

The Resource Management Act 1991

What is it, and how could it affect you?

Notification And Non-notification Of Resource Consents

Part 5 in an 8 part series on the Resource Management Act (RMA), 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 role that written approval from adversely affected persons plays in the resource consent process. This article looks at the issue of notification – when is a resource consent application publicly notified, and what does notification involve?

What Is Notification?

If a resource consent application is publicly notified, it means details about that application are publicly advertised, and sent to any relevant interest groups (see 'Who is notified?' opposite), as well as anyone who has been identified as being directly affected by the proposal.

Notification is intended to give the public the opportunity to 'have their say' on the activity proposed in the resource consent application.

How Do I 'Have My Say'?

You can register your support for or objection to an activity proposed in a notified resource consent application by preparing a written submission, and sending this to the local authority responsible for processing the application. You also need to send a copy of your submission to the applicant. That authority will then take your views into account when deciding whether or not to grant the application. However, please note that Council can only consider those matters raised which are relevant to the RMA in relation to effects.

If you wish, you may also attend a public hearing and present your views in person before those responsible for making the decision (an upcoming article will examine the submissions process and public hearings in greater detail).

Who Decides If The Application Is Notified?

The local authority responsible for considering the resource consent application decides if notification is necessary, in accordance with the criteria set out in the RMA. This is outlined below.

What Criteria Are Used To Determine If Notification Is Necessary?

There is an inferred presumption in the RMA that all resource consent applications will be publicly notified. However, the local authority handling the application can determine that it be processed without public notification if:

- The activity is a 'controlled activity'* and the written approval from adversely affected persons has been obtained.
- The activity is a 'controlled activity' or 'discretionary activity' and the relevant district/regional plan permits the activity to be considered without the need to obtain written approval from adversely affected persons.
- The activity is a 'discretionary activity' or 'non-complying activity' and the adverse effects of the activity will be no more than minor and the written approval has been obtained from all persons who may be adversely affected by the activity.

Note: *Notwithstanding the above, there is provision where there are 'special circumstances', that the application may still be publicly notified.*

* The RMA classifies activities according to the level of impact they will have on the environment – an outline of these 'levels' is provided in Article 1 - 'What is a resource consent?'

Who Is Notified?

The RMA states that the following persons/organisations must be publicly notified:

- The owner and/or occupier of the land where the activity proposed in the resource consent application will be carried out
- Persons likely to be directly adversely affected by the proposed activity (eg, adjacent neighbours) which is determined by Council.
- The general public (this means the proposed activity will be listed in the 'public notices' section of a relevant newspaper/s).

Auckland City Council utilises upon its weekly City Scene publication that is sent to each address within the City for the purpose of notification. However, the Council may also advertise the application in other forums depending on the circumstances of the application, and if there are any cross-boundary issues with other Councils.

- The Minister of Conservation, if the application is for an activity on land adjoining the coastal marine area
- The Historic Places Trust (Pouhere Taonga) if its interests are affected (eg, the proposed activity relates to a building of historic significance)
- The Minister of Fisheries, if the application relates to a marine or fish farm
- Local authorities, iwi authorities and other authorities or persons considered appropriate.

A notice is also put up in a clearly visible place on or next to the location of the proposed activity (unless it is impractical or unreasonable to do so).

What Happens To Non-Notified Applications?

If a non-notified application doesn't have to go through the submissions process, the local authority responsible for deciding its outcome will make a decision on the application within 20 working days from the date of lodgment of the application (provided no further information is needed). If further information is needed, then the working days stop until all necessary information has been received.

It's important to note that whilst the public can't make submissions on a non-notified application, persons who consider themselves adversely affected by the outcome of the application can seek a judicial review. This is done by making an appeal to the High Court who will consider whether legal processes were adhered to and whether the Council made a reasoned decision (You should seek legal advice relating to this process).

Next time: Notified Resource Consent Applications – submissions, hearings and the appeal process.