

COVID-19 Lockdown – summary of changes to RMA/LGA administration

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Many news articles and updates are released daily regarding COVID-19 and its potential impacts on workplaces generally. We thought it would be useful to pull a few strands together and provide a potted summary of recent developments relevant to the administration of the Resource Management and Local Government Acts.

It is very likely there will be more changes as we move to different COVID-19 alert levels in the coming weeks, leading to some of the matters below becoming out of date. We will endeavour to keep our summary updated for your reference. Please do not hesitate to contact us if you want to check on the continuing currency of anything below.

On 3 April 2020, an MFE letter from David Parker to councils outlined responsibilities under the RMA, including:

- Emergency works to be carried out under ss 330 and 330B of the RMA
- Planning and consenting to carry on as normal where possible
- Exercising discretion in compliance and monitoring services
- Taking a pragmatic approach to timeframes and exercising broad discretion in extending timeframes for consents under ss 37 and 37A RMA
- Continuing to engage with Māori under Part 2 of the RMA
- The general tone of the letter is to ensure the employment rich projects can re-start as soon as possible and if delays are to be experienced, that these delays should not impact employment rich projects.

Environment Court update 3 April – the Environment Court is not considered a Category 1 Essential Service Court. As such, all cases listed for hearing before the end of May have been adjourned (save for some urgent matters such as interim enforcement orders and applications for stays of abatement notices involving serious issues of safety).

With a focus on infrastructure playing a key role in economic recovery from COVID-19, councils need to ensure consents are still being processed so that they are 'ready to go' once lockdown is lifted. Fast Tracking consenting processes are a tool that could assist with this (as has been used in Christchurch and Kaikōura post Earthquake).

In light of the focus on infrastructure and fast-tracking discussed above, a more economic focus of 'sustainable management' may be taken over social/cultural and environmental.

Temporary Amendments to the Local Government Act 2002 allow councils to hold online meetings and waivers the requirement for physical presence to make up a quorum. See clause 25B, Schedule 7 of the LGA 2002.

Temporary Amendments to the Local Government Official Information and Meetings Act require recordings (video or audio) to be available to the public via livestream and to be uploaded to the internet site post meeting to enable access by the public. See Section 47A.

- Section 46B amends 46A – requires minutes, agendas and reports to be available on their website free of charge (as opposed to in public libraries or council offices – see also s51AA). Hardcopies must still be available by post if required.

Rates relief may be possible. Where the councils had no plans to increase rates prior to COVID-19, councils could exercise their discretion in accordance with the Rates Remissions Policies and their terms.

- Any pre-planned rate increases prior to COVID-19 (that have been consulted on) may not be able to be cancelled straight away. Instead, there could be a requirement to consult before cancelling the pre-planned increases.

Enforcement action and any prosecutions should be informed by guidance from the Solicitor-General (note this directly applies to Public and Crown Prosecutions but it does inform prosecution/enforcement decisions generally). While the two

stage test for prosecutions and enforcement remains the same (ie (1) is there sufficient evidence to support the charge and (2) the public interest element), COVID-19 is a relevant factor for consideration in the public interest element of the test. The current circumstances may lead councils to consider delaying taking enforcement action, alternative solutions for resolution and whether enforcement action is appropriate in the circumstances particularly given the anticipated Court delays. The overriding consideration remains the health and safety of the public.

No site visits should occur during level 4 lockdown unless they are essential to **immediate human health or life safety risk** or to prevent serious environmental harm. If the level 4 status is reduced to level 3, site visits may be able to resume. In preparation, we would suggest considering alternative (contactless) methods of undertaking site visits available (ie recent satellite images, photos submitted, video call with applicant). Participants may also wish to prepare:

- A risk-based assessment before deciding whether to undertake a site visit or utilise alternative methods. Things to consider might include the recent travel activity of the applicant and whether the site is occupied
- A COVID-19 site visit protocol for staff and applicants which focuses on minimising interactions with people and maintaining social distancing.

On 16 April 2020, the Ministry for the Environment and Statistics NZ released the latest report on the state of the environment – Our Freshwater 2020. See our [alert](#).

The Select Committee released its report on the Resource Management Amendment Bill. See our [article](#).

If any of the above gives rise to concern or questions we are available to discuss and assist on any matters that arise.

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