

Guide to the Resource Consent Process

Introduction

The purpose of the Resource Management Act (RMA) is to promote the sustainable management of natural and physical resources – our land, air and water.

Councils are required to prepare policy statements and plans, which guide the use and protection of our resources, and are allowed to issue resource consents, which give permission to use a resource in a certain way.

The RMA establishes five types of consent:

- **Land Use Consent** – for any use of land which contravenes a rule in a plan.
- **Subdivision Consent** – for boundary adjustments and when dividing a lot into two or more lots.
- **Coastal Permit** – for activities in the coastal marine area (the area below mean high water springs).
- **Water Permit** – for the taking, use, damming or diversion of water, or heat or energy from water.
- **Discharge Permit** – for the discharge of contaminants to land, air or water.

The RMA provides for several types of activity. These are described in the box on the right.

Resource Consent Process

There is a standard consenting procedure for all resource consent applications and similar basic information requirements. The procedure is set out in the diagram overleaf.

Permitted activities do not require resource consent, however, in order to be permitted, an activity may have to meet certain standards.

Controlled activities require resource consent. The consent must be granted, however, the consent may be subject to certain conditions.

Restricted discretionary activities require resource consent and may be granted or declined, however, in making that decision, the council must restrict the exercise of its discretion to the matters identified in the plan.

Discretionary activities require resource consent and may be granted or declined, at the discretion of the council. The council has a broad discretion (not limited by the plan) in assessing such activities.

Non-complying activities require resource consent and (like discretionary activities) may be granted or declined. However, these activities must pass one of two “gateway” tests before they can be assessed. Non-complying activities are often described as activities that would not normally be appropriate for a particular zone but that is not necessarily the case.

Prohibited activities cannot be approved. If an activity is prohibited, you will need to change the district or regional plan before you can apply to undertake the activity.

Assessment of Effects

All applications must include an Assessment of Environmental Effects (AEE). An AEE should assess the proposal against the relevant provisions of the relevant policy statements and plans, identify any potential effects of the proposal and outline any consultation undertaken by the applicant, any response from those consulted, and any response to the concerns expressed by them.

As a general rule, an AEE should be prepared to a level of detail that corresponds to the scale and significance of the proposal and its effects. Detailed information is not necessary for minor activities with only minor environmental effects. However, where a proposal has the potential for significant effects, a comprehensive AEE is expected.

Councils can reject an application within 10 working days of lodgement where they are of the view that the AEE is not adequate.

Consultation

The RMA encourages (but does not require) applicants and councils to consult with potentially affected parties, such as adjoining landowners and tangata whenua. Consultation can assist applicants to gauge the level of support or opposition to their proposal and to modify the proposal to reduce any adverse effects. This often helps to expedite the consent process.

Requests for Further Information

Councils can request further information on a proposal and its effects. These requests typically result in the application being placed "on hold", resulting in delays in processing the application. Councils can also commission reports on any of the matters raised by the application, for example traffic issues.

If an applicant refuses to provide the requested information or does not agree to the commissioning of a report, the application must be publicly notified.

Notification and Submissions

Applications can be processed in one of three ways:

- On a publicly notified basis (when notice of the application is published in the newspaper and served on affected parties and anyone can lodge a submission on the application);
- On a limited notified basis (when notice of the application is served on affected parties and only those parties can lodge a submission on the application); or
- On a non-notified basis (without notification to any other parties or any opportunity for submissions).

Preparing an AEE

It is up to the judgment of the applicant, based on an understanding of what is proposed and the environment in which it is to operate, to determine whether a consultant should be engaged to prepare an AEE.

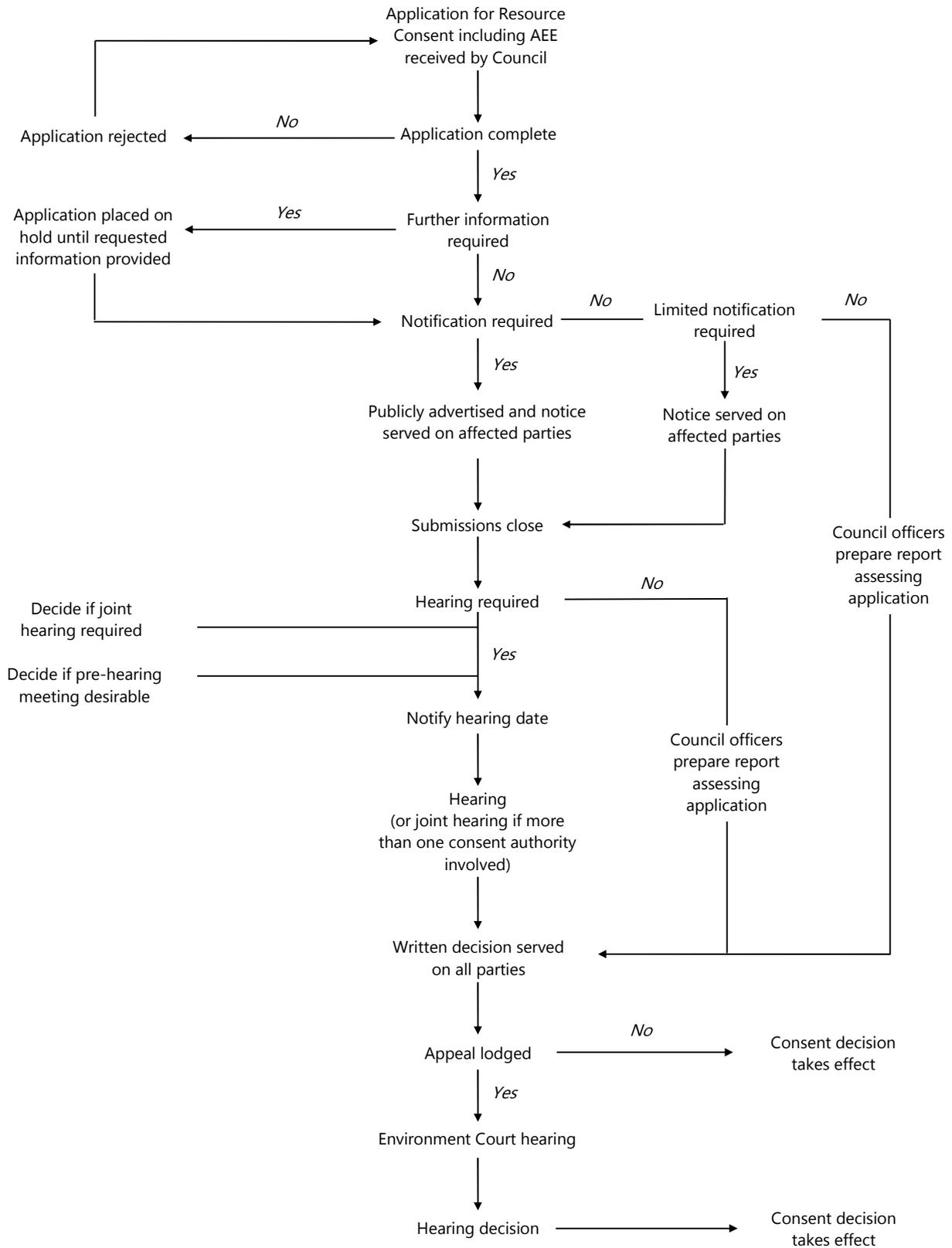
In many situations (e.g. small developments), the level of impact is low, the effects well understood, and the mitigation measures easily defined. Accordingly, applicants may be able to write the AEE themselves.

However, where proposals create a significant number of "infringements", have the potential for significant adverse effects, or have the potential to be controversial, applicants would be wise to seek professional advice.

Engaging a planner can:

- Minimise the risk of an application being rejected following lodgement;
- Minimise delays from requests for further information;
- Reduce the risk of notification;
- Increase the prospect of approval.

Resource Consent Process from Lodgement to Approval



The RMA sets out a series of steps that councils must follow when deciding how to process an application. These are difficult to summarise both succinctly and accurately. However, in broad terms:

The council must publicly notify an application where:

- The applicant requests public notification;
- A rule or a national environmental standard requires notification;
- The applicant refuses to provide information requested by the council;
- The adverse effects on the environment will be more than minor; or
- There are special circumstances warranting notification.

Where an application is not publicly notified, the council must serve notice of the application on any affected persons.

Where neither public nor limited notification are required, the council may process the application on a non-notified basis.

Councils have 20 working days from lodgement to make a decision on notification.

Planner's Report

Once the period for submissions has closed, or a decision has been made not to notify or serve notice of the application, a council planner will prepare a report assessing the proposal against the relevant matters. This may include the purpose and principles of the RMA, the objectives, policies and assessment criteria of the relevant policy statements and plans and the effects on the environment.

Where an application has been notified or served on affected persons, the applicant and submitters will receive a copy of the planner's report prior to the hearing and can comment on any part of it during the hearing. The decision then rests with the hearings panel.

Hearings

A hearing will be held where the applicant or submitters have indicated they wish to be heard.

Hearings are open to the public (meaning anyone can attend) but only the applicant and submitters may speak.

Hearings are supposed to be conducted without undue formality. You cannot be cross-examined by other parties in a council hearing, however, you can be questioned by the hearings panel.

Applicants are not required to retain a planner to appear at a hearing, however, where a proposal has significant effects or is controversial, it may be advisable to do so.

How a planning consultant can help you

A planning consultant can assist you in the following ways:

- Contribution to design process
- Preparation of resource consent and plan change applications
- Consultation and negotiation with council staff, tangata whenua, neighbours etc
- Presentation of expert evidence at council and Environment Court hearings
- Preparation of submissions on proposed plans, plan changes and notified resource consent applications
- Project management

Planning consultants are particularly well placed to undertake the above work due to their:

- Understanding of resource management issues
- Familiarity with the resource management process
- Working knowledge of the relevant planning documents
- Working knowledge of resource management case law
- Ongoing professional relationship with council staff

Conditions of Consent

The council's ability to impose conditions will depend on the matters requiring consent and the overall activity status. As a general rule, conditions should be imposed for resource management purposes, be fairly and reasonably related to the activity for which consent is sought and be clear and certain to the applicant. Conditions can include a requirement for a financial contribution, bond, covenant, administrative charge, monitoring and so on.

Appeals

The council's decision is final for some types of consent e.g. boundary activities, subdivisions and residential activities, other than non-complying activities.

For other types of consent, an applicant or a submitter may, within 15 working days of receipt of the council's decision, appeal the decision or any condition imposed in the decision, to the Environment Court.

There is no right of appeal against a decision on a non-notified application, however, an aggrieved party can seek a judicial review of the decision (this is typically a review of the decision to process the application on a non-notified basis). Judicial reviews are undertaken by the High Court. If the court decides the application should have been notified, it may then set the council decision aside.

Timeframes

Councils are supposed to process non-notified resource consents within 20 working days (approximately 1 calendar month) of lodgement. However, the ability to put applications on hold, and to extend the statutory timeframes for other reasons, means many applications take longer than that. Where an application is processed on a notified or limited notified basis, the process typically takes at least four months and sometimes up to a year.

About Civitas Ltd

Civitas provides town planning services nationwide to a wide variety of clients including homeowners, schools, churches, retailers, retirement village operators, property developers and local authorities.

Director, Iain McManus, is qualified with a Bachelor of Planning (1st Class Honours) and Bachelor of Arts and is a member of the NZ Planning Institute and Resource Management Law Association. Iain has worked as a planning consultant since 1995 and is a clear thinker and confident speaker with extensive hearings experience. Outside of planning, Iain is an active property investor and member of the Auckland Property Investors Association.

The Role of the "Expert Witness"

There are two types of participants in the resource consent process: the advocate and the expert witness.

Applicants and submitters may act as advocates. Alternatively, they may engage a lawyer or other party to advocate on their behalf.

However, planners, traffic engineers and others who have specialist training or experience that can assist the consent authority (i.e. council or court) are required to act as expert witnesses.

The role of the expert witness is to present an independent and impartial evaluation of the application's merits, and the credibility of the witness rests in part on his or her aura of objectivity.

Accordingly, contrary to popular opinion, the consultant planner is not a "hired gun". Although typically engaged by a party supporting or opposing a proposal, the primary professional obligation of the consultant planner is to the consent authority.

The planner has a duty to present all the relevant facts and not to omit those that are detrimental to his or her client's case, and must explain logically and objectively the reasoning for the opinion advanced. The planner must be honest with all parties and willing to acknowledge any weakness in the case.

It is not appropriate for an expert witness to give detailed evidence outside his or her field of expertise.