

Practice and Guidance Note

Subdivision Resource Consents - Consideration of Lapse Date

1. [Introduction](#)
2. [The Subdivision Development Cycle](#)
3. [Legislative Background: Subdivision Resource Consents and 'Lapsing'](#)
4. [Caselaw Background](#)
5. [Planners: Lapsing Considerations](#)
6. [Planners: Lapsing Period - Practice](#)
7. [Summary](#)

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1 Introduction

The [Resource Management Act 1991](#) (RMA) contains provisions in consideration of a finite lifetime for resource consents. This practice and guidance note identifies the relevant legislative and caselaw background for the consideration of lapse dates, having specific regard to subdivision resource consents. The practice and guidance note also addresses matters to be considered when assessing the suitability of any lapse date for subdivision resource consents and how that is to be addressed within the resource consent decision.

2 The Subdivision Development Cycle

The subdivision process provides the underpinning for individual property rights across New Zealand. Subdivision has a specific meaning as set out in [s218](#) of the RMA.

When designing and project managing subdivision developments, an applicant must maintain a watch on economic cycles as well as the costs and timeliness associated with the provision of any necessary infrastructure.

For large scale green-field and brown-field subdivisions, an applicant may determine that the 'staging' of the subdivision across a number of individual plans will enable them to recoup costs associated with the development earlier, often enabling subsequent stages to be financed and completed. A 'staged' subdivision resource consent is one that is to be completed in stages i.e. not as a single survey plan. Each individual subdivision 'stage' must stand on its own and relate directly to the other stages coming before and/or afterward. Because of the scale of these staged developments, it may be necessary to consider timelines extending beyond 10 years. The processing of staged subdivision resource consents and the subsequent control of developments under those resource consents was tested in *Wilbow Corp. (NZ) Ltd v North Shore City Council* (2001) 7 ELRNZ 174, [2002] 1 NZLR 114, [2002] NZRMA 32 (see 4.2 below)

The provision of sufficient time within a resource consent to enable completion of a subdivision development can therefore be essential to determining whether a development is ultimately successful.

3 Legislative Background: Subdivision Resource Consents and ‘Lapsing’

3.1 What is the ‘Lapse Date’ of a Resource Consent?

[Section 125\(1\)](#) of the RMA states that the default position for the lapsing of all resource consents is 5 years from the commencement of the resource consent (except for aquaculture activities in the coastal marine area, set at 3 years). It also states that the lapsing period can be any date specified in the consent, providing the applicant and Council with flexibility on that date.

[Section 125\(1A\)](#) subsequently states that a consent does not lapse if it is either given effect to, or an application is granted to an extension of that lapse period.

3.2 When is a Subdivision Resource Consent given effect to?

[Section 125\(2\)](#) states that a subdivision resource consent is given effect to when a survey plan in respect of the subdivision has been submitted to Council under [s223](#).

Note: The key date is the date of submission of the survey plan, not the date of its approval.

3.3 When does a Subdivision Resource Consent lapse?

While [s125\(2\)](#) states that the submission of an application for a [s223](#) survey plan approval gives effect to the subdivision resource consent, [s224\(h\)](#) places a limitation of 3 years on that [s223](#) certification. This is recognised in [s125\(2\)](#), which states that a subdivision consent shall lapse if the survey plan is not deposited in accordance with [s224](#).

There is therefore potential for a standard 5-year lapse period for the subdivision resource consent (without [s125](#) extension) to combine with a 3-year limitation on the [s223](#), for a combined total of 8 years to enable an applicant to complete the subdivision process.

4 Caselaw Background

4.1 *Ruck v Horowhenua District Council* [2013] NZEnvC175

The *Ruck*¹ decision provides very clear guidance in respect to subdivision resource consents and the interaction of ss125, 223 & s224(h) as noted previously. The key components of *Ruck* in respect to time periods are:

- It is appropriate to take a purposive approach to the provisions relating to the implementation of subdivision consents. Parliament clearly intends that consent holders should be allowed a generous time period before consents lapse.
- In the case of subdivision consents multiple iterations of s223 survey plans can be submitted to a Council at any time prior to the specified lapse date for the subdivision consent. In most cases (except those where the specified lapse period for the consent is more or less than the standard 5 years) that will mean that up to 8 years might pass before it is too late for the s224(c) process to be completed (or potentially longer if the lapse date is extended under s125).
- There is no ability for a Council to use s37 of the RMA to increase the time period (of three years) between approval of a survey plan (pursuant to s223) and deposit of the plan, as the function of depositing a plan (after certification by the Council under s224(c)) lies with the Registrar-General of Land and not with Council.

4.2 *Wilbow Corp. (NZ) Ltd v North Shore City Council* (2001) 7 ELRNZ 174, [2002] 1 NZLR 114, [2002] NZRMA 32

In *Wilbow*², the High Court confirmed Council's position in relation to the way staged subdivision resource consents are currently addressed. The decision identifies the fundamental steps of the subdivision process, addressing the Council's responsibilities at each step. In particular, the decision highlights the importance of addressing each stage of a subdivision consent as part of the whole.

Balancing the idea of a lapse period beyond 5 years, thought needs to be given to the overarching statutory purpose of the lapsing regime in s125 of the RMA. That is, resource consents should not subsist for lengthy periods of time without being put into effect, because the context can change significantly in that time. This section of the RMA prevents historical unimplemented resource consents from hindering a potential change in context, or policy direction for an area.

¹ *Ruck v Horowhenua District Council* [2013] NZEnvC175

² *Wilbow Corp. (NZ) Ltd v North Shore City Council* (2001) 7 ELRNZ 174, [2002] 1 NZLR 114, [2002] NZRMA 32

4.3 *Sidwell v Thames-Coromandel District Council* [2020] NZEnvC 124

In *Sidwell*³, the Environment Court considered an application for a declaration regarding the lapsing of a subdivision consent and the relationship between s125 and ss37 and 37A.

The necessary prerequisites for avoiding lapse had not been satisfied in that no survey plan was submitted for s223 approval, and no lapse extension was sought or granted. Notwithstanding, the applicant considered that the council could utilise the provisions at s125 and ss37 and 37A to extend the lapse period, even after the expiry of the lapse period.

In declining the application, the Court confirmed that s125 does not enable the revival of a consent that has lapsed. Therefore, in conclusion, a new s11 subdivision consent would be necessary.

5 Planners: Lapsing Considerations

For all resource consent applications, the consideration of a lapse date is one matter to be addressed in the decision-making process. With subdivision resource consents, and because of the limitations imposed by s125(2) and s224(h), it is important for a planner to turn their mind to whether the default 5 years provides sufficient time to enable the development to complete. While s125 does provide an opportunity for extension post-decision and prior to the consent lapsing, clarity at the beginning of the subdivision development cycle provides greater certainty for the applicant and reduces the opportunity for additional time and costs associated with a subsequent application process.

5.1 Is a 5-year lapse period sufficient for subdivision resource consents?

As a rule of thumb, the default 5 years with additional 3 years provided by s223 and s224(h) (8 years total) is suitable for most subdivision consents to complete.

For complex and staged subdivision resource consents however, additional care is required:

- Where a subdivision has been approved in stages, the s223 survey plan for all stages must be approved within the lapse period that has been provided for in the consent. Therefore, turn your mind to the following:

³ *Sidwell v Thames-Coromandel District Council* [2020] NZEnvC 124

- Discuss with the applicant their expectation of the time necessary to complete the full development. Do they anticipate that the development can be completed within the 8-year total default period?
- Will additional time be necessary? Why? What effects will an extended lapse period have, if any? What risks are there that a longer lapse date could impact on future changes in policy direction in this area (a discussion with the policy team may be needed)? Are there any statutory or non-statutory documents that guide the future of this area and will the development be consistent with those?
- The lapse period cannot be open-ended. Timeframes in excess of 10 years should be actively discouraged, as this goes to the lifetime of a District Plan.

Note: Timeframe extensions do remain available to the consent holder post-decision through s125, providing opportunity for further assessment at an appropriate time.

Such an assessment must take into account the progress or effort made towards giving effect to the consent, any approval from persons who may be adversely affected by the granting of an extension, and the effect of the extension on the policies and objectives of any plan or proposed plan.

6 Planners: Lapsing Period - Practice

While the consideration of an appropriate lapse period is a component of all resource consent decision making, with staged or complex subdivisions care needs to be taken to ensure the lapse period covers the intended development timeframe:

1. The consent will default to a 5-year lapse period should there be no lapse date consideration.
2. In the event an alternative lapse date is considered appropriate, this will need to be justified in writing within the reasons for the decision.

7 Summary

While a lapse date default is identified within the RMA, this is not always appropriate for subdivision resource consents. This practice and guidance note provides the planner with the tools to consider whether the default or an alternative lapse date is suitable and how that must be addressed in the decision-making process.