

Morena Whānau,

Welcome to another exciting and informative RMA kōrero of the fortnight!

It was a great start to the week with the Team New Zealand boys and girls bringing the Americans cup back to Aotearoa, let's hope it manages to avoid a trip to the panel beaters again ....

Last week we covered the topics of avoid, remedy and mitigate we covered off some points that put those ideas into some context.

As promised in this week's Kōrero we will delve into the subject of the activity status.

Without further delay let's get into the thick of the kōrero.

Sections 77A and 87A of the RMA describe the different types of activities that may be included in plans. These are:

- **Permitted activities**
- **Controlled activities**
- **Restricted discretionary activities**
- **Discretionary activities**
- **Non-complying activities**
- **Prohibited activities.**

## **1. Permitted activities**

A permitted activity is one that is described in the RMA, regulations (including a national environmental standard), or a plan as permitted. A resource consent is not required for the activity if it complies with any requirements, conditions, and permissions specified for the permitted activity. It is therefore important that councils are confident that compliance with any requirements, conditions, and permissions will adequately manage the effects expected (including cumulative effects).

## **2. Controlled activities**

A controlled activity is one that is described in the RMA, regulations (including a national environmental standard), or a plan as a controlled activity. The RMA, regulations or plan must specify:

- any requirements, conditions, and permissions with which the activity must comply
- the matters over which the consent authority has reserved control.

An application for a controlled activity cannot be declined (except if s106 applies). Councils need to consider whether effects of a development up to the maximum permissible under the proposed activity could be adequately managed through the matters of control and resource conditions proposed. There are two reasons for this requirement:

1. to identify the total cumulative effects that may occur from resource use and development occurring as controlled activities
2. More importantly, it also refers to a need to consider whether the matters of control can be effectively addressed through resource consent conditions.

### **3. Restricted discretionary activities**

A restricted discretionary activity is one that is described in the RMA, regulations (including a national environmental standard), or a plan as a restricted discretionary activity. An application for a restricted discretionary activity can be declined or granted (with or without conditions). The RMA, regulation or plan must specify both:

- any requirements, conditions, and permissions to be complied with for the activity to be a restricted discretionary activity
- the matters over which the council has restricted its discretion.

Note that in relation to the second point, the matters of discretion are those matters the council can consider when determining to either decline a resource consent, or to grant consent and impose conditions.

### **4. Discretionary activities**

A discretionary activity is one that is described in the RMA, regulations (including a national environmental standard), or a plan as a discretionary activity. An application for discretionary activity can be declined or granted (with or without conditions). Discretionary activities may:

be identified by listing and naming them explicitly (including any restrictions, conditions and permissions that have to be met to qualify for discretionary status)

1. be classified as such because of non-compliance with any restrictions, conditions and permissions for permitted, controlled, or restricted discretionary activities
2. be discretionary by virtue of there being no plan, proposed plan, relevant rule or resource consent classification for the activity (ss87B(1)(a) and (b))
3. be described in a proposed plan as prohibited but that rule is not yet operative (s87B(1)(c)).
- 4.

An application for a discretionary activity can be notified or non-notified. A rule in a plan can expressly provide that the application must be notified, or must not be notified or limited notified (s77D).

## **5. Non-complying activities**

Non-complying activities are those that the RMA, regulations (including a national environmental standard), or a plan describes as non-complying. This activity status is often reserved for those activities where the potential adverse effects are great but do not necessarily warrant prohibition. An application for a non-complying activity can be declined or granted (with or without conditions). Councils can grant consent where an application can meet any of the following tests:

1. the adverse effects on the environment will be minor (disregarding the adverse effects on those who have given their written permission, and exercising the discretion to disregard adverse effects of the type generated by activities the plan permits or is permitted by a national environmental standard (ss104(2) and 104(3)(a)(ii))
2. the application is not contrary to the objectives and policies of the plan, the proposed plan, or both (as appropriate - s104D(1)(b))

3. the activity can comply with any restrictions, conditions and permissions specified in the Act, regulations or plan (s87A(5)(b)).

#### Prohibited activities

A prohibited activity is one that the RMA, regulations or a plan specifically describe as being prohibited. Prohibited activities must expressly prohibit an activity without exceptions.

A resource consent application cannot be made for a prohibited activity and a consent cannot be granted. The prohibited activity status is the most restrictive of any activity status and therefore must be used with care. The decision to use it should be backed with strong evidence of its necessity, including justification through objectives and policies.

While prohibited status would require a plan change to allow prohibited activities to take place, the plan change process should not be used as an alternative resource consent process (source: Quality planning, 2017).

<http://www.qualityplanning.org.nz/>

<http://www.legislation.govt.nz/act/public/1991/0069/latest/whole.html#DLM230265>

**Hope your still with me !! !!!**

Next week we will cover off some historical RMA kōrero. The Ropu has grown in number 80 members and growing and I wanted to ensure the newer whānau members were abreast of those early RMA kōrero.

Don't worry we will continue the learning to for those older members but once we have covered of some of the early basics.

As always and until next time always remember **ITS COOL TO RMA**  
**Korero !!**

Ma te wa

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*Thriving together – mō te taiiao, mō ngā tāngata*