces s 357 objections - which are not cost recoverable); an applicant wants to consider alternatives in order to obtain council officer support/avoid notification or written approvals; an applicant wants to negotiate with parties prior to a hearing. All of these are situations which would be best dealt with by “stopping the clock” (at the applicant’s request) rather than extending the timeframes, or going over time.
19. *Local Government New Zealand* also notes that it appears implicit that the use of s 37 is associated with “tardiness” and not processing consents in a timely manner. MfE collects data on a range of matters including the use of s 37. The data collected is under the section on “Timeliness” in its publication<sup>1</sup> where this data is presented. Clarifying in the RMA that an applicant can “stop the clock” at any time (for any reason they so choose) will give councils another tool to achieve

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<sup>1</sup> Ministry for the Environment, Key Facts about Local Authorities and Resource Consents in 2007/2008

best practice and to continue to work with applicants to achieve sound resource management decision making.

20. *Local Government New Zealand* has also received feedback that the discount regulation may result in inefficiencies (and costs for councils). For example, a council may want to retain higher staffing levels in order to cope with peaks in consenting workload. These higher levels create inflationary pressure on rates and may not be fully utilised at times when consent application activity is lower. Some very small councils have commented that they can find it difficult to retain and recruit staff and particular difficulties finding experts as advisers into the consent process.

***Best practice***

21. *Local Government New Zealand* is concerned that the proposed regulation does not encourage/fit with the following:

- *Joint processes:*  
Joint processes do not fit with the “discount environment”. Joint hearings (with more than one local authority), combined hearings (with the Department of Conservation (DOC)), deferral of applications (under s 91) and co-management (with iwi authorities) are all cumbersome processes to administer and this has implications for timeliness under the RMA.
- *Pre-hearing meetings and mediation:*  
Pre-hearing meetings and mediation (provided for in sections 99 and 99A) may push out timeframes and while they represent “good practice” there is no ability to “stop the clock” for a pre-hearing meeting process. It is implicit that an applicant should be able to do so but this becomes even more important if there is a conflict between trying to achieve “best practice” with an applicant’s buy in and achieving statutory timeframes.
- *Quality Hearings Panels:*  
It is possible that commissioners may be selected on the basis of their availability rather than their competencies. This is particularly the case for smaller councils which do not have the same ready access to experts to act as commissioners. Some particular skills sets are better represented than others and it can be difficult to form a hearings panel with the necessary skills. With the penalties proposed, councils are likely to opt for a panel which can be quickly assembled even if it does not have the best skills set. This may lead to a poorer quality decision and the possibility of more litigation.
- *Positive relationships between applicants and councils:*  
It is possible that the regulation will not promote an applicant and councils working together to achieve good decisions under the RMA. The regulations may promote a focus on scrutiny of the timeframes and conflict over detail at the expense of “best practice”. A council manager can currently divert staff resources to a particular application if an applicant requires it to be processed within a specified timeframe (perhaps well inside the required 20 working days for a non-notified). This will not be as easy to achieve as it may create implications for the timeframes associated with other consents (even with the agreement of the other applicants). Flexibility is therefore reduced.

- *Consultation:*  
The policy does not reflect/account for the time needed to consult with iwi. For example, the deed of settlement for the Waikato River provides for joint management agreements. These agreements include processes under the RMA, for example consultation, a hui, a role in hearing an application. This also has implications for the determination of “fault” if the timeframes are exceeded because of requirements outside of the RMA.

A specific example is that the regulation does not cater for consultation required with Maritime NZ. Section 89A of the RMA requires regional councils to circulate some specific types of coastal permits to Maritime NZ and they have a 15 working day period after receiving a copy of the application to provide a report on navigation related matters. Taking into account mail delivery times (2 working days) it leaves regional councils with very little time to take into account any concerns Maritime NZ may have or to explore the concerns further if need be. There is no ability to “stop the clock” to accommodate this process.

- *Finite resources:*  
In cases where applicants are potentially competing for resources eg where a council receives two or more applications for the same (finite) resource there is potentially an issue whereby the first to be deemed “complete” under section 88 has the priority to have its application heard first. The RMA is silent on what happens to the timeframes for the second or other applications but they cannot be heard until the first one has been determined. The statutory processing times for the second one are therefore very likely to be exceeded, particularly if the first one has a s 92 request or is notified and requires a hearing. This matter needs to be addressed either through amendments to the RMA (s 88B) or covered in the regulation.

### *Clarification required*

22. *Local Government New Zealand* considers that the regulation needs to clarify a number of matters:

- *Is the discount automatic?*  
Any regulation needs to be specific as to whether a consent holder needs to apply for a discount or whether it is automatic. The discount should be clear that it does not apply to council consents or for consents for which there is no fee. A consent holder should be able to opt out of applying for/accepting a discount.
- *Applications not subject to the regulation:*  
Any regulation should be explicit that it only applies to resource consents (not to private plan changes or applications for a notice of requirement or a heritage order). Any discount regulation should not apply to an application under s 124 (exercise of a consent while applying for a new consent). There is no impediment to an applicant if timeframes are exceeded on these applications. It is also assumed that the regulation will not apply to applications for a Certificate of Compliance (COC) under section 139 or an Existing Use Certificate (EUC) under section 139A of the RMA.

The regulation should not apply to a (retrospective) consent process where it is offered as an alternative to formal enforcement action for un-consented activities.

- *Applicant agreement:*  
Any regulation needs to ensure that an applicant can agree to a delay and that a discount will not be payable. The regulation should also allow for an alternative discount regime to be negotiated between the consent holder and the local authority. See discussion under Issue 3 (Fault).
- *Hearing dates:*  
Any regulation should clarify that hearing dates are excluded from the statutory timeframes.
- *Commencement of regulations:*  
Any regulation needs to be clear as to when it starts ie the regulation will only apply to applications received after its commencement date. Consideration should be given to implications for the Auckland councils when setting a commencement date as they are likely to need time to consolidate their processes and achieve efficiency.
- *Mediator:*  
*Local Government New Zealand* supports the use of an independent mediator to resolve disputes over an objection but clarification is required as to whether the process is the same as that under s 357 and whether a qualified commissioner will be required.

### ***Guidance required***

23. Guidance will be needed to accompany any Discount Regulation:

- Councils will need to amend their service level agreements for external consultants, independent commissioners and possibly their internal advisers and councillors. A template could usefully be produced for councils.
- Information for councils to include in LTCCPs or annual plans on the regulations.
- A template for councils to send to an applicant with the time record associated with the consent. Consideration needs to be given as to how this could be presented - eg as a table with the key milestones noted eg the date the consent is officially received, the date a s 92 request is sent, the date the consent is issued and the total time taken. The steps will be more complicated for a notified consent. The template should include reference to the use of s 37 through the processing of an application.
- Guidance is required as to keeping accurate file notes and records of emails with an applicant regarding discussions about timeframes. For example, an applicant may agree that the council can “stop the clock” to enable draft conditions of consent to be considered. This agreement should be recorded and also noted on any table as per above.
- Guidance should be given as to what constitutes “special circumstances” for the purposes of consideration under s 37A(4)(b). Caselaw has provided guidance on “special circumstances” in relation to s 94C matters but this is not useful for a consideration of time extensions.

## Detailed Comments

### Issue 1 Method of calculating a discount

24. *Local Government New Zealand* considers that a sliding scale is the best of those presented. The overwhelming response received from councils is that a sliding scale is the best method of calculating a discount. The logic behind a sliding scale is that more inconvenience is caused to a consent holder the longer a consent decision is delayed and it is appropriate that a larger discount reflects the growing inconvenience to a consent holder. *Local Government New Zealand* does consider, however, that:

- A different approach is required for notified and non-notified applications.

*Notified vs non-notified consents:*

25. Most councils consider that a different approach is required for notified and non-notified consents. Some councils state that they have never processed a notified consent within the statutory timeframes. Some councils consider that a distinction should be made between “complex” and “less complex” consents, however *Local Government New Zealand* submits that a simpler distinction can be made ie between notified and non-notified consents. Most parts of a non-notified consent can be readily controllable by the local authority, activities are of a smaller scale and implementation is usually imminent. This contrasts with a notified (and limited notified) application where a local authority does not have the same degree of control due to the greater number of processes and parties to those processes. For example, in organising a hearing the authority must coordinate the availability of commissioners, the availability of the applicant and their witnesses, submitters and their expert witnesses and staff resources. A venue must also be sourced. Where a hearing is *joint* (with another local authority) or *combined* (with the DOC) or subject to joint management processes (with *iwi*) this becomes even more of a logistical challenge.

26. MfE should consider the statutory timeframes applicable to notified and limited notified consents as part of the work on Phase II of the Resource Management Act. That only 52% of notified applications and 57% of limited notified applications were processed on time (2007/2008<sup>2</sup>) in contrast with 70% of non-notified applications illustrates two matters. Firstly that the administrative processes are very different for the two types of applications to produce such different results and secondly that the timeframes may not be appropriate for either type of consent. *Local Government New Zealand* considers that the statutory timeframes for limited notified applications and notified applications particularly need to be reconsidered as part of the work on Phase II of the RMA.

27. The four Southland councils have combined to make a submission to MfE<sup>3</sup> on the proposed discount regulation (a copy was provided to *Local Government New Zealand*) and the example contained in that submission is reproduced here as it clearly illustrates the issues associated with processing notified applications.

28. “The most significant notified application (requiring a joint hearing) processed in the Southland Region in recent times was in relation to the Kaiwera Downs

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<sup>2</sup> Ministry for the Environment, Key Facts about Local Authorities and Resource Consents in 2007/2008

<sup>3</sup> Southland combined submission on proposed Discount Regulation to RMA review

windfarm proposal. It was lodged on 8 November 2007, notified on 17 November 2007, and submissions closed on 17 December 2007. The hearing commenced on 31 March 2008 and concluded on 10 April 2008. The decision was finalised and signed by the Hearing Committee on 30 May 2008 and posted to the applicant and the 65 different persons who lodged submissions to either the Gore District Council land use consent or various Environment Southland Consents. Under our interpretation of processing requirement a total of 124 working days was taken. The applicant agreed to a doubling of the allowable time and therefore no refund would have applied. Indeed, the applicant (TrustPower) was highly complementary at the efficiency in the processing of the consents. However, in the absence of applicant approval or other distinguishing circumstances under MfE criteria 75% of the Council fees claimed would require refunding, totally some \$220,000. A total fee was approximately \$293,000 (including GST) for the Gore District Council and this represented some 80% of its fees for processing resource consents that financial year. It should also be noted that this included:

- \$8,000 for the cost of the hearing committee visiting another wind farm site in Palmerston North
- \$50,000 was paid to hearing commissioners / hearing panel for their time and travel expenses
- \$39,000 was time associated with processing the consent, including notification, acknowledging submissions, admin support at the hearing, service of notices and the decision and photocopying of the same
- \$100,000 was paid to consultants advising the Council and the hearing committee (planner, landscape architect, roading engineer and acoustics engineer)
- \$30,000 related costs paid prior to the lodging of the consent in time and disbursements incurred prior to the lodging of the consent, as agreed with the applicant (in order to facilitate processing following formal lodging). This including peer review of drafts of the application and comments that would have otherwise resulted in section 92 requests.

The issue we ask that you consider in the context of this example, is whether the 70 working days (even with a doubling of time) is appropriate for major consents processed locally (and indeed all notified consents) and whether it is fair and reasonable to include all of these items in the discount policy.”

29. *Local Government New Zealand* considers that if implemented, a “sliding scale” is the most appropriate. However, until the statutory timeframes for notified and limited notified applications, have been further considered, any Discount Regulation should not apply to these consents.
30. Many notified applications, being of a large scale, do not have a project start date that is reliant on the consent being issued exactly within statutory timeframes. In some cases an activity may only commence three months or a year after a decision is issued.
31. A general comment is made regarding the logic behind a “sliding scale” which will result in penalties not being applied evenly. A notified application which is two days late will receive a much greater discount than a non-notified application

(dollar amount). Further, notified applications may subsequently go before the Environment Court and then be subject to the greatest delays with regard to the statutory process.

### *Issue 2 Value of a discount*

32. *Local Government New Zealand* considers that any regulation needs to be easy to use and to administer and that one scale should be applied to all non-notified consents. *Local Government New Zealand* supports the concept of a cap on the refund payable but considers that the 80% is too high. The cap needs to acknowledge that there is an administrative component associated with any application for resource consent but the cap should be reduced. The applicant still retains the value of the consent when it is issued, even if it is “late”.
33. At such a time as the regulation may apply to notified applications (eg after the timeframes for notified applications have been reconsidered) any cap for notified applications should be considerably less than the 80% proposed. A notified application may accrue total fees of between \$5,000 and \$1,000,000. An 80% cap would have serious consequences for the cash flow of and financial position of a consent authority, particularly a small one. A consent holder could potentially only have to pay \$200,000 instead of the \$1,000,000 accrued through a large, complex consent. Such complex applications are likely to involve outside experts and hearings commissioners which would then be paid by the council rather than by the consent holder. Yet as noted above, for various reasons, an applicant usually has less expectation that statutory timeframes will be strictly met. A consent holder always has the uncertainty that their consent may be appealed to the Environment Court. This is a further reason why a consent holder will be more flexible about timeframes and when the consent will be able to be exercised
34. Councils will be required to budget for these discounts through the annual plan process and it will be very difficult to project the amounts which may be involved.
35. The figures as proposed are “front loaded” with 25% building in 5% increments over the first five days. *Local Government New Zealand* questions the amount of inconvenience associated with a consent which is one-three days late. The more serious impacts are associated with longer delays where an applicant may experience holding costs, contractors may be waiting to start work, a business may be waiting to open.
36. Most councils who responded to our request for feedback consider that the value of the discount proposed is too high. Some councils suggest a few days grace with no discount would better reflect the degree of inconvenience to an applicant. *Local Government New Zealand* agrees with a reduction in the amount of discount payable. Some councils suggested that the penalty should be applied in increments of a week rather than daily. *Local Government New Zealand* sees merit in this approach. If a consent is already over time then if the discount payable is the same for the entire week then an officer will not rush the decision in haste.
37. *Local Government New Zealand* considers the value (cap) of the discount should be lowered and that it also needs to have a cut off below which no discount is payable because the cost (officer time) of processing the discount is greater than the cost of the discount.

38. The proposed discount regulation (without modification) could result in a significant cost to ratepayers or to other projects undertaken by the council or a significant increase in charges to applicants. This is based on the assumption that performance remains similar to the current levels as reported in the MfE survey<sup>4</sup>. Even if there is an improvement in performance, it is the notified applications (as discussed above) which will be problematic and which would have potentially considerable discounts payable.
39. The regulation needs to be clear that it would only apply to processing costs (and not to development contributions, bonds etc). It is assumed that the regulation as proposed would include time such as expert advisers and hearings commissioners. While *Local Government New Zealand* considers it would be appropriate to cover expert adviser input in any discount regulation as they essentially perform a processing role in the same way as a council officer, we question if the cost of hearings commissioners should be included in the discount payable to a consent holder. An applicant will always budget for the cost of a resource consent hearing (if notified).
40. As councils' performance has not been monitored under the amended legislation, *Local Government New Zealand* submits it would be appropriate to introduce any regulation incrementally. The reason for this is that amendments have significantly changed s 92 provisions and therefore councils' practice. The first round of data collected after a full year of operating under the new provisions should provide an indicator of councils' performance. We are unable to accurately assess the costs of the Discount Regulation because the data is not yet available.

### ***Issue 3 How is local authority 'fault' determined***

41. *Local Government New Zealand* considers that the concept of how local authority "fault" is determined requires more consideration. As currently considered, *Local Government New Zealand* believes that there is a real risk of creating undesirable outcomes and this is echoed by councils. In the earlier section *General Comments* we have listed a number of examples where the discount policy does not fit with the specified processes. We have also listed matters at paragraph 22 which require clarification and made some suggestions where we consider the RMA should be reformed as part of Phase II work. These are all tied up with "fault" because they are process issues which need to be addressed and will create very real issues in the fair/logical application of the discount regulation.
42. Most councils support the concept of providing many examples about how to attribute fault. The broad principles, however, in determining fault need to be very clear and unambiguous. The examples will be useful only to illustrate how to determine fault.
43. However, in the first instance, *Local Government New Zealand* considers that the regulation should not apply to some processes. These processes should either be excluded under s88B timeframes through an amendment to the Act or excluded through regulation. Another alternative (not favoured by *Local Government New Zealand* because it is less certain) is that they should be included in examples and discussion of fault.
44. The discussion paper refers to instances where delay is incurred as a result of input from external parties (eg the NZ Transport Agency (NZTA) or NZ Historic

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<sup>4</sup> Ministry for the Environment, Key Facts about Local Authorities and Resource Consents in 2007/2008

Places Trust (NZHPT)). The paper states that local authorities have the opportunity of requiring this information before “receiving” this application under s 88. This is not correct. The RMA does not impose any obligation on an applicant to consult persons who may be affected by the proposal (or who may have an interest in the proposal). A consent authority may choose to request that an applicant consults external parties but there is no legal obligation to do so.

45. A consent authority may, for example, consider that the input of NZTA is desirable because an application may potentially affect the operation of the state highway network. The district plan may provide for this application to be processed under non-notification provisions. While the consent authority can choose to consult NZTA over this application, there is no onus on the applicant to do so even if requested by the consent authority. Although it is “best practice”, there is no mandate contained in the legislation.
46. Section 89A of the RMA requires regional councils to circulate some specific types of coastal permits to Maritime NZ and they have a 15 working day period after receiving a copy of the application to provide a report on navigation related matters. Taking into account mail delivery times (two working days) it leaves regional councils with very little time to take into account any concerns Maritime NZ may have or to explore the concerns further if need be. How would fault be attributed in this case? The Act provides for the regional council to circulate the consent not for the applicant to consult with Maritime NZ before lodging the application.
47. The combined Southland submission<sup>5</sup> makes the point that the proposed solutions outlined in the discussion document demonstrate the risks inherent in having such (fault) criteria. *“Where delay is a result of external input, it is recommended that councils should not receive the application until the info is received, and once the application is received the council would then be ‘at fault’ for any delays. However, I know from discussions with surveyors and consultants that they really value our approach of receiving and starting work on an application without waiting for such input. An example is where Land Information NZ (LINZ) approval is required for amalgamation conditions on a subdivision. Under our current approach we send a request to LINZ and start processing the application immediately. In most cases the LINZ approval comes in while we are still working on other aspects of processing, and their response is then incorporated into the final decision. In this way, we process most subdivision consents in 3-4 weeks. However, if we took the approach recommended in the report, we would not receive the application until the LINZ approval is provided. This would give us slightly better technical compliance with the timeframes (and no risk of refunds), but from the applicants’ point of view it would mean consents generally taking 1-2 weeks longer before they get a decision.”*
48. *Local Government New Zealand* recommends the inclusion of many examples to help to determine “fault” within the regulation and guidance material to accompany the regulation if they commence. The discount set by regulation should only apply when the local authority only is at fault. Where both parties are at fault, discretion is required and a process for this should be embodied in the regulation.
49. The examples given in the Discussion Document about “fault” are some of the easier cases. Here are additional examples:

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<sup>5</sup> Southland combined submission on proposed Discount Regulation to RMA review

- Where an applicant asks for a commissioner to determine an application and this takes time to organise a hearing this is not local authority “fault”.
  - For a Restricted Coastal Activity hearing if DOC delays in appointing a panel member then this is not local authority “fault”.
  - If a local authority consults iwi over an application and iwi response is not timely this is not local authority “fault”. The time period of consultation with iwi could be excluded from the timeframes to which the discount regulation applies.
  - If an applicant changes their application and this affects the timeframes this is not local authority “fault”.
  - When an applicant does not provide information requested under section 92 and a council then notifies the application (section 95) any delays are not the “fault” of the local authority eg the application may already be on day seven when the section 92 request is made so when the non-provision of information requires notification it would not be possible for the council to meet the 10 day timeframe.
  - Timeframes related to internal advisers to provide comments or for consultants to process an application is local authority “fault”.
  - Delays associated with joint hearings and combined hearings should not be subject to the regulations. We consider that the alignment of administrative processes should be encouraged by excluding them from a calculation of timeframes for a discount.
  - Where an applicant requests an independent commissioner to determine an application and this takes time to organise the hearing due to availability this is not local authority “fault”.
  - If commissioners cause delays outside of a hearing is this local authority “fault”?
  - Is a delay associated with appointing an appropriate commissioner local authority “fault”? This may be of specific concern to smaller councils who, for example may not have the same pool of expertise and have to look outside of their region for a suitable commissioner.
  - Consultation with external advisers eg NZTA, NZHPT, LINZ, Maritime NZ (some of these processes required by statute) is not the “fault” of the council.
50. S 36(7) provides that where a charge of a kind referred to in (1) is payable to a local authority, the local authority need not perform the action to which the charge relates until the charge has been paid to in full. This section does not bestow a corresponding ability to “stop the clock” until the fee is paid. Such a scenario, which could cause a timeframe to “blow out”, should be included in the examples of where “fault” lies. Phase II of reforms to the RMA could consider this matter.
51. The regulation needs to ensure that an applicant can agree to a delay and that a discount will not be payable. An example is when an applicant is consulted over setting hearing dates in order to find a time that best suits all parties involved. Often, this can lead to delays due to the availability of key parties or logistical requirements. There should be an obligation that when an applicant objects to the timing (or advises that they would seek a refund) at the time that the decision about hearing dates is made, a council can make an informed decision. A possible guideline would be that *“where an applicant is advised of, or consulted*

on, a decision that will affect the processing time, any delays that result from that decision are 'no fault' unless the applicant advises at the time that they object to the delay". This will allow councils to generally follow best practice in terms of the decision-making process, and will clarify where the responsibility lies when best practice is sacrificed in order to meet timeframes.

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

52. *Local Government New Zealand* has received overwhelming feedback that any discount be applied to the sum of all timeframes associated with the processing of a consent. *Local Government New Zealand* submits that this is most appropriate as it is the simplest to administer and the applicant will be concerned about the total time taken rather than individual components.
53. Most councils consider that the timeframe should commence at the first full day after receiving an application. *Local Government New Zealand* supports this view. This will be a simple method of calculating timeframes and will not create disputes over part days etc.
54. Section 114 states that the timeframe ends when the notice is issued (not granted as suggested in the paper). Any regulation needs to reflect the provisions of the Act.
55. It is assumed that part days at the end of the process would be treated as a full day eg a consent issued at midday on 21 would be considered to be one full day late rather than half a day late. *Local Government New Zealand* considers that this will be the simplest to administer.

***Applicant's ability to stop the clock***

56. As stated earlier, *Local Government New Zealand* considers that it would be appropriate to clarify that an applicant can request at any time that the "clock be stopped". This can encourage "best practice" and allows, for example, an applicant to review draft conditions of consent. A council will be unwilling to allow a review of draft consent conditions prior to issue if it may result in a discount being payable. Councils have different practices around this. Some will apply s 37, others will "stop the clock" (with the applicant's agreement) and others will aim to have conditions reviewed within the statutory timeframes.

## Conclusion

In conclusion, *Local Government New Zealand* considers that:

- The discount regulation should **not** be implemented.
- The discount regulation will be at odds with “best practice” and sound resource management practice.
- The regulation should **not** apply to notified and limited notified consents at this time as the timeframes associated with these processes are reasonable and need to be reconsidered.
- Any regulation needs to be easy to use and to administer and one scale should be applied to all non-notified consents.
- The cap proposed is too high.
- A sliding scale is the best option of those proposed. The value of the discount proposed is too great.
- The regulation does not fit well with a number of processes under the RMA namely joint and combined processes and those requiring external input.
- The RMA should be amended to address the matters specified in this submission.
- Certain activities need to be excluded from timeframes subject to any discount as identified in this submission.