

GUIDANCE 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.