

# Applying for an Existing Use Certificate

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 plan (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.

Owners can however, apply to extend the duration of existing use rights if an application is made to Council within **2 years** of the land use ceasing to occur.

In considering the application, Council needs to be satisfied that the effect of the extension is not contrary to the objectives and policies of the district plan. It also needs to consider whether any person may be affected by extending the existing use rights.

### **Process for an application for existing use:**

While Council will work with property owners or their agents to find out whether existing use rights apply to their individual situations, the legal onus is on the applicant to establish existing use rights. Council staff will assist where they can to advise what information is required and where it could be sourced from if it is not held by the Council.

As a starting point, we recommend that owners or their agents request a pre-application meeting at an early stage, so that our planning staff can review the information available on Council records to find out if there is relevant information in those records.

### **What happens if existing use rights do not apply?**

If existing use rights do not apply, or there is not enough information to confirm this, then the use of land must comply with the current planning rules which may require land use consent to be obtained.