2013

Consent Steps

To Notify or Not to Notify

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Making a decision on whether an application should be notified, limited notified or non-notified is a very important step in processing a resource consent. This guidance note provides good practice advice about making recommendations and decisions on notification.

Sections 95 to 95G of the Resource Management Act 1991 (RMA) set out the requirements for notification of a resource consent application.

In accordance with s95A, an application for any type of activity must be publicly notified if:

- the activity will have or is likely to have adverse effects on the environment that are more than minor; or
- the applicant requests it; or
- a rule or national environmental standard requires public notification.

In addition, the council may choose to publicly notify the application if:

- regardless of any other matters, there are special circumstances (s95A(4))
- a notification decision has not been made and a further information request is not responded to before the deadline concerned or the applicant refuses to provide the information requested (s95C).

Guidance note

Definitions Relating to Notification

Section 2AA of the RMA sets out notification definitions applicable to resource consent applications. Definitions are provided for 'notification' in general, and both 'limited notification' and 'public notification'. An 'affected person' is also defined with reference to other relevant sections of the RMA.

Controlled and restricted discretionary activities

When considering the adverse effects of controlled or restricted discretionary activities, any adverse effect of the activity that does not relate to a matter for which a rule or a national environmental standard reserves control or restricts discretion must be disregarded (ss95D(c) and 95E(2)(b)).

For example, a district plan may provide for a wall or fence as a controlled activity subject to design and external appearance only. Therefore the only matter that needs to be considered when assessing the effects of the proposal is the design and appearance of the wall. Making such an activity controlled or restricted discretionary recognises that such small-scale activities only generate particular localised effects and do not warrant consideration of all potential effects.

Discretionary and non-complying activities

When considering discretionary and non-complying activities, all adverse effects of the activity can be considered. Activities classified as discretionary or non-complying are recognised as being capable of generating a wide range of effects and therefore the assessment of effects is not narrowed or limited in any way.

The rules in the plan or national environmental standard

For all activities the first step in making a notification decision is to check the rules in the plan and any relevant national environmental standard.

1) When a plan **or a national environmental standard** includes **a rule waiving public notification (but not limited notification)**, whether the consent is **limited notified** or not, will depend on an assessment of whether there are affected persons or groups (s95B):

- if there are **no** affected persons or groups, the application can be processed as non-notified
- if there **are** affected persons or groups, check if all of them have given their written approval
- if **all** affected persons or groups have given their written approval, the application can be processed as non-notified
- if there **are some** affected persons or groups who have not given their written approval, the council must proceed with **limited notification**

(s95B(2) and (3)). Notice of the application must be served on all affected persons or groups who have not provided their written approval. There is no requirement to serve notice on any persons who have given their written approval to the activity.

Making a decision on who is an affected person or an affected group is to be made by the council in accordance with ss95E and 95G respectively. Guidance on determining affected persons, affected protected customary rights groups and affected customary marine title groups is provided in sections further below.

2) When a plan **or a national environmental standard** includes a **rule waiving limited notification (but not public notification)**, whether the consent is **publicly notified** or not depends on an assessment of whether the activity will have or is likely to have effects on the environment that are more than minor (s95D).

When considering the effects under s95D for the purpose of public notification, the council must disregard any effects on persons who own or occupy the subject site or any land adjacent to the subject site.

It is at council's discretion to determine which sites are deemed to be adjacent and which parties are affected. There is no definition of 'adjacent land' in the RMA, however further discussion on this issue is provided in the sections below.

However, if there is one or any number of customary marine title or protected customary rights groups who are considered to be adversely affected, then the application must be limited notified to these groups (s95B(3)).

3) When a rule **waives both public and limited notification**, the application will be dealt with as non-notified (unless there are affected customary marine title group(s) or affected protected customary rights group(s), then the application will need to be limited notified (s95B(3)).

Section 77D authorises that a rule may state whether applications may be decided without public notification under s95A or without limited notification under s95B. However, these rules only apply if:

- the applicant does not request notification
- the council does not deem special circumstances to exist
- the applicant agrees to provide or respond to all further information requests and/or the commissioning of reports.

4) When the **rules in the plan are silent** as to notification (public or limited), the council will first need to assess whether the activity will have or is likely to have effects on the environment that are more than minor (s95D).

- If the adverse effects of the activity will be or are likely to be more than minor then the application will need to be publicly notified. However the effects on persons who own or occupy adjacent sites are disregarded in respect to public notification decisions (s95D(a)).

- If the adverse effects of the activity will be or are likely to be minor or more than minor, but the adverse effects only fall on a clearly identifiable set of land-owners or occupiers, normally adjacent to the proposed activity, then the council must decide that those persons are adversely affected by the activity. The council will then need to assess whether or not the affected parties have given their written approval to the activity.
- If **all** affected persons or groups have given their written approvals, the application can be dealt with on a non-notified basis.
- If some affected persons or groups have not given their written approval, the council must limited notify the application by serving notice on all affected persons and groups who have not provided their written approval. Those who have given their written approval to the activity are not considered affected persons and need not be notified.
- If the adverse effects of the activity are less than minor the application can be dealt with on a non-notified basis.

Overall it is good practice for the processing officer to advise the applicant (verbally or in writing) of an intention to notify in advance of the public notice or serving notice.

There is no requirement for there to be a written report on the notification decision provided to the applicant. However s35(5)(ga) requires the council to keep records of notification decisions and for these to be publicly available.

See Flowchart for notification decisions on resource consent applications

Public notification of consent application after request for further information or report

Section 95C states that a council must publicly notify an application if:

- it has not already decided that the application should be publicly or limited notified; and
- the council requests further information from the applicant under s92(1) but the applicant has not provided the information within the deadline concerned, or refuses to provide the information; or
- the council notifies the applicant under s92(2)(b) that it wants to commission a report, but the applicant does not respond within the deadline concerned, or refuses to agree to the commissioning of the report.

Note that the requirement to notify is mandatory if a decision on notification has not been made and this section overrides any rule or national environmental standard that precludes public or limited notification.

What is the difference between public and limited notification?

For a **publicly notified application**:

- public notification is required if the effects are more than minor (disregard effects on the site and adjacent land owners/occupiers)
- the notice must be in the prescribed form. Refer to Form 12 of the Resource Management (Forms, Fees and Procedures) Regulations 2003
- the notice of the application must be served on every person prescribed in Regulation 10 of the Resource Management (Forms, Fees and Procedure) Regulations 2003
- the notice should include enough information about the application and the location to enable any person to decide whether or not to view the complete application for the purposes of making a submission
- the council must serve notice on all affected persons and on various other specified organisations and persons. Any person may make a submission on an application that has been publicly notified, unless they are a trade competitor and are submitting on trade competition grounds (as outlined in s308B)
- the council has the discretion whether to require the public notice to be affixed in a conspicuous place on or adjacent to the site to which the application relates. Refer to Regulation 10A of the Resource Management (Forms, Fees and Procedure) Regulations 2003. This is more relevant for contentious applications, where a large number of people have been served notice. It may also be beneficial where the proposal is likely to have effects, or be of interest to people, far beyond the immediate site.

For a **limited notified application**:

- limited notification is required if the effects on persons are minor or more than minor and localised, including the effects on persons who own or occupy adjacent sites
- the council must serve notice of the application on all affected persons but does not need to serve notice on any persons who have already given their written approval
- there is no prescribed form for serving notice of an application on affected persons. Council could use a notice similar to that used to publicly notify an application (Form 12), but this form would need to be amended so it does not get confused with the public notification form
- the notice should include enough information about the application and the location to enable the affected person to decide whether or not to view the complete application for the purposes of making a submission
- the council does not need to serve the entire application itself. Service can be by way of a letter advising where the application can be viewed rather than attaching a copy of the application
- anyone who is served with notice of an application may make a submission, unless they are a trade competitor and are submitting on trade competition grounds (as outlined in s308B)

- no one else has a right to submit, and the council cannot accept submissions from persons who were not served (note: this is mandatory, so it is important the correct affected persons are identified and served notice if they have not provided their written approval).

If all affected persons have given their written approval, the council does not need to serve notice on anyone and the application can proceed as non-notified.

Separate activities or holistic assessment?

For the purposes of notification, councils also have to decide whether to treat a proposal as a number of separate activities ('planning units') or as one overall activity (a 'bundle'). For example, should an application for earthworks be treated separately from a concurrent application to construct and/or use a building?

An applicant is entitled to apply for separate consents and may have to make separate applications (at least in the case of regional council consents). In some circumstances, a council may decline to process an application until other related applications are made (s91).

Where more than one activity is involved and those activities are inextricably linked, the general rule is that the activities should be bundled and the most restrictive activity classification applied to the overall proposal.

Splitting the proposal into its separate applications for the purposes of notification and assessment of effects could mean that the council failed to look at a proposal in whole.

Important exceptions to the general bundling rule described above are where:

- separate but concurrent applications have been made
- one of the consents sought is a controlled or restricted discretionary activity
- the scope of the council's control or discretion is relatively confined
- the effects of exercising the two consents would not overlap, impact or have flow-on effects on each other.

Usually, if one part of a proposal is publicly or limited notified, the other related applications (if they are also before the council) should be dealt with in the same way.

Are the adverse effects minor or more than minor?

The following are key issues in determining the extent and magnitude of effects.

The assessment of whether an effect is minor is one of fact and degree. It requires exercising discretion as to the degree of seriousness involved. A minor effect is at the lower end of the scale that includes major, moderate and minor effects, but it must be something more than de minimis.

A council cannot take into account positive effects from the proposal when considering whether the effects will be minor. It can, however, have regard to any mitigating factors

that would eliminate any cause for concern about the possibility of adverse effects, such as extra noise being nullified by additional sound proofing. This can include the consideration of prospective conditions of consent to mitigate effects of the activity which are inherent in the application.

The council is not entitled to consider the effects of one activity in isolation, where other applications are part of the package. The package can only be split in the limited circumstances mentioned earlier.

The council should look at the overall combined effects of the proposal on the broader environment. It is possible that the council may consider there are more than minor effects on one neighbour, but in the context of the wider environment those effects are still minor. In such a case, the application would only be limited notified to the affected neighbour.

There is now a clearer distinction in the RMA between localised effects and effects on the wider environment. Section 95D(1)(a) requires that when deciding if the effects will have or are likely to have adverse effects on the environment that are more than minor for the purposes of public notification, the adverse effects of an activity on the following persons must be disregarded:

- the owners and occupiers of the land on which the activity will occur; or
- the owners and occupiers of any land adjacent to that land.

This means that an assessment needs to be made by the council as to which properties are considered to be adjacent to the activity or land use. The term adjacent has a common meaning which is "close to, but not necessarily adjoining another site". The term adjacent has also been defined by the Courts as lying near or close; adjoining; continuous; bordering; not necessarily touching".

When assessing whether an activity will have or is likely to have adverse effects that are more than minor, regard needs to be had to the following:

- the cumulative nature of any effect over time, or in combination with other effects
- the probability of occurrence
- temporary effects, including adverse effects associated with construction work
- the scale and consequences of the effect (high potential impact?)
- the duration of the effect
- the permitted baseline (refer to the section later in this guidance note)
- the frequency or timing of any effect
- whether the effect relates to a s6 or s7 matter
- the area affected (eg, is it an effect on neighbours or the wider environment?)
- the sensitivity of surrounding uses to that effect
- reverse sensitivity issues
- whether the effect is to be mitigated or avoided by a condition contained in the application or offered by the applicant in the application, which the applicant has agreed to.

The following matters should not be considered by the council when assessing whether effects are minor:

- the precedent effect of granting consent
- an adverse effect permitted by a rule or national environmental standard
- effects that are outside the council's discretion or control (restricted discretionary and controlled activities and national environmental standard)
- trade competition and the effects of trade competition
- any effect on a person who has given written approval.

Consider developing a checklist for staff in assessing whether effects are minor or not (the questions above could be a starting point). An application could have any number of possible effects. Your checklist will not always be able to cover everything, so think about putting a warning on the bottom to remind staff that the list is not exhaustive.

Under ss95D(e) and 95E(3)(a) the effects on persons who have given their written approval must be disregarded when forming an opinion as to whether adverse effects are minor or more than minor both for public and limited notification, and when the application is considered.

The council should ensure it has enough information to be properly satisfied the effects would be minor or more than minor. The council must have adequate information to enable it to:

- understand the nature and scope of the proposed activity as it relates to the district or regional plan
- assess the magnitude of any adverse effect on the environment
- identify the persons who may be more directly affected.

The information is not required to be all-encompassing, but it must be sufficiently comprehensive to enable the council to consider these matters on an informed basis. The test on adequacy of information is essential to the decision whether to notify an application, rather than being a preliminary decision.

Identifying affected persons

A council must decide if a person is an affected person if the activity's adverse effects on the person are minor or more than minor (but are not less than minor) (s95E).

The council can disregard only such adverse effects as will certainly be less than minor and those effects that are only a remote possibility. The council may also disregard an adverse effect if a rule or national environmental standard permits an activity with that effect and in the case of controlled or restricted discretionary activities, where an effect does not relate to a matter over which control or discretion has been reserved.

Potentially adversely affected persons (depending on the nature and scale of the resource consent application – keeping in mind that the effects on persons who own or occupy the subject site and adjacent sites are disregarded in public notification decisions) may include:

- owners and occupiers of the land (an 'owner' includes any person who is a party to a current written sale and purchase agreement for the land (either conditional or unconditional), or a similar agreement to take a lease of the land. Where there are joint owners, it is important that each give written approval (or one owner give specific approval on the other's behalf – but not implied consent). Where the property is tenanted, it may be unreasonable to treat a short-term tenant as being affected.
- owners and occupiers of adjacent, nearby and/or downstream land
- tangata whenua
- downstream resource users
- any Minister of the Crown with statutory responsibilities for an area or a site that could be adversely affected
- the relevant district or regional council
- those persons or organisations whose use or enjoyment of an area could be adversely affected
- adjoining owners/occupiers with sensitive activities (reverse sensitivity effects)
- any other person who the council considers is affected in a manner different from the public generally.

Just because some people and organisations may have an interest in a proposal, does not mean they may be affected. Some potential adverse effect, of at least a minor nature on a person, must be apparent for written approval to be considered necessary. Case law has shown that an affected person is one who is 'affected in a manner different from the public generally'. Being 'interested' in a manner different from the public generally has not been enough.

Adverse effects on persons are broadly conceived and are not limited to direct effects on those who own or occupy land. Persons can also be adversely affected in an environmental sense (i.e. indirectly by the proposed activity).

When is a protected customary rights group or customary marine title group considered affected?

Customary Rights Group

A consent authority must decide that a protected customary rights group is affected if the activity may have adverse effects on the rights the group has under the Marine and Coastal Area (Takutai Moana) Act 2011 (MCAA) unless the group has given written approval.

Schedule 1 of the MCAA outlines what needs to be considered when deciding whether a protected customary rights group is affected by an application. It states that when deciding whether a consent application will, or is likely to, have an adverse effect on the exercise of a protected customary right, the following matters must be considered:

- the effects of the proposed activity on a protected customary right; and

- the area the application would have in common with the protected customary rights area; and
- the degree to which the proposed activity must be carried out to the exclusion of other activities; and
- the degree to which the exercise of a protected customary right must be carried out to the exclusion of other activities; and
- whether an alternative location or method would avoid, remedy, or mitigate any adverse effects of the application on the exercise of the protected customary right; and
- whether conditions could be included in a resource consent for the proposed activity that would avoid, remedy, or mitigate any adverse effects of the proposed activity on the exercise of the protected customary right.

Customary Marine Title Group

The only activities requiring resource consent that may take place within a customary marine title area are those that the group has approved or accommodated activities. Accommodated activities are defined in the MCAA.

When a council is considering an application for an accommodated activity within a customary marine title area, they must decide that the customary marine title group is affected if the activity may have adverse effects on the exercise of the rights applying to the group, unless the group has given written approval. Section 60 of the MCAA outlines the rights of customary marine title groups. In summary, these rights are the right to use, benefit from and develop a customary marine title area. Customary marine title groups are still required to apply for any relevant resource consents for activities they undertake within their title area.

Unreasonable in the circumstances

A person must not be treated as being adversely affected if it would be unreasonable in the circumstances to seek the written approval of that person (s95E(3)(b)). The courts have made no significant comment on when it might be unreasonable to require an applicant to obtain the written approval of all affected persons.

The provision is not intended to authorise the ignoring of people who 'unreasonably' withhold their approval or refuse to participate. It applies where affected persons are not easily contactable or available and do not have an agent who may act on their behalf. Both the applicant and the council need to have made an effort to contact the affected persons and that needs to be documented. Councils should be conservative when using this test as it has implications for public participation in the resource consent process.

Persons who are unavailable will not need to be served with notice of an application. Furthermore, if they are the only persons who would otherwise be affected, or if all other affected persons have given their approvals, the application can be dealt with on a non-notified basis.

Obtaining the written approval of affected persons

The responsibility for obtaining the approval of affected persons lies with the applicant, not with the council. Nevertheless, it is the council's responsibility to determine who it considers to be affected and to determine whether all such persons have given their approvals, before dispensing with notification.

The council is not expected to investigate the written approvals it receives; however, if the approval does not explicitly state what the applicant is applying for and therefore what is being agreed to, then the council has a duty to ascertain what has been approved of and what has not.

As there is no need to serve notice on persons who have given their written approval to a limited notified application, councils need to be vigilant in ensuring that any changes to the application and/or plans throughout the consent process are communicated to those who provided their written approval. This is especially important given there is the ability for written approvals to be withdrawn. Council officers should assure themselves that any written approvals provided relate to the proposal under consideration. Should any significant changes be made to the proposal then generally new written approvals are required.

There is no prescribed form for a written approval but many councils have developed their own forms for applicants to use.

The form should include the following details:

- the proposal for which they are giving approval
- a statement that once the form is signed, approval is given for the council to consider the application without public notification under s95A
- a statement that once the form has been signed the council is no longer entitled to consider any effects on them when deciding the application under s104
- that their written approval can be withdrawn before the date of a hearing if there is one, or if there is not, any time before the consent is granted (s104(4))
- that the affected party has signed and dated the applicant's proposed plans and assessment of environmental effects (AEE).

Signing the actual proposed plans and AEE is important, as sometimes an approval may relate to an earlier version of an application (as outlined above) or to plans that may not have been disclosed to the person. It is also important the signed plans relate to all aspects of the development which require consent, not just the non-compliances on that neighbour's boundary.

Consider using an aerial photograph to identify the site and properties of potentially affected parties.

Checking affected persons' approvals

It is important to ensure that the written approvals supplied with an application for resource consent (whether they are on a standard form or not) are complete and adequate. Check the following:

- Has the form been signed and dated?
- Have all relevant plans, and in most cases the AEE, been signed and dated?
- Are they the same plans and information that is now before the council, i.e. current versions?
- If the application is amended in any way, check that the affected person(s) know and approve of the amendments.
- Are the approvals from the correct people (i.e.` registered landowner(s), all landowners or occupiers if there is more than one registered on the title (computer register)). Are they signed by or on behalf of other owners and/or occupiers with their authority? For example, if a property is jointly owned, have both owners signed or the second owner confirmed that the first is signing on his/her behalf?
- Have all trustees signed or have authority to sign on the others' behalf?
- Are the approvals unconditional? Conditional approvals should not be accepted. There is no onus on a council to ensure the demands or 'conditions' of an affected person are satisfied. This is the responsibility of the applicant. The proposal should have been amended by the applicant to reflect any agreed changes.
- Has the approval been withdrawn? Note that lodging a submission does not have the effect of automatically withdrawing that party's approval, unless it specifically says that.

Where there are a number of affected persons, it may help to create a checklist to tick off (for each affected person) whether they are the owner or occupier, or both, whether they signed the plans/AEE, and whether their written approval has been obtained. This information can also be transferred into the decision report.

What is the permitted activity baseline? (permitted baseline test)

Sections 95D(1)(b) and 95E(2)(a) provide that when determining the extent of the adverse effects of an activity or the effects on a person respectively, a council 'may disregard an adverse effect if a rule or national environmental standard permits an activity with that effect'. This is the permitted activity baseline.

- The permitted activity baseline applies to consideration of both who is affected and whether effects are or are likely to be minor.
- If a council applies the baseline, it is only the adverse effects over and above those forming a part of the baseline that are relevant when considering those two issues.
- It is the decision-maker's discretion whether to use the permitted baseline as the basis for assessing effects and identifying affected parties.

The purpose of the permitted baseline test is to isolate and make effects of activities on the environment that are permitted by the plan, or have already been consented to, irrelevant. When applying the permitted baseline such effects cannot then be taken into account when assessing the effects of a particular resource consent application. The baseline has been defined by case law as comprising the 'existing environment' and non-fanciful (credible) activities that would be permitted as of right by the plan in question.

A permitted baseline analysis and an analysis of the receiving environment are two different assessments. The permitted baseline, which applies to permitted activities on the subject site, removes the effects of those activities from consideration under ss95D, 95E and 104(1)(a) of the RMA. The receiving environment (beyond the subject site) is the environment upon which a proposed activity might have effects. It is permissible (and often desirable or necessary) to consider the future state of the environment upon which effects will occur, including:

- the future state of the environment as it might be modified by the utilisation of rights to carry out permitted activities
- the environment as it might be modified by implementing resource consents that have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented.

but not

- the environment as it might be modified by implementing future resource consent applications (because these are too speculative).

The 'environment' upon which effects should be assessed is therefore the existing and reasonably foreseeable future environment. In identifying the environment, a council should consider the environment as it is at the time of the application.

It should also consider the likelihood of change to that environment in the future, based upon the activities that could be carried out as of right and under resource consents that have been granted (where it is likely that they will be given effect to).

When applying the permitted baseline, a council should first ask what permitted activities would be credible (as opposed to fanciful).

Points to consider:

- Section 87A(1) states that an activity permitted by regulations (including any national environmental standard), a plan, or a proposed plan does not require a resource consent. Section 95D(b) and s95E(2)(a)states that adverse effects can be disregarded if permitted by a national environmental standard or a rule. This refers to rules that have either taken legal effect in accordance with section 86B, or have become operative under section 86F
- 'Permitted by the plan' does not include controlled or restricted discretionary activities. It is unclear whether the permitted baseline includes activities already occurring on the site as a result of existing consents. Although this issue is not entirely clear, the Environment Court has suggested that existing use rights are part of the environment. Permitted and consented activities should be considered as part of the existing and reasonably foreseeable future environment.

There should be a clear determination in the report from the relevant council officer stating the reasons for applying or not applying the permitted baseline. As a matter of good practice all notification decisions should consider whether or not to apply the baseline.

Situations where applying the baseline may not be appropriate include:

- where the application of the baseline would be inconsistent with Part 2 of the RMA
- where the baseline claimed by the applicant is fanciful or not credible
- where the application of the baseline would be inconsistent with objectives and policies in the plan
- applying the permitted baseline in relation to controlled activities.

Special circumstances

A council may decide to publicly notify an application if it considers that special circumstances exist, even if the relevant plan or national environmental standard expressly provides that the application need not be publicly or limited notified (S95A(4)). In effect, special circumstances 'trumps' other notification provisions.

Special circumstances have been defined as circumstances that are unusual or exceptional, but may be less than extraordinary or unique.

The purpose of considering special circumstances requires looking at matters that are beyond the plan itself. The fact that a proposal might be contrary to the objectives and policies of a plan is probably not sufficient to constitute special circumstances.

Special circumstances must be more than:

- where a council has had an indication that people want to make submissions
- the fact that a large development is proposed
- the fact that some persons have concerns about a proposal.

Considering if special circumstances exist may not be mandatory, although there is conflicting case law on this point. However, if a council decides not to publicly notify an application the notification report should include an express conclusion that no special circumstances exist (and, where relevant, why).

If the council has concluded that special circumstances do exist it is still at the discretion of the council to publicly notify it. It is recommended good practice that if the council does reach this conclusion then the application is publicly notified.

It is good practice to keep a record of the decision-making process in determining whether special circumstances exist, rather than leaving the matter silent in decision reports. Include a statement in your notification decision report indicating your consideration of special circumstances and your conclusion.

Section 104(3)(d)

Section 104(3)(d) provides that a council must not grant consent to an application that should have been publicly notified and was not.

In Fullers Group Ltd v Auckland Regional Council [1999] NZRMA 439 (Court of Appeal), the Court of Appeal held that when a council is deciding whether to grant consent, it is not under any duty to consider whether the application should have been notified, if that notification decision was considered at any earlier stage.

Nevertheless, a submitter on a limited notified application may be entitled to argue at the council hearing and/or on appeal that the application should have been publicly notified. If the council or Court agrees, it appears they would have no choice but to decline consent in terms of s104(3)(d).

It is also possible to re-notify an application if a notification decision has been made but further information requires this decision to be changed.

Documenting the notification decision

The decision whether or not to publicly or limited notify an application, and the reasons for doing so, must be well documented. This documentation should show that the tests set out in ss95A – 95G of the RMA have been met, and should include all those matters that were considered as part of the decision. The council should also document its consideration of whether special circumstances exist in terms of s95A(4).

If the process is not properly documented there is a higher risk of a successful judicial review as judicial reviews focus on process.

On judicial review, the Court will scrutinise the material that was before the council at the time of the notification decision to determine whether there was an adequate basis for the decision.

A report on notification should address the following questions:

- What is the application for?

- What is the activity classification?
- Are there special circumstances? If so, should the application be publicly notified?
- Does the plan or a national environmental standard exclude public and/or limited notification?
- Does the plan or a national environmental standard require public and/or limited notification?
- If there is more than one application should they be treated separately or holistically (bundled)? Decide whether to treat a proposal as a number of separate activities or as one overall activity. For example, should an application for earthworks be treated separately from a concurrent application to use a building?
- Are adverse effects on the environment less than minor, minor, or more than minor (discretionary, non-complying activities and some restricted discretionary)?
- What effects must be considered and are those effects minor? (restricted discretionary and controlled activities)?
- If the adverse effects are or are likely to be more than minor are these effects only on persons who own or occupy the land on which the activity will occur or the land adjacent to the activity or are they more widely spread?
- What effects does the plan or a national environmental standard permit?
- What is the existing and reasonably foreseeable future environment?
- Should the council apply the permitted baseline?
- Are there any affected persons or groups? If so, have all of them given their written approval to the particular proposal?
- Have the affected persons or groups sighted the plans and the application documents?
- Has the proposal changed since written approvals were sought?
- Include or attach the initial effects analysis and/or council checklists.

The consideration and decision on each of the above issues (where relevant) should be clearly recorded for each application. Notification decisions should be kept separate from the substantive decision, even if they are within the same document. However, common matters may be cross-referenced.