

# Practice and Guidance Note

## Considering limited changes to be “in accordance” with an approved resource consent

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# 1 What is an ‘in accordance’ request?

All resource consents issued by the Council will include a standard condition 1 as follows:

## ***Activity in accordance with plans***

*The activity shall be carried out in accordance with the plans and all information submitted with the application, detailed below, and all referenced by the council as consent number LUCXXXXXXX*

This condition is included to provide certainty to applicants, Council staff and the public on what it is that has been consented.

In many instances, the development process will necessitate further detailed design work needing to occur post the resource consent phase. Where an aspect of the proposal needs to be changed from what was detailed on the plans or in the application documents, this can leave you faced (at building consent stage or immediately prior to the commencement of works) with a proposal that deviates from the approved resource consent. This, for example, could be a minor design change or an altered works methodology in order to respond to site constraints, construction practicalities, etc.

It is in these situations, that you should approach the Council with a request to review the change and confirm that it is in accordance with the approved resource consent.

In the event that the change is not in accordance with the resource consent, we can then advise you on whether a change or cancellation of conditions is required under section 127 of the RMA or whether the change is of such significance that you will need to apply for a new resource consent under s88 of the RMA.

# 2 Section 127 v ‘in accordance’

[Section 127](#) of the RMA provides for changes to or cancellation of conditions of consent. An application under section 127 can only be made where the change/cancellation to the condition(s) would not result in an expanded or extended activity, consequentially increasing the adverse effects beyond those from the original resource consent application. For the purpose of this practice and guidance note, we refer to this test as being ‘within scope’.

It is only when it is within scope that a development can be amended without the need to re-lodge a new resource consent application, but it will be necessary to change or cancel conditions that have been imposed on the resource consent.

In contrast to the s127 process, the changes proposed for an ‘in accordance’ request are typically very limited and small in scale such that it is not necessary to extensively evaluate the nature and effects of the change via an application under section 127.

The context is important here. For example, a change to a window design for a new dwelling in the Residential - Single House zone may be inconsequential as opposed to a window design change in the Special Character Areas (Residential) Overlay in terms of its level of effect. Larger infrastructure projects may also be afforded some leeway particularly where draft management plans signalled some refinement of management measures within broadly defined parameters.

An 'in accordance' request provides a transparent and documented process that will allow for other Council processes, including consent monitoring and building consent plan checks, to occur more efficiently. Importantly, it provides certainty for both council planner and the public (particularly interested neighbours) as to the outcomes to be achieved.

Where a change is not deemed to be 'in accordance' with the approved resource consent, but is still within the scope of the resource consent, then s127 will apply.

**Note: *The determination of an 'in accordance' request should not be confused with the 'within scope' determination required when considering an application for [s127 Changes to RC conditions](#).***

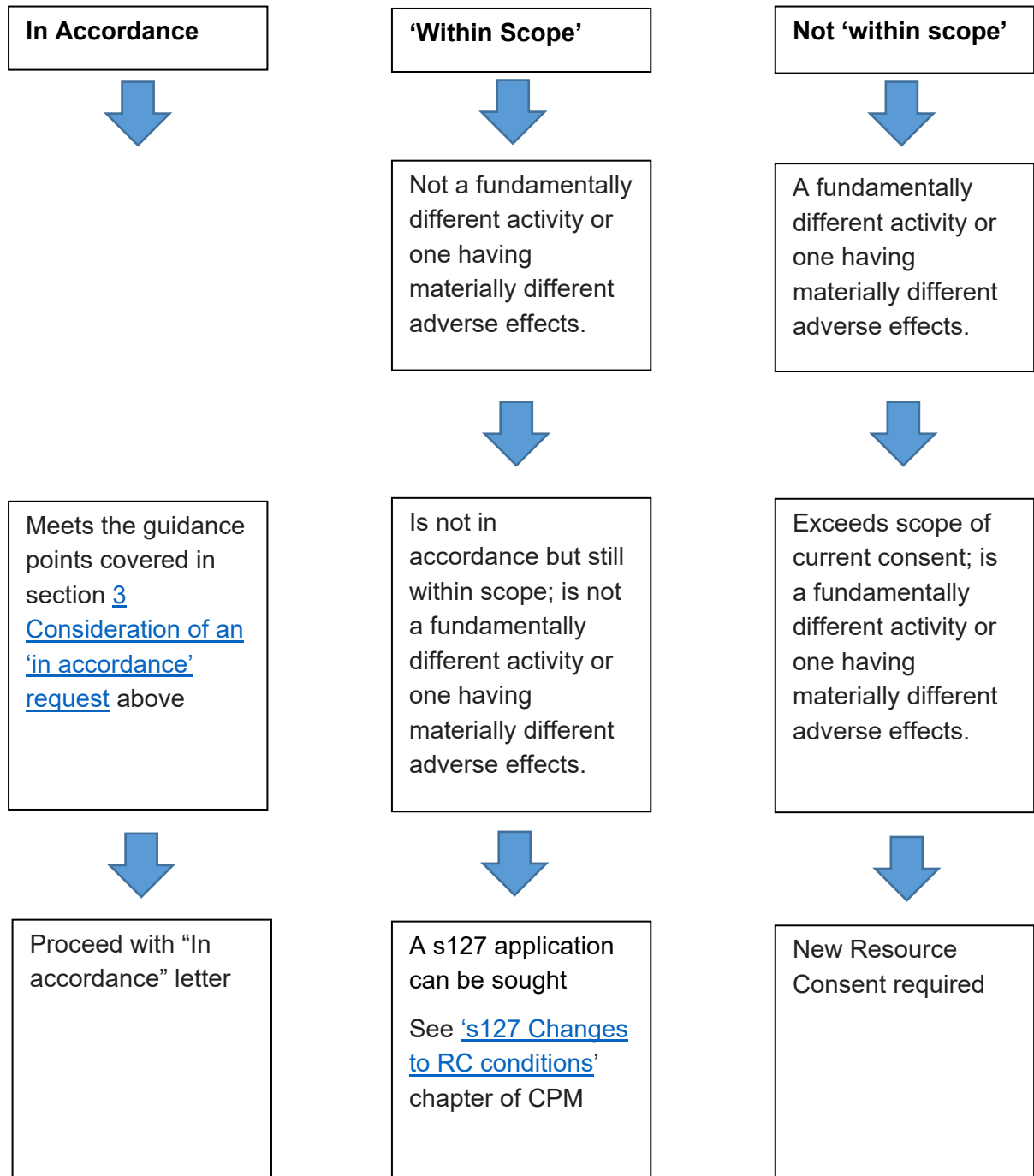
### 3 Consideration of an 'in accordance' request

When considering a limited or small-scale change, there should be no change required to any conditions, or any new, increased or additional infringements to rules/standards. If there is, then it will be an indication that the change will require approval under s127, or if not 'within scope' of the approved resource consent, a new resource consent.

In addition to the key elements above, the following (or combination) provide general guidance of what could be taken account of when considering an 'in accordance' request:

1. The change would have no impact on the implementation or outcome to be achieved by any condition of consent;
2. Changes that would result in decreasing an infringement of a standard that was assessed under the approved resource consent;
3. The overall design of the proposal will not be significantly altered;
4. Limited changes to design elements that were accepted by relevant specialists who were involved in the assessment of the element to be changed when the application was originally lodged. (E.g. Built Heritage for applications within a special character overlay, Auckland Design Office for applications where urban design matters were considered or a landscaping plan as part of the mitigation, etc.);
5. There are no written approvals being relied upon;
6. The resource consent did not have interested parties (neighbours, local board, mana whenua etc) who sought the application be notified and/or objected to the proposal. This can be found by reviewing the background and application material relevant to the resource consent; and
7. The likelihood of challenge from a third party.

As the context is important, every request is to be considered on a case by case basis. Please contact the Resource Consents department to discuss what will be the best option to consider the proposed changes. A simple diagrammatic process is:



**Note: The consent holder is responsible to pay all processing charges in accordance with the hourly charge out rate for all staff involved in an 'In Accordance' request, as per the current Fees and Charges schedule.**