

## EXISTING USE RIGHTS

# Existing Uses

Existing use rights (s 10 RMA) confer on the owner a right to continue certain existing "lawfully established" uses of land which contravene a rule of a district plan or a proposed district plan which subsequently comes into force.

The burden of proving existing use rights is on the person asserting that they have those rights. That is the owner of the property, not the Council.

The use must have been "lawfully established". Proving this can be difficult. For example where a building has existed for a long time and/or has been added to at various stages in the past.

The effects of the use must be the same or similar in character, intensity and scale. THE Council decides what is similar character, similar intensity etc. As these matters are not defined a Council can refuse to accept there is an existing use right leading to disputes as to whether this requirement is met.

Existing use rights don't apply if reconstruction, alteration or extension of a building increases the degree by which the building fails to comply with a rule that is in effect in a plan.

Existing use rights also do not apply if the use has been discontinued for a continuous period of more than 12 months. For example, if a house burns down and there is delay in rebuilding).

**NEED TO SOURCE THIS AND DATE IT**

### **Further reading:**

<http://www.environmentguide.org.nz/rma/duties-restrictions-and-existing-uses/existing-uses/>

Berry and Vella, paras 3.27-3.30 at [http://www.coastalratepayersunited.com/files/02-law/03-planning/planning\\_controls\\_and\\_property\\_rights\\_paper\\_as\\_at\\_281010.pdf](http://www.coastalratepayersunited.com/files/02-law/03-planning/planning_controls_and_property_rights_paper_as_at_281010.pdf)

<http://qualityplanning.org.nz/index.php/manual/enforcing-plans-and-consents/10-useful-links/496-existing-use-rights>