

# Practice and Guidance Note

## Condition 1 – Activity in accordance

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# 1 Introduction

Sections 108-108AA, 127-133A and 220-221 of the Resource Management Act 1991 (**the RMA**) deal with the inclusion, change, cancellation or review of resource consent conditions.

Good resource consent conditions are fundamental to ensuring actual or potential adverse environmental effects of an activity are appropriately avoided, remedied or mitigated. It is critical that resource consent conditions are drafted carefully to ensure:

- they are lawful
- compliance with the conditions will result in any adverse effects being limited to the extent anticipated by the decision-maker
- the consent holder and other parties understand exactly what the condition requires, and
- monitoring of the conditions can be carried out efficiently and if necessary, enforcement can be undertaken.

Resource consent decisions made by the council include a standard 'condition 1', which describes what the consent must be "in accordance with", including approved plans and documents.

Condition 1 is essential as it clarifies exactly what is authorised, where the activity is located, and includes reference to all approved plans and documents.

The council's practice is to record all approved plans and documents in our computer system. This includes electronically stamping the approved plans and providing a copy to the consent holder when the resource consent is issued.

This accurate record-keeping means that for some application types, a shortened version of condition 1 can be used that does not individually list all approved plans.

The council has developed a way to identify applications where a shorter version of condition 1 is appropriate using the categories for a monitoring fee deposit. This Practice and Guidance Note (**PGN**) explains the principles that the council will follow when determining what information needs to be listed in condition 1, and how condition 1 will be modified following an approved s127 variation.

## 2 Aligning Condition 1 to the monitoring categories

There are four different categories for determining the level of monitoring deposit required for applications for consent:

- Low
- Medium
- High
- Other

The categories correlate with the level of monitoring that the consent will require. Where a low or medium level of monitoring is required, each approved plan does not have to be listed individually in condition 1. Where a high level of monitoring is required, it is appropriate to record each approved plan and document individually. This is to ensure that the applicant can effectively implement the consent and the council can effectively carry out its monitoring and enforcement obligations. It provides certainty to all parties involved in consents that require a high level of monitoring.

The monitoring categories are used as a guide to assist council planners in determining whether a shorter or longer format condition 1 is required.

### 2.1 Shorter format condition 1

Low and medium category consents require a low to medium level of monitoring only.

As an example:

- Minor changes to heritage or special character buildings
- Low scale commercial activity
- Residential development (including associated subdivision)
- Most applications processed by Streamline
- Construction – Residential and small commercial (sediment control, management plan to approve & monitor, construction, traffic, landscaping, noise, dust etc.)
- Removal of, or works on, a notable tree, or a tree in a Significant Ecological Area (SEA) or riparian
- Earthworks up to 1000m<sup>2</sup> or 100m<sup>3</sup>, or where located proximate to streams.

For these consent types, condition 1 does not need to individually record the approved plans, provided that the final and correct versions are all stamped and uploaded to the council system as one combined PDF file at the time the consent is issued. The plans must also be sent to the applicant at this time either as an attachment to the decision email, or as a OneDrive link.

Only approved plans that the consent(s) must be undertaken in accordance with should be included in this combined set. Any extraneous material should be excluded, e.g., standard engineering details where they relate to future Engineering Plan Approvals, shading diagrams, and structural details.

If an index cover page has been provided by the applicant with the plans, the index either needs to be checked to ensure it is accurate and up to date prior to grant of consent, or it should be removed from the final approved plan and document set.

The following is an example of how condition 1 should be drafted for low and medium category consents (a template condition). If there are no reports or other information, the condition can be edited to remove these tables.

**Activity in accordance with application**

1. The [insert details] activity must be as described in the application and assessment of environmental effects prepared by [name] [date] [and any other information relating to description of activity] and must be carried out in accordance with the plans stamped and referenced by the council as resource consent number(s) XYZ.

The consent must also be carried out in accordance with all other reports and information detailed below and all referenced by the council as consent number(s) XYZ:

Report title and reference	Author	Rev	Dated

Other additional information	Author	Rev	Dated

For any variation to a consent under s127 of the RMA that has condition 1 in a shortened format, new or revised plans that the consent is required to comply do not need to be listed, provided that:

- The applicant has provided a combined PDF set of unchanged and updated plans. This plan set should include all original plans that are not changing (with their original stamps), and any new/updated plans (for stamping as part of the variation); and
- The final and correct updated plans within the combined set are stamped with the variation number and uploaded to the council system as one PDF file at the

time the variation decision is issued, and emailed to the applicant with the decision document. The plans that remain unchanged within the set do not require a new stamp.

Below is an example of how condition 1 would look following a variation (a template condition).

**Activity in accordance with application**

1. The [insert details] activity must be as described in the application and assessment of environmental effects prepared by [name] [date] [and any other information relating to description of activity] and must be carried out in accordance with the plans stamped and referenced by the council as resource consent number(s) XYZ, unless superseded by plans stamped as LUCXXXXXXXX-A.

The consent must also be carried out in accordance with all other reports and information detailed below and all referenced by the council as consent number(s) XYZ and LUCXXXXXXXX-A:

Report title and reference	Author	Rev	Dated

Other additional information	Author	Rev	Dated

**2.2 Longer format condition 1**

High and other category consents require a high level of monitoring .These consents are likely to require 5 or more site visits to determine compliance. They will likely involve larger construction projects with more than one resource consent, or multiple consent matters including relating to:

- Sediment control, multiple management plans to approve & monitor (construction, traffic, landscaping, noise, vibration etc.)
- Natural Environment – tree protection, tree removal, replacement planting, landscape plans
- Contamination – remedial action plans, waste management plans validation reports
- Notified applications
- Service stations
- Apartment complexes and retirement villages

- Larger infrastructure projects
- Consents with ongoing monitoring requirements, e.g., entertainment facilities, shopping malls

For these consent types, it is essential that condition 1 lists all of the documentation that the consent relies on. This includes all relevant approved plans and documents (including any relevant s92 information).

Only correspondence and emails that change the AEE and that are relied on in the application assessment should be listed in condition 1. All final versions of the relevant approved plans and documents should be listed.

The longer format version of condition 1 is the standard version contained within the council's report and decision templates.

For any variation to a consent under s127 of the RMA that has condition 1 in the longer format, all new approved plans and documents that the consent is required to comply with should be listed in a varied condition 1. This is to ensure that council can effectively monitor the consent and the changes that have been approved.

### **3 Summary/Conclusion**

Condition 1 is essential as it clarifies exactly what is authorised by a consent, where the activity is located, and usually includes reference to all approved plans and documents.

As part of determining how much information to include in condition 1, the council needs to consider compliance monitoring and enforcement issues such as the practicability of compliance monitoring, certainty for all parties involved and enforcement issues. The monitoring deposit categories are used as a guide to assist council planners in determining whether a shorter or longer format condition 1 is required.

In certain cases, there may be risk elements or other factors that may result in the council deciding to use an alternate version of condition 1 than suggested in this guidance.