

## GUIDANCE AND CHECKLIST FOR APPLYING FOR AN EXISTING USE CERTIFICATE

### Existing Use Certificate guidance

You can apply to Council for a certificate confirming an existing use of land can continue to be undertaken even though a district plan rule now requires that use to be authorised by a land use consent.

If Council is satisfied that the use of land is allowed under Section 10 of the Resource Management Act 1991 (RMA), and you have paid the appropriate fee, Council will issue a certificate of existing use for that use of land.

### What are Existing Use Rights?

Section 10 of the RMA sets out existing use rights.

Existing use rights may be relevant to you if your land use complied with the planning rules at the time it was established, but the planning rules have since changed and your land use requires a land use consent under the current planning rules. Section 10 provides that, if you satisfy certain legal requirements, you can rely on existing use rights to continue the land use without the need to obtain a land use consent under the current planning rules.

Note: Existing Use Rights do not apply to a use of land established under a resource consent. Such land uses can continue as long as you continue to comply with the land use consent for the term (if any) of that consent.

### What legal requirements do I have to satisfy?

Under Section 10 of the RMA, there are four key requirements to satisfy:

#### 1. Lawfully established

Your land use must have been lawfully established, meaning that either it complied with the planning rules when it was established or Council granted specific permission at that time. You must provide documents to prove this to Council's satisfaction such as plans, photographs, records of title, newspaper articles, council agendas or minutes, council letters etc.

#### 2. Adverse effects the same or similar

The effects of the land use are the same or similar in character, intensity and scale to those which existed before the planning rules changed.

#### 3. Do not apply if the extent of non-compliance is increased

If the existing use of land is a building, existing use rights do not apply if reconstruction, alteration or extension of the building increases the degree to which the building fails to comply with the new planning rules. A replacement building cannot breach the current planning rules by a greater extent than the building it is replacing or create a new non-compliance.

For example, if the original house was located 1.2m from the boundary and the current planning rule requires a 1.5m setback, a replacement house cannot be located closer to the boundary than the old house. The same applies to other rules such as height, recession plane (sunlight angle) and building coverage.

#### 4. Cease after 12 months

Existing use rights cease to exist after a land use has been discontinued for 12 months after the planning rule(s) changed.

## 1. Existing Use Certificate checklist

Section 139A of the Resource Management Act 1991 (RMA).

The following information is required in order for Council to fully assess your application.

### Note to applicant

You must include all information required by this form. The information must be specified in sufficient detail to satisfy the purpose for which it is required. Please print clearly and complete all sections.

### General information

- Current Record/s of Title for the subject site (please attach separately).  
(Records of Title may be obtained from Land Information New Zealand. Please ensure that the Record of Title consists of both the cover page and attached pages showing the survey plan.)
- Locality plan (scale 1:500) or aerial photograph (scale 1:500).  
(Showing the physical location of the subject site in relation to adjoining streets and sites)
- Site Plan showing the original site and another site plan showing any proposed changes to the use of the site. Please attach two copies at a scale of 1:50, 1:100, 1:200 or 1:500, and one reduced A4 size copy, showing:
  - North point
  - Lot boundaries and dimensions
  - Date the plans were drawn
  - Natural features, incl significant trees, water courses, etc
  - Heritage features, incl buildings, archaeological sites, etc
  - Road frontages
  - Locations and layout of existing and any proposed new buildings and/or land uses
  - Location of buildings and/or land uses on adjacent sites
  - Access and vehicle crossings from road boundaries to parking, loading and manoeuvring areas
  - Position and dimensions of loading spaces
  - Layout of all existing and/or proposed parking spaces
  - Location and dimensions of service area(s)
  - Location and dimensions of living court area(s)
  - Original and proposed future contours of the site with contours at 1m intervals
  - Existing and/or proposed landscaping
  - Existing and/or proposed fencing
  - Site coverage calculation
  - Details of any existing and/or proposed signage (design, dimensions, location)
  - Existing and/or proposed location of utility services (water lines, street lights, etc)
- Floor Plan(s) showing existing and proposed floor levels in buildings (including additions and alterations) on the site. Please attach two copies on a scale of 1:50, 1:100 or 1:200, and one reduced A4 size copy. The plan(s) should show the following:
  - Layout of internal rooms
  - Deck areas and balconies
  - Storage and internal parking areas

### General information (continued)

- Elevation drawings showing existing and proposed buildings. Please attach two copies on a scale of 1:50, 1:100 or 1:200, and one reduced A4 size, showing the relationship and appearance of buildings, including:
  - The natural ground level, and extent of any earthworks
  - Existing and finished ground levels
  - Max building height and relevant height control plane angle(s)

### Description of the land use

Please describe in detail the land use for which you are seeking an existing use certificate:

- Proof of establishment date. Please attach as much of the following as possible, showing evidence of the date the land use was lawfully established
  - Business letter (dated)
  - Historical photographs (dated)
  - Letter from owner-operator
  - Account records (dated)
  - Other evidence to Council's satisfaction

- How was the land use lawfully established
  - As a Permitted Activity under relevant district plan(s)
  - Before any district plan in existence
  - Via resource consent or permit

Note: If the existing use of the land was established under an actual or deemed resource consent which has not expired or been cancelled or surrendered, you do not need an existing use certificate.

- Under what regulations/legislation was the land use lawfully established
  - Transitional district plan
  - Operative district plan
  - Proposed district plan
  - Other (please specify below)

**Description of land use (continued)**

Has the land use continued uninterrupted since it was established?

Yes

No (if no, please specify below when it stopped)

Assessment of the effects and scale of the land use

Please fully complete the following table comparing the effects of the lawfully established use to the effects of the proposed use/change.

**Types of Effects**

What is provided and what is the magnitude of the effects of the current established use?

What is proposed and what is the magnitude of the effects of the proposed use?

Will the effects of the proposed use be similar in character, scale and intensity to the current use?

**General Effects**

Lawfully Established Use

Proposed Use

Difference in Effects

Size, number and colour of signs

Size of buildings (m2)

Exterior alterations to buildings

Change to site layout

On-site planting and screening

**Noise Effects**

Lawfully Established Use

Proposed Use

Difference in Effects

Traffic noise

Noise of activity

**Traffic Effects**

Lawfully Established Use

Proposed Use

Difference in Effects

Number of clients / customers

Number of staff

Number of parking spaces

Change in exterior parking layout

Change in vehicular access

Type of goods and services offered

Hours of operation

**Lighting Effects**

Lawfully Established Use

Proposed Use

Difference in Effects

Number, location and type of exterior lights

**Smoke, Fumes and Odour Effects**

Lawfully Established Use

Proposed Use

Difference in Effects

Change in these effects from proposal

Any other effects

### Continuity of the land use

If the land use would now require resource consent to establish under the district plan, please confirm whether or not the use has been continuous since the date it required consent. Provide evidence of continuity of use, for example company records, photos, phone bills etc. If the land use has ceased during this time, state the period for which it ceased.

### Reconstruction, alterations or extensions to a building or land use

Not applicable – no alterations, extensions, reconstruction, or expansion proposed.

If considering reconstruction, alteration, or extension to a building, or alteration or expansion of a land use, does this increase the degree to which the building or land use fails to comply with any legally effective rule in the Operative District Plan and Proposed Te Tai o Poutini Plan?

### Privacy Information:

Once this application is lodged with the Council it becomes public information. Please advise Council if there is sensitive information in the proposal. The information you have provided on this form is required so that your application consent pursuant to the Resource Management Act 1991 can be processed under that Act. The information will be stored on a public register and held by the Westland District Council. The details of your application may also be made available to the public on the Council's website, [www.westlanddc.govt.nz](http://www.westlanddc.govt.nz). These details are collected to inform the general public and community groups about all consents which have been issued through the Council.

### Signature

I hereby certify that, to the best of my knowledge and belief, the information given in this application is factually true and correct.

Applicant/Agent:

Signature:

Date:

### Submit

Attach this checklist to your Existing Use Certificate application.