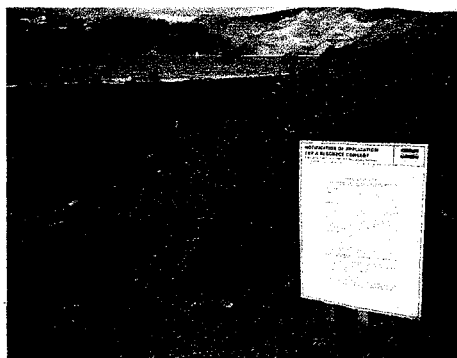


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TAKING A CLOSER LOOK AT PUBLIC NOTICES

A STUDY OF PUBLIC
 NOTICES ASSESSES THEIR
 USER-FRIENDLINESS

Fort Dorset, Wellington - A public notice for a resource consent application at Burnham St, Seatoun. As well as the street address, the location description refers to "Fort Dorset" (as the area is commonly known) and also explains the location as being "part of the Fort Dorset land south of the proposed Seatoun School site".



We see them all the time in the back of the newspaper, but how often do you stop to read the public notices to find out what people want to do in the neighbourhood. Okay, so we are writing to a biased audience, but we would probably all agree that the average person reading a public notice would not find them interesting, much less even understand how the proposed development may affect them.

This is particularly problematic as some resource consent applications are notified because the activity is expected to have some effect on the community. There are opportunities for the public to become involved in the Resource Management Act's processes. However, if the public feel unable to access those opportunities because of legalese and what may seem to be bureaucratic red tape then we need to make the process easier to access. This generally comes in the form of providing people with targeted information so they can make informed choices about whether or not to get involved. A much wider debate currently exists about whether or not applications are notified in the first place. However, this article looks at the issues in the current practice of public notices. These issues have been drawn from the findings of a study on public notices under the Resource Management Act (RMA) that was prepared by Opus International Consultants. The study, commissioned by the Ministry for the Environment, looked at the user-friendliness of public notices and made suggestions for improvements to current practice.

The study examined the user-friendliness of public notices for 31 resource consent applications from a range of newspapers across the country. While on-site public notices were not part of the brief, the report did include some examples of these. Particular attention was paid to the adequacy of the description of activity and location, and to whether a member of the public, with little knowledge of the RMA, would be likely to find the notice helpful

in determining whether or not they might be affected by the proposed activity.

CURRENT PROVISIONS

Regulation 9 of the Resource Management (Forms) Regulations 1991 requires that every notification under section 93 shall be in Form 6 or to "like effect".

In essence, Form 6 requires the following information:

- the name and address of the consent authority;
- the name of the applicant;
- details of the application and location or description of land to which it relates;
- the closing date for submissions;
- details on information required for a submission
- an address where the application can be viewed at
- a specification that a copy of any submissions must be served as soon as reasonably practicable on the applicant
- an address for service for the applicant
- a signature for and on behalf of the consent authority.

Public notices are to be in accordance with section 93 (2) (b) which states:

(2) A notice under subsection (1) shall be in the prescribed form and shall -

... (b) where it is to be published or given in accordance with paragraphs (f) to (h) of subsection (1), contain a description of the application including the location (as it is commonly known) of the proposed activity; and

(a) State that submissions on the application may be made in writing by any person; and

(b) State the closing date for the receipt of submissions by the consent authority under section 97; and

(c) State that a copy of every submission must be served on the applicant; and

(d) State the place where the application and accompanying information may be viewed and the address for service of the consent authority and the applicant.

It is also useful to consider the definition of "public notice" that is contained in section 2 of the RMA. However, as the definition was proposed to be amended in the Resource Management Amendment Bill 1999, we have chosen to leave the definition issue aside for the purposes of this article.

ARE PUBLIC NOTICES EASY TO UNDERSTAND?

The study found that most of the consent authorities included all of the material contained in Form 6, but presented it in a different format. Some councils chose to place information about how to make a submission at the top of the notice. This had the effect of putting the most relevant information about the proposed project near the end of the notice - at which point people may have already lost interest. In order to grab the attention of the reader, information about the resource consent application should be near the top of the notice.

The size of the notice, use of graphics and font size may also impact on how easy a notice is to read. The sheer volume of detail included on some notices may have precluded many members of the public from taking any interest in the proposals.

Many notices only referred to legal site descriptions or sections of the Act, but could have benefited from using plain language as well. Other notices used jargon, for example, several earthworks applications used the terms 'cut' and 'fill', the meaning of which is likely to be unclear to most people reading the notice.

ARE THE ENVIRONMENTAL EFFECTS CLEARLY IDENTIFIED?

Where an application is publicly notified, a council officer has already decided that the activity will have potential environmental effects. However, the focus on describing the effects of activities was generally poor, with most notices dedicating only a few lines to describing the activity and preferring instead to communicate legal detail.

It should also be noted that, if the format of Form 6 is followed, the public notice assumes that the reader knows what a resource consent is and why it is being notified. In reality many readers may not have even heard of the RMA. The Selwyn District Council public notice,

analysed as part of the study, was the only notice in the study to mention the purpose of the notice itself. The words used were:

Because of their possible environmental effect, many activities need a resource consent from the Council. You have the right to inspect the following consent applications at any Council Service Centre during normal office hours and to make submissions supporting or opposing them.

Such wording is not required by Form 6 yet clearly acts to raise public understanding of the purpose of the notices.

There have been a number of significant cases that have looked at the issue of public notices. But two recent cases have highlighted the issue of whether public notices contain enough information to inform a reasonable member of the public about what the activity is and where it is to be located. In *Christchurch Civic Trust Inc v Christchurch City Council C27/2001* the Court ruled that a public notice advertising an application for a footbridge over the Avon River was deficient, as it did not mention Hagley Park. The Court concluded that s.93 (2)(b) requires a description in city-wide or district-wide parlance, as well as a precise street or road address.

The second case involves a subdivision consent granted by Wellington City Council. The Court held in *Action for Environment, Federation of Wellington Progressive Associations Incorporated and Johnsonville Residents Association v Wellington City Council W41/2001* that s.93(2)(b) was not met as the public notice did not contain a description of the location (as it is commonly known) of the proposed activity. The notice described the location as 89 and 100 McLintock St and did not mention that the activity would result in works affecting Old Coach Road. While not listed as a heritage item, Old Coach Road was constructed circa 1850s and is presently used as a recreational route. The Court noted that for the wider public, the legal description (89 and 100 McLintock St) would mean nothing for those not living in the area.

These two cases highlight the importance of the planner finding out whether there is a 'commonly known description' of the location of an activity and then adding this to the public notice. An example of this is contained in a Wellington City Council public notice for a resource consent application that relates to part of the land that is commonly known as Fort Dorset (refer Figure 1).

MAKING PUBLIC NOTICES MORE EFFECTIVE

Achieving effective public participation while ensuring that the RMA's processes are used expeditiously is one of the challenges facing those implementing the Act.

Therefore a new area of investigation for the Ministry has been to look closely at the public participation mechanisms in the RMA, particularly how these can be enhanced without compromising the efficiency of regulatory processes.

The Resource Management (Forms, Fees and Procedures) Regulations are in the process of being reviewed in light of the Resource Management Amendment Act 1996 and the Resource Management Amendment Bill 1999. This provides an opportunity to ensure the Forms are clearly expressed. Changes to Form 6 could include:

- A statement on why some resource consent applications need to be publicly notified could be added.
- The description of the application could include the type of resource consent sought, description of the activity itself, description of the location of the activity as it is commonly known and easily identifiable.
- A clarification could be included that any person is able to make a submission on the application.
- That instead of repeating what information must be included in a submission, it could refer the reader to the appropriate form required to fill out a submission. If this were the case, it would also need to include a statement on where submission forms are available from.

CONCLUSION

The RMA provides the opportunity for the wider community to be involved in plan-making and on some resource consent applications. The reality is, however, that unless people understand how their 'lives' could be affected by proposed developments, they are unlikely to want to get involved. Improving the content and form of public notices is just one way of making public participation more effective with relatively little change to existing council practice.

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