

# The Resource Management Act 1991

## What is it, and how could it affect you?

### Approval From Affected Persons

Part 4 in an 8 part series on the Resource Management Act, brought to you by the Auckland City Council. Copies of all articles in the series are available from the Council.

**Note:** The information contained in these articles is intended as a general guide only. It should not be taken as textbook or legal opinion.

The previous article examined the AEE (Assessment of Environmental Effects) report and how to prepare one. This article looks at the role written approval from affected persons plays when Council is assessing a resource consent application.

### Affected Persons Approvals & The Resource Consent Process

If written approval is obtained from people who will potentially be adversely affected by your proposed activity/development, it can have a major bearing on:

- Whether the application is notified or non-notified; and
- The final outcome of the resource consent application, and
- The time and cost involved in processing the application.

There are two main reasons for this. Firstly, in cases where written approval from all adversely affected parties has been obtained (and the environmental effects of the proposed activity are minor) Council may decide not to publicly notify the resource consent application.

Secondly, once an affected person has supplied written approval to an activity, Council cannot take into account any adverse effects on that person (resulting from the activity) when assessing the application. This is the case whether or not the application is publicly notified.

### What Happens If Written Approval Isn't Obtained?

If written approval from all adversely affected person(s) isn't obtained (or the environmental effects of your proposed activity are potentially more than minor) then

the application will be publicly notified.

### Who Decides Who Is An Affected Person?

Ultimately, it is Council that decides who may be potentially adversely affected by a proposal. However, we strongly recommend that you identify and consult with those likely to be adversely affected by your activity, at the time you prepare your AEE Report for your application, and before you lodge it with the council.

When Council receives your resource consent application, we will assess whether you have obtained approval from all the relevant parties. If not, you may be asked to approach additional people to seek their written approval, in order for the application to be recommended to be processed on a non-notified basis. Where this occurs, no further processing of the application will be undertaken until the written approvals have been obtained.

In cases where it is not possible to identify who all the potentially adversely affected persons are, or it would be unrealistic for a person to attempt to obtain, all of the potentially affected persons written approval, it is therefore more than likely that Council will make a decision to notify the application.

### How Does Council Establish Who Is An Affected Person?

This depends on the nature and scale of the proposed activity. For example:

- If your neighbour wishes to erect a new building which exceeds the Height in Relation to Boundary control (instead of complying with the control in a district plan) then it's likely that only your written approval will be required, as the proposed activity is unlikely to affect anyone else
- If a development exceeded its Height in Relation to Boundary controls, Lot Coverage and was two stories high it may be considered that all those people in the immediate environment could be potentially affected and hence all their approvals may be required.

The above examples are hypothetical and any determination is made on a case by case assessment once an application is lodged.

### Gaining Written Approval

1. Try to identify all persons likely to be affected by your proposed activity. Show them your complete resource consent application – including the application form, plans and the AEE Report.
2. Try to finalise your plans before seeking the approval of

affected persons. If you revise your plans after approval has been obtained, you will generally need to re-obtain written approval from all affected persons.

3. Provide the affected persons with any relevant information brochures/pamphlets produced by Council which may assist them in understanding the processes.
4. Make sure each affected person (or someone who has power of attorney to sign on their behalf), signs a full copy of the plans unconditionally.

If affected persons living at a particular address don't own the property (ie tenants), you may need to get their approvals. ensure when getting the property owner's approval that all persons registered on the property's certificated of title is obtained.

5. Put yourself in the affected person's shoes, and try to appreciate their concerns.
6. Keep an open mind and be flexible – you may be able to change your proposal to meet an affected person's concerns, and still achieve your own objectives.

### Being An Affected Person

If you are deemed (by either Council or the resource consent applicant) to be an adversely affected person, it is the applicant's responsibility to seek your written approval to the proposed activity.

This means the applicant (or someone acting on their behalf) will contact you (often in person) and ask you to sign:

- Plans outlining the proposed activity, and/or
- An affected person's consent form.

It is up to you to make sure you understand why your approval is being sought, and what effect the proposed activity will have on you and your property. Feel free to:

- Question the applicant about the proposed activity, and
- Seek further information about the resource consent process – and your part in it - from the relevant local authority or planning consultant or solicitor.

A Council Officer won't be able to assist you on whether you should give approval or not, rather they will be able to provide you with information on the resource consent process. For an opinion on whether to give your approval or not, you should seek independent advice.

Also remember that once you sign an affected person's consent form, Council cannot take into account any adverse effect on you when considering a resource consent application. However, you do have the right at any time up to the point that Council hears the application to withdraw/take back your approval. The Council will then be required to consider any potential adverse effects upon your property. If a decision has previously been made to not notify an application and that was based on your approval being required, it is likely that the application would now need to be notified.

### Can I Change The Proposed Activity?

You are entitled to discuss with the applicant possible ways in which their proposal can be changed to meet any concerns you have. The applicant may well be willing to negotiate and change their proposal to reduce its impact on you.

Please note that the Auckland City Council only accepts unconditional approval from affected persons (ie, you cannot make your approval subject to certain conditions or changes to the proposal). Any changes to the proposal must be incorporated into the plans and application. You can however enter into a private agreement with the applicant, which is outside the scope of the resource consent application. Please note the council will have no regard to and will not enforce any private agreements.

### How Long Do I Get To Sign The Form?

There is no legal time frames for giving written approval. If an applicant asks you to sign by a specified date it is usually for their own convenience or requirement – not because of any Council or legal time restraint.

### What If I Don't Approve Of The Proposed Activity?

If you don't approve of the proposed activity, you have no obligation to give your written approval. Remember that it is the applicant who is asking you for your approval to carry out some works, not the Council asking you for your approval.

If an affected person withholds their written approval then it's likely that the application will be publicly notified. This means affected persons will have the opportunity to formally object to the proposed activity through the submissions process (this will be explained in an upcoming article).

### What If I Change My Mind?

If, having given your written approval you change your mind about supporting the proposed activity, you can withdraw your approval.

To do this, you will need to provide Council with written notice of your decision to withdraw support. However, you must do this before Council has made its decision.

**Next time: Notification** – when is a resource consent application publicly notified, and that does notification involve?