

# Practice and Guidance note

## Working Day Count Dispute Process

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# 1 Introduction

## Process to resolve working day count disputes

This document outlines the process Auckland Council will follow to resolve disputes relating to the count council has undertaken of the number of working days taken to process resource consent applications and applications made to change or cancel conditions under section 127 of the [Resource Management Act 1991 \(RMA\)](#).

# 2 Background

## 2.1 Working Day Time Limits

The RMA sets statutory time limits for local authorities to process resource consent applications and applications made to change or cancel conditions under section 127 and details how to determine whether these time limits have been met. The schedule to the [Resource Management \(Discount on Administrative Charges\) Regulations 2010 \(the 2010 Regulations\)](#) (as shown in the below table) sets out the time limit for the various consent processes:

Was the application notified?	Was a hearing held?	Number of working days
Yes—public notification	Yes	130
	No	60
Yes—limited notification	Yes	100
	No	60
No	Yes	50
	No	20

## 2.2 Discount on Administrative Charges

The 2010 Regulations automatically apply to all applications not processed in the time limit applicable under the RMA. Auckland Council has not adopted its own discount policy under section 36AA(3). Therefore, the council follows the discount requirements set out within section 36AA(1)(a):

“(1) A local authority must provide a discount on an administrative charge imposed under section 36 as follows:

(a) a local authority that has not adopted a policy under subsection (3) must provide a discount if regulations under section 360(1)(hj) require the local authority to provide a discount.”

The 2010 Regulations are the current regulations under section 360(1)(hj). The 2010 Regulations capture publicly notified, limited notified and non-notified applications, applications lodged under section 124 (exercise of a resource consent while applying for a new consent) and section 127 (change or cancellation of conditions), to directly referred applications under sections 87D-87I, and to applications that are called in by the Minister of the Environment under section 144.

Under section 36AA Auckland Council must provide a discount if the relevant timeframes that they are responsible for meeting are exceeded. The applicant does not need to make an application to the council for this discount to be provided.

A discount of 1% of the total administrative charges (including fixed charges and additional charges) will be applied for every working day on which an application remains unprocessed beyond the statutory timeframes, up to a maximum of 50%.

### **3 Disputing Working Day Timeframes**

Disputes regarding a discount, or the amount of a discount, cannot be the subject of an objection under sections 357, 357A or 357B or the RMA. These sections specify what decisions can be subject to an objection and the 2010 Regulations are not included in this list.

However, it is the council's practice to reconsider the calculation of working days and the application of the 2010 Regulations if the applicant disagrees with either the decision on whether a discount applies, or the quantum of the discount, (i.e. whether the application was processed within the RMA timeframes, or if it was late, by how many working days).

When the applicant is sent the final invoice for the processing of the application, it will include the application of any discount applicable under the 2010 Regulations. If the applicant wishes to dispute the working day count, they will be provided with a copy of the form attached at [Appendix A](#) to this Practice and Guidance note and required to set out what they believe has been miscalculated and why in writing. The applicant should also attach any evidence in support of their claim to the form.

This completed form and its attachments should be provided with any objection to additional charges under section 357B of the RMA if both the additional charges and the application of the regulations are challenged.

### 3.1 Auckland Council's Process for Resolving Disputes

In most situations it will not be necessary to hold a hearing for the dispute. The first step the council will take after the applicant provides their completed form will be for the relevant Team Leader to undertake a review of the working day count and any discount applied to the final invoice. This review will be in conjunction with the processing planner and in consultation with a Principal Specialist-Planning. It is also recommended that the Ministry for the Environment guidance on this matter "[Resource Management \(Discount on Administrative Charges\) Regulations 2010 Implementation Guidance](#)" is referred to when undertaking the review. The Team Leader will then advise the applicant of the outcome of the review.

Issues likely to require reconsideration in a dispute are:

- whether the correct working days are described as the 'working days taken'
- whether any days excluded had been excluded for valid reasons.
- what the applicable timeframe in the Schedule is
- whether, based on those two factors, timeframes have been exceeded and a discount applies.

Decisions will be notified to the applicant in writing and include the reasons for the decision. If the applicant has not given specific reasons for disputing the calculation applied to the final invoice, it will be sufficient for the Team Leader to note that they have reassessed the working day calculation applied to the final invoice was correct. The council has developed a form letter for decisions on disputes, which is provided as [Appendix B](#) to this Practice and Guidance note.

If the applicant disagrees with the outcome of the Team Leader review, the applicant may request that the matter be considered by an independent planning commissioner. This consideration will be carried out on the papers, unless the commissioner carrying out that review determines a hearing would assist the process.

If the working day dispute has been submitted in conjunction with a section 357B fee objection and a hearing is necessary to consider the section 357B fee objection, the working day count dispute will also be considered by the Hearings Panel.

Whether the reconsideration of the working day count is undertaken by a Team Leader, an independent planning commissioner on the papers or by a hearings panel, their decision on the matter cannot be appealed to the Environment Court. As the review and reconsideration processes set out above are not an objection under sections section 357 or section 357A(1)(a), (d), (f), or (g), the appeal right set out in section 358 does not apply. Instead, if the applicant still disputes the council's findings, they may contact the [Office of the Ombudsmen](#) and request an investigation. The Office of the Ombudsmen will usually only consider complaints if the applicant has already attempted to resolve the issue.

## 4 Relevant Documents and forms

For further information please refer to [Resource Management \(Discount on Administrative Charges\) Regulations 2020 Implementation Guidance](#) by Ministry for the Environment.

For more information on the RMA related to Working Day timeframes see the following sections of the Act on the New Zealand Legislation Website

[Section 36 of the RMA](#)

[Section 37 of the RMA](#)

[Section 88 of the RMA](#)

[Section 127 of the RMA](#)

Note: Appendix A and B may be updated from time to time and the current version should be accessed via the [Resource Consents Index](#) and the [Auckland Design Manual](#).

## Appendix A

# Request for Auckland Council to review working day count and the associated discount calculation



To: Auckland Council  
Private Bag 92300  
Auckland 1142

Application number:	
Full name:	
Address to which application relates:	
Address for Service (if different from address above):	
Date notice of decision on application received:	
Invoice number:	
Was a discount given?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Amount of discount given (if applicable):	\$                      %
What part of the discount calculation do you think is incorrect?	
Why do you think the calculation is incorrect?	<b>Please include any relevant dates and attach to this form any relevant additional information</b>

I hereby certify that, to the best of my knowledge and belief, the information given in this form is true and correct.

Signature of the applicant or person authorised to sign on their behalf:	
Date:	

## Appendix B: Auckland Council's decision letter for working day discount dispute (RC 6.34.01)



Click or tap to enter a date.

### Attention:

Always address to agent if indicated as first point of contact on application form, unless the applicant has requested they now be the point of contact

Dear Name

### Review of discount on administrative charges for application

Application number(s):

Applicant:

Address:

Proposed activity(s):

As requested, a review has been undertaken of the discount calculated under the [Resource Management \(Discount on Administrative Charges\) Regulations 2010](#) (referred to from now on as the discount regulations) for the application referenced above.

The discount was reviewed by inspecting the file for the application, reviewing all the dates used and reconsidering the calculation of working days. The review [upheld the original discount OR has determined that an additional discount is due \[delete one\]](#).

EITHER

The total refund due is [\[insert dollar amount\]](#). Please provide me with the bank account details you would like the refund deposited within.

OR

The total additional fees have been adjusted and are now [\[insert dollar amount\]](#) which is the result of the time taken to complete the processing of your application by Council staff after the deduction of the deposit paid and the discount owing to you under the discount regulations. Payment of this invoice is due immediately unless an objection to additional charges has also been lodged under section 357B of the Resource Management Act 1991.

KEEP TEXT BELOW

If you are still dissatisfied with the decision reached as to the discount calculated under the discount regulations [please contact me to discuss further steps council may take to address your concern OR you may wish to contact the Office of the Ombudsman \[delete the option not applicable\]](#). If you have any queries, please contact me on [phone number](#) and quote the application number above.

Yours sincerely,

**Name**  
**Position**