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Land Development Processes

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The Institution of Professional Engineers New Zealand Incorporated (IPENZ) is the non-aligned professional body for engineering and technology professionals in New Zealand.

Practice Notes offer guidance to practising engineers by exploring issues of importance to the profession and setting out good-practice methodologies. They are written by practitioners and subject to peer review by IPENZ Members. While every care is taken in their preparation, these documents are not offered as formal advice. Any liability arising from their use rests with the practitioner.

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Introduction

Developments involving land, water, buildings and other structures of any type or size involve processes to guide the project through the planning, legal, regulatory, design and construction phases to ensure a successful outcome.

This *Practice Note* aims to assist professional engineers in their own work and when advising developers, designers, contractors, construction component suppliers, land owners, council officers, professional organisations and others on processes to develop land and buildings.

Developing a project requires a sound knowledge of the processes to follow and the commitment of resources needed to take a project through to a successful outcome with the least risk of cost overruns and time delays. Engineers and other professionals involved in the development of a project should have a thorough knowledge and understanding of the requirements, processes and timeframes required to ensure compliance with the legislation. Their professional skill and competence requires consideration of the legal, ethical, risk and community wellbeing issues that will ensure a successful outcome for the developer, owner, councils, contractors and the public in general.

In order to observe the ethical requirement to work within one's level of competence, some projects require the engineer to take specialist advice at an early stage. If the project involves land or buildings the development processes are likely to require either resource or building consent, or both, and compliance with other New Zealand legislation.

Significant compliance processes, regulatory requirements and timeframes are prescribed by the following legislation:

- Resource Management Act 1991
- Building Act 2004
- Local Government Act 2002
- Conservation Act 1987, Reserves Act 1977 and National Parks Act 1980
- Historic Places Act 1993
- Land Transport Management Act 2003 and Transit New Zealand Act 1989
- Ngāi Tahu Claims Settlement Act 1998 (and those Acts related to other Treaty of Waitangi claim settlements)

Resource Consent Process

The Resource Management Act 1991 (RMA) is New Zealand's main environmental legislation. It provides a framework for managing the effects of activities on the environment in terms of the sustainable management of resources. Regional, city and district councils and unitary authorities have responsibilities for the environment under the RMA. Regional councils manage the rivers, air, coast and soil – resources that are not generally owned by individuals.

City and district councils are required to consider how the use of the land can affect the environment – noise, new subdivisions and land development, clearing of native bush, changing the inside and outside of historic structures and places, or anything else that might affect what the community agrees is important. Unitary authorities have the functions of both the regional and district councils.

Other key players also look after the environment. The Ministry for the Environment gives advice to the Government on environmental issues. The Department of Conservation and the Minister of Conservation (DoC) have a particular role under the RMA to ensure the coastal environment is managed. The Parliamentary Commissioner for the Environment has an overview role to manage the environment in New Zealand. The Commissioner investigates emerging environmental issues and may also investigate concerns raised by the public. The RMA requires councils to prepare district and regional plans to manage the environment in each area.

Regional policy statements set the basic direction for environmental management in the region. Regional plans concentrate on particular parts of the environment – the coast, soil, a river or the air. They set out how discharges or activities using these resources will be managed to stop the resources being degraded or polluted. A district plan is concerned with the use and development of land (including contaminated land) and sets out the policies and rules a council will use to manage land in its area and determine if a proposed activity needs resource consent. Resource consent is required for all proposed activities that the district plan does not allow as-of-right. In the case of a regional plan, it determines whether resource consent is required.

A district plan includes planning maps and land designations. These are provisions that provide notice to the community when a council or other authority intends to use land for a particular work or project, such as schools, community buildings, treatment plants, reservoirs, roads and reserves.

The need for resource consent or conditions should be determined by contacting the local city or district council before purchasing any land, building or business, or subdividing or developing land. DoC should also be consulted in some cases and the nature of the project determines whether it is necessary to consult with local iwi. Table 1 on page 4 lists the different types of resource consent and the consent authorities responsible for issuing them.

Every application for resource consent must include an assessment of environmental effects (AEE) that identifies all the positive and negative environmental effects of the proposed activity, and the ways to prevent or reduce any negative effects. There is a requirement to consider alternatives and to consult with affected parties. A proposal that has “more than minor” environmental effects will be publicly notified, or if it adversely affects parties who have not given approval, notice is served directly to those parties.

Anyone can make a submission on applications that have been publicly notified, and a public hearing is usually held to give applicants and submitters a chance to speak. Informal pre-hearing meetings may also be held. If consents are required from a regional council, a district or city council and DOC, these bodies may decide to hear the applications together.

Councils can decide to either grant or decline resource consent. Some applications involve “controlled activities” and – with a few exceptions – these must be granted, although councils usually grant consent with conditions.

The Environment Court is a specialist court that hears appeals

TABLE 1: TYPES OF RESOURCE CONSENT AND CONSENT AUTHORITIES

Consent	Consent authority	Examples
Land-use consent	Regional councils and/or district and city councils	<ul style="list-style-type: none"> To convert a garage in a residential neighbourhood into a shop. To erect a building.
Subdivision consent	District and city councils	<ul style="list-style-type: none"> To divide a property into two or more new titles, using fee simple or unit title mechanisms.
Coastal permit	Regional councils and DoC	<ul style="list-style-type: none"> To build a wharf on the coast below the mean high water springs mark. To discharge sewage or stormwater into coastal waters.
Water permit	Regional councils	<ul style="list-style-type: none"> To take water from a stream for a water supply or irrigation scheme. To build a dam in the bed of a river.
Discharge permit	Regional councils	<ul style="list-style-type: none"> To discharge stormwater through a pipe directly into a river, stream or lake. To discharge exhaust fumes from a wood curing kiln into the air.

against councils' policy statement or plan decisions, or on resource consent applications.

Councils also decide the period of resource consent. Some consents last indefinitely, such as subdivision consents, while others may last only a couple of years, such as a permit to take water from a river. Water- and soil-related consents have a maximum duration of 35 years, but land use consents are not restricted in this way.

The local city or district council will provide a Land Information Memorandum (LIM) or a Project Information Memorandum (PIM). These detail council information about a piece of land, including what it can be used for under the district plan rules.

Heritage orders are provisions in a district plan to protect the heritage characteristics of a particular place. A certificate of compliance can be issued to confirm that a proposed activity is permitted under the plan.

An existing use certificate is useful when an activity doesn't meet a current district or regional plan rule, but was lawfully established before the rule came into force.

If an activity requires a building consent, the PIM issued by the city or district council will provide advice on resource consents.

Building Consent Process

A building consent is required if the project involves the construction of a building or other structure. The Building Act 2004 applies to the construction of new buildings and the alteration, demolition and maintenance of existing buildings.

The Building Act 2004 requires building control practices to ensure buildings are safe and healthy by providing:

- clear standards on building construction
- guidance on how those standards can be met
- certainty that qualified and capable people are undertaking building design, construction and inspection
- scrutiny of the building consent and inspection process
- protection for building owners through the introduction of mandatory warranties

The following is the three-part framework for setting out these controls.

1. The Building Act sets out the law on building work.
2. Section 400 of the Act provides for regulations, called the Building Code.
3. The Building Code prescribes the building's functional requirements, and the performance criteria it must comply with in its intended use. It provides requirements for compliance with the Building Act when constructing a new building or altering an existing one. The Building Code covers aspects such as structural stability, fire safety, access, moisture control, durability, services and facilities. It does not prescribe construction methods, but gives guidance on how a building and its components must perform as opposed to how the building must be designed and constructed.

The Department of Building and Housing (DBH) is the regulatory authority for building controls in New Zealand. Territorial Authorities (TAs) are responsible for the day-to-day administration of building control legislation within each district.

Compliance documents are published by the DBH. They include prescriptive step-by-step guidance methods – known as acceptable solutions – and verification methods, which include calculations, laboratory tests, and in-situ tests. Designs that satisfy these paths are deemed to meet the relevant performance requirements of the Building Code. Following a compliance document is not mandatory, as designs using alternative solutions may meet the performance standards stipulated in the Building Code. The alternative solution will be considered by the Building Consent Authority (usually the council) to decide whether it will meet the requirements of the Building Code.

The DBH investigates questions related to Building Code compliance and publishes its findings as determinations. A determination is binding on the parties concerned.

The TA must provide the building owner with a PIM containing all information about physical site conditions and requirements under any legislation that could be relevant when initiating a building project. This requirement avoids the owner being committed to expensive redesign costs on a project if they are not supplied with the requirements in advance of doing the work.

The building consent is the TA's formal authorisation that the proposed building work may proceed subject to any conditions that may be applied and a pre-determined inspection programme to ensure the completed work complies with the Building Code.

The Act applies to building construction, including alteration and demolition, and the maintenance of building systems such as lifts and fire protection installations. It does not cover planning and resource management, or other aspects of a building's relationship to the surrounding neighbourhood. It does not cover occupational safety and health, or other aspects of managing people.

Additional Processes

Additional processes may come to bear on the project because of the requirements of other legislation, including the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, Historic Places Act 1993, Land Transport Management Act 2003, Ngāi Tahu Claims Settlement Act 1998 and other similar legislation relating to claim settlements.

Conservation Act 1987

DoC was formed to integrate conservation management functions and the Conservation Act sets out the majority of the Department's responsibilities and roles. Specific legislation for such things as wildlife, reserves and national parks is discussed later in this *Practice Note*.

The Act sets out conservation management functions, including the management for conservation purposes of all historic resources administered by DoC (primarily Crown conservation lands). The requirements of the Act can be more onerous than those of the RMA. If the project is in or near a conservation area the requirements of the Act should be considered.

Conservation areas are defined as "land or foreshore held for conservation purposes or land in respect of which an interest is held for conservation purposes". It includes the following.

- Conservation parks – managed for protection of their natural and historic resources and to facilitate public recreation and enjoyment.
- Wilderness areas – managed for preservation of indigenous natural resources.
- Ecological areas – managed for protection of the particular values of each area.
- Sanctuary areas – managed to preserve indigenous plants and animals in their natural state, and for scientific and other similar purposes.
- Watercourse areas – land already under some form of protection, whether under the Conservation Act, Reserves

Act 1977 or Queen Elizabeth II National Trust Act 1977 which adjoins inland waters also under some form of protection. The land, together with the adjoining waters, also has outstanding natural or recreational characteristics and is managed to protect these characteristics.

- Amenity areas – managed for protection of indigenous natural and historic resources, to contribute and facilitate the public's appreciation of those resources, and to foster recreational attributes of the areas.
- Wildlife management areas – managed for the protection of wildlife, wildlife habitat and genetic material of indigenous plants and wildlife, and for the protection of indigenous natural and historic resources.

Reserves Act 1977

If the project involves an existing or proposed park or reserve the requirements of the Reserves Act should be considered. The Act provides for the acquisition of land for reserves, and the classification and management of reserves, including leases and licences, and:

- provides for the preservation and management, for the benefit and enjoyment of the public, areas possessing some special feature or values such as recreational use, wildlife, landscape amenity or scenic value – for example, the reserve may have value for recreation, education, as a wildlife habitat or as an interesting landscape
- ensures, as far as practicable, the preservation of representative natural ecosystems or landscapes and the survival of indigenous species of flora and fauna, both rare and commonplace
- ensures, as far as practicable, the preservation of access for the public to the coastline, islands, lakeshore and riverbanks and to encourage the protection and preservation of the natural character of these areas

City and district councils usually take a reserve contribution as part of a subdivision to ensure that there are adequate local recreational parks and reserves for the development. This is either by provision of a portion of land or as a cash contribution for the betterment of an existing reserve. If a portion of reserve land is required by a project for an alternative purpose or use, the revocation processes required by the Act must be followed. A common example of this is taking a portion of reserve for road realignment or widening.

National Parks Act 1980

The effects of any project within or near a National Park should be considered as part of the early planning of the project. Timeframes are likely to be very long to obtain approvals. The National Parks Act aims to preserve in perpetuity, for their intrinsic worth and for the benefit, use and enjoyment of the public, those parts of the country that "contain scenery of such distinctive quality, ecological systems, or natural features so beautiful, unique, or scientifically important that their preservation is in the national interest".

Historic Places Act 1993

Known historic places and archaeological sites in the vicinity of the project site should be identified at the outset and considered in the planning of the project. Land under a building scheduled for demolition may be an archaeological site. It is necessary to apply to the New Zealand Historic Places Trust (HPT) for permission if there is a chance of damage to an archaeological site. The HPT is required to make a decision within three months of receiving an application.

Archaeological remains or sites are often discovered during earthworks. Some organisations have accidental discovery protocols which may be cited in contractual specifications.

The Historic Places Act regulates the modification of archaeological sites on all land and makes it unlawful for any person to destroy, damage or modify the whole or any part of an archaeological site without the prior authority of the HPT. This is the case regardless of whether:

- the site is registered or recorded
- the land on which the site is located is designated, or the activity is permitted under the district or regional plan
- resource or building consent has been granted

Works must not start until the requirements of the Historic Places Act are satisfied. The Act provides substantial penalties for unauthorised destruction, damage or modification and provides a national register of historic places, areas, wāhi tapu, and wāhi tapu areas.

Land Transport New Zealand

Land Transport New Zealand (LTNZ) requirements will affect projects that involve a new portion of state highway, or any work, including survey, inspection and maintenance on or within an existing state highway.

LTNZ is the government agency that was formed when Transfund New Zealand and the Land Transport Safety Authority merged under the Land Transport Amendment Act 1997. LTNZ's objective is to contribute to an integrated, safe, responsive and sustainable land transport system in partnership with central, regional and local government and with many other stakeholders to help develop land transport solutions.

LTNZ provides financial assistance to the following approved organisations.

- Transit New Zealand – for New Zealand's state highway system, including maintenance and construction of state highways, passenger transport-related state highway projects and walking and cycling projects. LTNZ fully funds work on the state highway system.
- City and district councils – to jointly fund the maintenance and construction of local roads, passenger transport infrastructure, and walking and cycling projects. LTNZ provides a national average of 50 per cent financial assistance for maintenance programmes and an additional 10 per cent for construction projects, with local rates

and other local authority revenue generally providing the balance. TAs in the Northland and Tairāwhiti areas receive full funding for regional development roading.

- Regional councils – for the provision of passenger transport services, transport demand management, rail, and sea freight.

Transit New Zealand Act 1989

Under the Transit New Zealand Act, the principal objective of Transit New Zealand is to operate a safe and efficient state highway system in a way that contributes to an integrated, safe, responsive and sustainable land transport system. Transit New Zealand's functions are primarily to control the state highway system.

Ngāi Tahu Claims Settlement Act 1998

The Ngāi Tahu Claims Settlement Act includes an instrument called a statutory acknowledgement intended to recognise Ngāi Tahu's mana in relation to a range of sites and areas. It is an acknowledgement by the Crown of Ngāi Tahu's particular cultural, spiritual, historical and traditional association with specified areas. The statutory areas include land, geographic features, lakes, rivers, wetlands and coastal marine areas with which Ngāi Tahu has a particular association.

Statutory acknowledgements affect specified RMA processes concerning identified areas of the South Island, and therefore impact on consenting authorities and land owners in the specific areas. Statutory acknowledgments apply over only Crown-owned land. With respect to bodies of water, such as a lake, river or wetland, the statutory acknowledgments apply to the whole lake, river or wetland, except any part of the area not in Crown ownership or control.

A project may be affected by a statutory acknowledgment if the resource consent application is for an activity that is within, adjacent to, or impacts upon, a statutory area.

Decision making in relation to statutory acknowledgments is subject to the provisions of Part II of the RMA which requires local authorities to:

- recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga
- have particular regard for kaitiakitanga
- take into account the principles of the Treaty of Waitangi

The Ministry for the Environment monitors how the Treaty of Waitangi obligations and responsibilities specified in the RMA, including those relating to the statutory acknowledgments, are working in practice.

Similar legislation applies to other areas of New Zealand, including the acknowledged areas of Ngāti Awa, Ngāti Mutunga, Ngāti Ruanui, Ngāti Tama, Ngāti Tuwharetoa (Bay of Plenty) and Ngāa Rauru Kītahi.

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