



## DISCOUNT REGULATIONS - ISSUES AND OPTIONS PAPER

### Submission on behalf of the Resource Management Law Association of New Zealand Inc

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#### INTRODUCTION

1. This Submission is made on behalf of the Resource Management Law Association of New Zealand Inc (“**RMLA**”).
2. The RMLA is concerned to promote within New Zealand:
  - (a) an understanding of Resource Management Law and its interpretation in a multi-disciplinary framework;
  - (b) excellence in resource management policy and practice; and
  - (c) resource management processes which are legally sound, effective and efficient and which produce high quality environmental outcomes.
3. The RMLA has a mixed membership. Members include lawyers, planners, judges, environmental consultants, environmental engineers, local authority officers and councillors, central government policy analysts, industry representatives and others. Currently the Association has some 1,100 plus members. Within such an organisation there are inevitably a divergent range of interests in views of members.
4. While the membership has been consulted in preparing this submission, it is not possible for the RMLA to form a single universally accepted view on the proposed regulations. It should also be noted that a number of members may be providing their own individual feedback and those may represent quite different approaches to the views expressed here.
5. For these reasons, this submission does not seek to advance any particular policy position in relation to the proposed regulations, but rather is kept at a reasonably high level and is made with a view to ensure that the proposed regulations:
  - (a) are consistent with the general framework of existing laws and policies of relevance, and the Resource Management Act 1991 (“**RMA**”);

- (b) are practicable and workable; and
- (c) will assist in promoting best practice.

### **SUBMISSION**

6. The RMLA acknowledges that there will be significant challenges in drafting the proposed regulations to implement the policy decisions that will be made following the receipt of submissions. Whatever approach is taken, the RMLA requests that, at a broad level, the proposed regulations:
  - (a) reflect the policy decisions underlying the new section 36AA in the RMA;
  - (b) be drafted in a manner that is easy to read and understand by lay people; and
  - (c) provide for a process that is as straightforward as possible, simple to administer and that does not increase litigation potential under the Act.
7. The RMLA would be happy to nominate one or more of its members to work with those responsible for drafting the regulations in order to "test" the efficacy of any proposed drafting. If this would assist, then please contact the RMLA at the address noted below.
8. In terms of some more specific matters:
  - (a) The discussion document welcomes comments on whether or not to include a broader definition of Working Day in the regulations. We suggest that reference simply be made to the definition of "Working Day" in the RMA, perhaps with the addition to the list of excluded days of the annual anniversary holiday of the relevant district.
  - (b) The RMLA suggests that the regulations specify that, for the purposes of assessing when a timeframe begins for any particular event, the day on which that event happens is not included. So, if a decision needs to be made within 10 working days of receipt of the application, then the day on which the application is received is not counted as one of those 10 days. This would be consistent with the High Court Rules (Rule 1.17), and would avoid any difficulties arising from when on any particular day an application, for example, was received.
  - (c) To ensure consistency with the terminology used in the RMA, the RMLA suggests that the proposed regulations adopt the phrase "responsible for" the delay rather than refer to "fault".
  - (d) The RMLA recommends that the proposed regulations specifically provide that where an applicant requests further time (eg, to undertake additional consultation or further research), then this further time can be agreed to be excluded from the calculation of the timeframes. (While this would probably occur anyway through the application of the "responsible for" principle, it would be better if it were stated expressly.)
  - (e) Finally, the RMLA does not agree with the approach (p15) that, if both the local authority and the applicant are responsible for creating delays then no

discount will apply. If such an approach were applied under the proposed regulations, it could result in quite unfair outcomes (eg, if an applicant is responsible for one day of delay, and the local authority is responsible for 40 days of delay it would seem unfair that there should be no discount at all). A more principled approach would be to subtract from any local authority delay any delay that might be caused by the applicant.

9. If there is any further opportunity to do so, the RMLA wishes to be heard in support of this submission.



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Signature of Bal Matheson on behalf of the Resource Management Law Association

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