

# Practice and Guidance note

## Section 127 - Ensuring quality applications and efficient processing

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### Disclaimer

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- *this document sets out general principles which may be used as guidance for matters relating to the interpretation and application of the Auckland Unitary Plan; it is not intended to interfere with, or fetter, the professional views and opinions of council officers when they are performing any function or exercising any power under the RMA. Each consent will be considered on a case-by-case basis and on its own merits*
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# 1 Introduction

Auckland Council (**Council**) receives a large number of s127 applications where the condition being changed is condition (1) of a previously approved resource consent. Ensuring that quality information is provided by the applicant at the time of lodgement will ensure that the changes proposed are clearly understood by the Council. This, in turn, will ensure faster and more efficient processing of the s127 applications.

Consistent with the [In Accordance Practice and Guidance note](#) (PGN), this PGN sets out the minimum requirements that the Council will apply to s127 application lodgements to achieve more efficient processing for all parties involved. Setting minimum requirements, and consistently applying them, will ensure that Council can efficiently assess s127 applications. This will keep timeframes shorter, and costs lower, for applicants.

This PGN also sets out some tips around report writing for planners to ensure that the s127 template is being used correctly. This will assist decision-makers in undertaking their role and to reduce the number of changes required to reporting.

## 2 Improving Quality

### 2.1 Statutory Considerations

[Section 127](#) of the Resource Management Act 1991 (**RMA**) states that a consent holder can apply to change or cancel an existing consent condition and that ss88 – 121 will apply to such an application with all necessary modifications.

[Section 88\(3A\)](#) provides that a Council must immediately return an incomplete application to the applicant, with written reasons for the determination. An applicant needs to clearly state what conditions are being changed or cancelled, and why these changes are required. There must be an Assessment of Environmental Effects (**AEE**) that assesses all relevant adverse effects arising from the proposed changes, and whether the changes will be consistent with any provisions of any relevant statutory document referred to at s104(1)(b) of the RMA.

As with all applications, the length of an AEE for a s127 application should be proportionate and should be focussed on the changes proposed only.

### 2.2 Requirements to be set at s88 stage

To achieve Council's aim of efficiently processing s127 applications within statutory timeframes, applicants should ensure the following:

- The application must be lodged via the Council's online portal, or via post, in accordance with Council's normal lodgement requirements. Email requests will not be accepted and applicants will be directed to our [website](#) for lodgement details.
- The application must clearly state that the applicant is either the consent holder (in the instance of regional permits) or is the landowner or their representative (in the instance of land use or subdivision consents).
- The application must include an AEE that clearly states which conditions are being changed or cancelled, showing strikethrough for deletions, and underlining for additions. A Microsoft Word document version of the tracked changes is particularly helpful so that the text can be copied and pasted into a decision report if Council is in agreement with the changes sought (though this is not mandatory to enable application acceptance).
- The AEE must provide an assessment of any adverse effects *of the changes*, and an assessment against the relevant provisions of any relevant statutory document referred to at s104(1)(b) of the RMA.

Applications that are received but do not contain the above information may be returned as incomplete under s88(3A) of the RMA.

## 2.3 Deciding whether an application should be processed under s127

One of the first things that the processing planner will turn their mind to is whether the proposed changes or cancellation are appropriately processed under s127, or whether a new application is required. In accordance with the leading case law<sup>1</sup> on s127, a consent authority must:

- compare any differences in the adverse effects likely to follow from the varied proposal with those associated with the activity in its original form; and
- ask itself: would the variation result in a fundamentally different activity or one having materially different adverse effects? That is particularly the case where the application for variation seeks to expand or extend an activity with a consequential increase in adverse effects.

Some of the questions both the applicant and planner should turn their mind to in deciding whether an application is a s127 or new application are:

- Would the changes to the design result in new infringements to development standards or activity types under the AUP that were not considered in the first application?
- Do the changes increase the height, length or location of infringements when compared to those considered under the first application?

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<sup>1</sup> *Body Corporate 970101 v Auckland City Council [2000] NZRMA 202*

- Do the changes result in an increase in intensity of the proposal? For example, are more houses proposed than the original application or is the overall floor area of a business activity increasing?

If the application contains all the information prescribed by the regulations and required by Schedule 4, and after reviewing the application, the processing planner considers the changes should be processed as a fresh consent, the processing planner will advise the applicant that Council will be treating the application as a fresh application and not a s127 application. Further information will be requested in this circumstance to enable Council to process the consent as a fresh application, for example updated plans showing compliance with Auckland Unitary Plan (Operative in Part) (AUO(OP)) standards may be requested, an amended AEE or any other information required to progress the application to a decision.

It is worth noting that if the processing planner does determine that a new application is required, they will still turn their mind to the existing resource consent if it is likely that consent could still be implemented within the lapse period. This ensures the focus of the Council planner will still be on any changes now proposed by the applicant irrespective of whether processed as a s127 or new application.

The processing planner will reject the s127 application and ask that the applicant re-apply for Consent via Council's online portal. This is to ensure the records are correct and the timeframes are adhered to. The deposit paid for the s127 application will be refunded in full.

## **2.4 Requirements to be set at s92 stage**

If an application is accepted as complete, Council will check that the information is provided in a consistent manner to assist both the processing planner and the peer reviewer/ decision maker.

The processing planner will request the following information if it has not already provided at time of lodgement:

- Where plans are being changed, the plans should clearly indicate the changes sought through "clouding" of changes, setting out the "before and after" plans side by side or other notations on the plans that clearly convey the changes being made.

The processing planner may also request the following information:

- A Microsoft Word copy of the conditions showing any changes as strikethrough for deletions and underlining for additions. To assist applicants with this task, a copy of previous consent conditions can be supplied by the processing planner to the applicant with the s92 request.

The provision of a word copy allows more efficient processing of the s127 application and ensures that wording changes are correctly captured before a decision is made.

The Council will only consider changes that are clearly stipulated on the plans and explained in the AEE. Requesting the above information ensures that proposed varied or cancelled conditions submitted to the Council decision-maker are clear and agreed with the applicant, and that changes to plans are clearly notated and easily followed by all parties involved in the process.

### **3 Further Reading**

The following further guidance may be of relevance:

- [RC 3.3.7 – In Accordance PGN \(external version\)](#)