

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 natural and physical 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:

- **Subdivision Consent** – required for nearly all subdivisions.
- **Land Use Consent** - for any use of land which contravenes a rule in a plan.
- **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 will be granted, however, the consent may be subject to certain conditions.

Discretionary activities require resource consent and may be granted or declined, at the discretion of the council.

Non-complying activities require resource consent and may be granted or declined. These are often activities that would not normally be appropriate for a particular zone.

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.

Councils also have the power to classify activities as “restricted” discretionary. Where this occurs, an assessment of the effects of the proposal needs to address only those matters the consent authority has restricted its discretion to.

Assessment of Effects

All applications must include an Assessment of Environmental Effects (an AEE). An AEE should identify the relevant provisions of the district or regional plan, any potential effects of the proposal and any persons who may be interested in or affected by the proposal. It should also 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 activities with only minor environmental effects. However, where a proposal is likely to have significant effects, a comprehensive AEE will be expected.

Councils can reject an application within five 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

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

Notification and Submissions

Applications can be processed in one of three ways:

- On a notified basis (when notice of the application is published in the newspaper and served on affected parties);
- On a limited notified basis (when notice of the application is served on affected parties);
- On a non-notified basis (without notification to any other parties).

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.

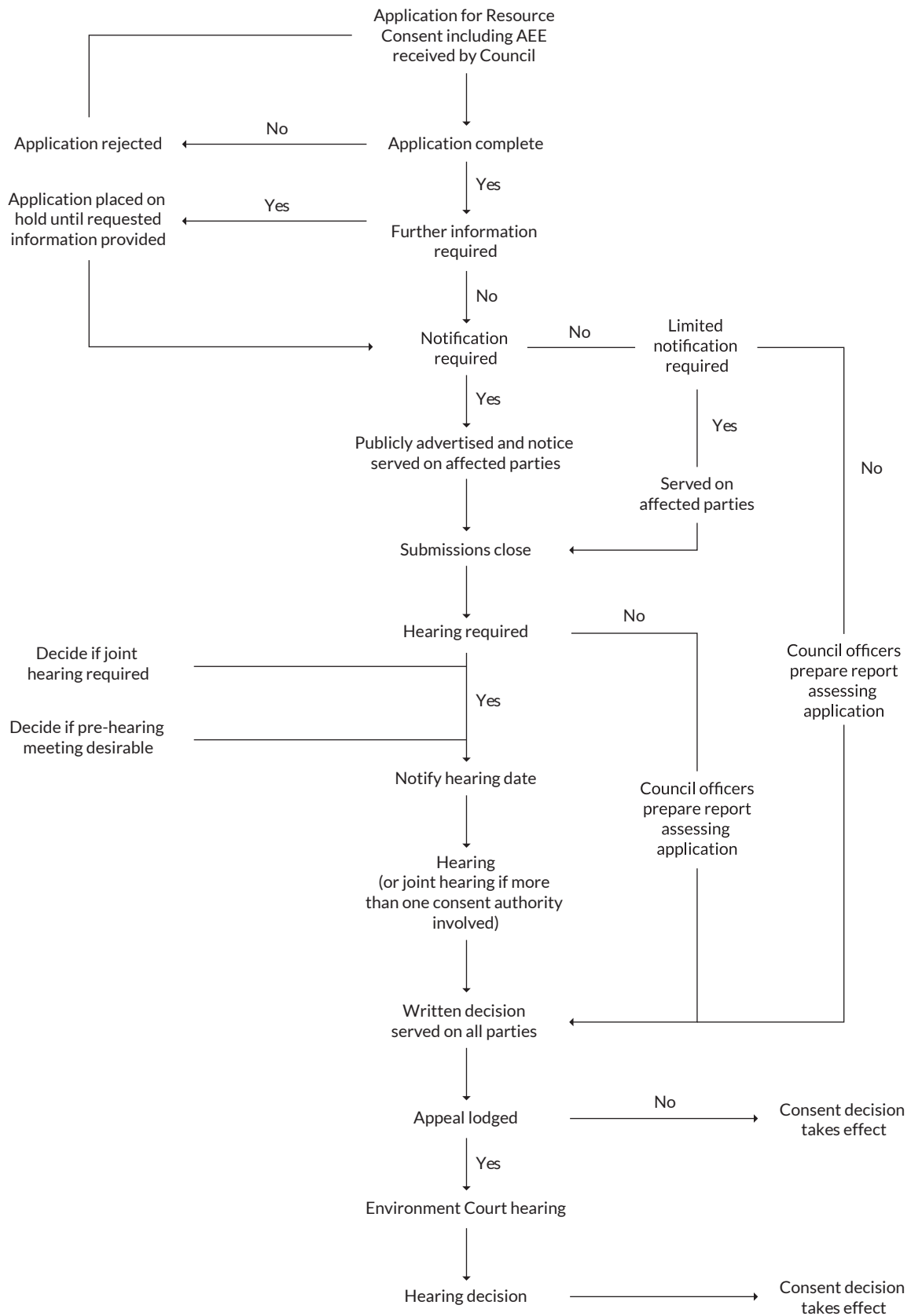
In many situations (e.g. small developments), the level of impact is low, the effects well understood, and the mitigation measures easily defined. Accordingly, applicants may be able to write the AEE themselves.

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 council must notify an application where:

- The adverse effects on the environment will be more than minor;
- A rule in the plan or a national environmental standard requires notification;
- There are special circumstances warranting notification; or
- The applicant requests notification.

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

Where no one is adversely affected by the application, the council may process the application on a non-notified basis.

Councils have ten 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 in terms of 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 parties, 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 and are supposed to be conducted without undue formality. You cannot be cross-examined 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 local authority staff

Conditions of Consent

Councils can impose any number of conditions on a consent, provided those conditions are imposed for resource management purposes, are fairly and reasonably related to the activity for which consent is sought, and are clear and certain to the applicant. Conditions can include a requirement for a financial contribution, bond, covenant, administrative charge, monitoring and so on.

Appeals

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. The Environment Court is similar to a district court but deals only with planning and environmental matters.

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, 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.

About Civitas Ltd

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

Company director, Iain McManus, is qualified with a Bachelor of Planning and Bachelor of Arts. He is a member of the NZ Planning Institute and Resource Management Law Association, as well as the Auckland Council Unitary Plan External Advisory Panel. Iain has worked as a planning consultant since 1995. He started his career with Connell Wagner and Beca Carter before founding Civitas in 2003. Iain is a clear thinker and confident speaker with extensive hearings experience.

Iain is supported by Craig Haughey. Craig is qualified with a Master of Science (Urban and Regional Planning) and a Bachelor of Arts and is a graduate member of the Royal Town Planning Institute. Craig worked for Planning Aid for Scotland and the Scottish Parliament before returning to NZ in 2012.

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.