



Ministry for the
Environment
Manatu Mō Te Taiao

AN EVERYDAY GUIDE TO THE RMA → SERIES 3.1

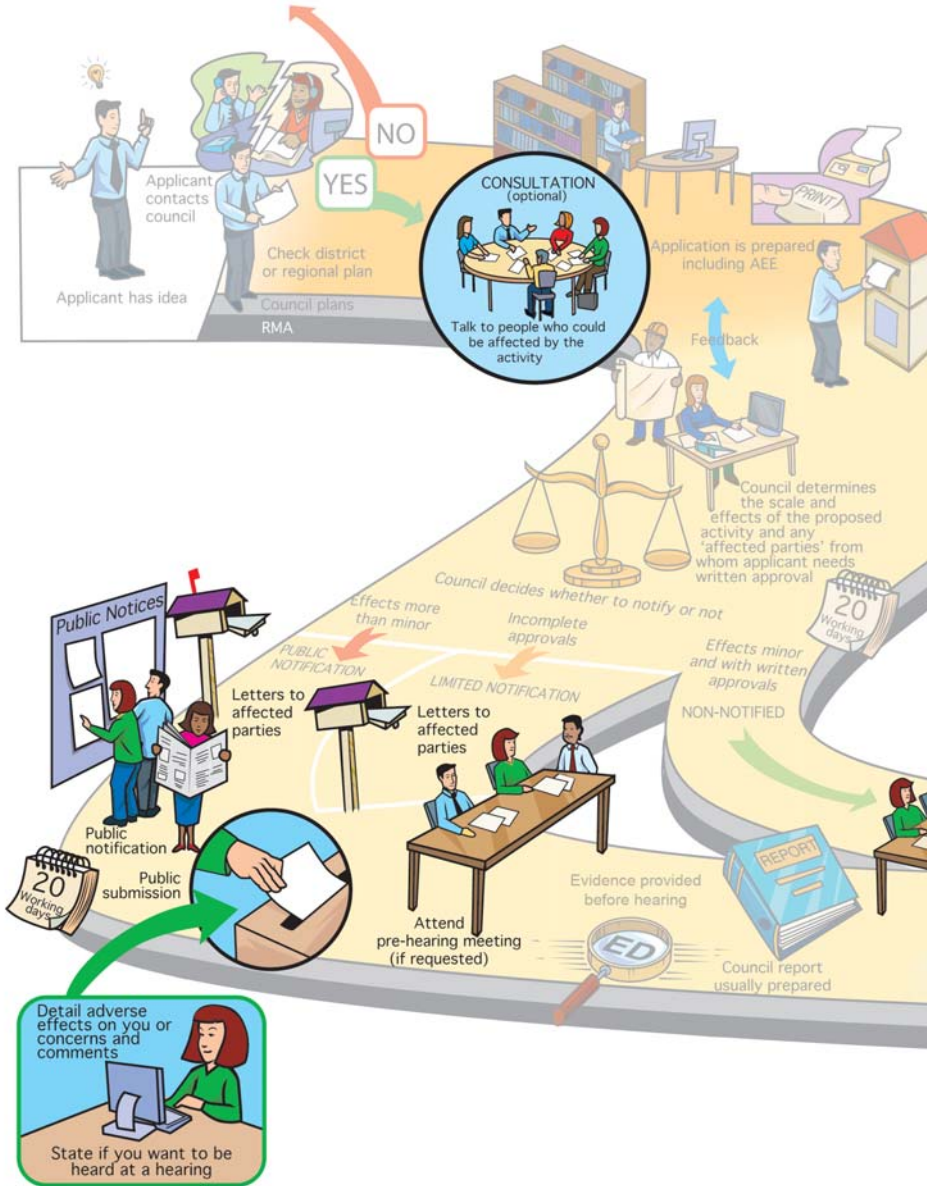
Your Rights as an 'Affected Person'



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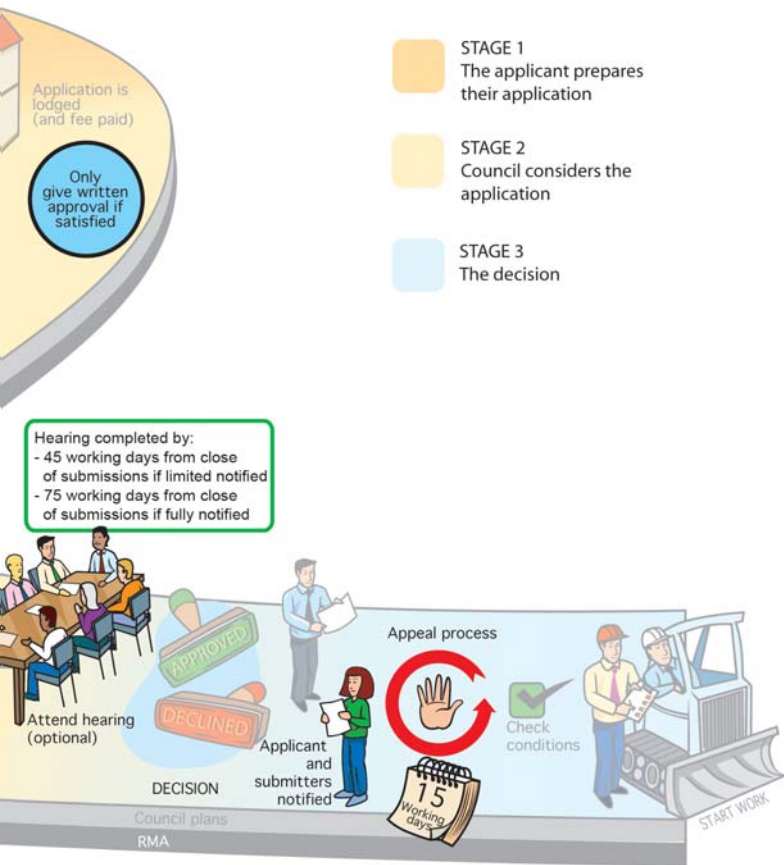
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GETTING INVOLVED IN THE RESOURCE CONSENT PROCESS



YOUR RIGHTS AS AN 'AFFECTED PERSON'

This diagram represents the council process. Some applications may be referred to the Environment Court or a board of inquiry for a decision, instead of the local council. See 'An Everyday Guide to the RMA' booklet 1.4 *National Level Guidance and Processes* for more information.



Introduction

The Resource Management Act 1991 (RMA) sets out how decisions are made about activities that might affect the environment. Applications from people wanting to undertake such activities are considered by councils or, in some cases, by a board of inquiry or the Environment Court. If successful, a resource consent is issued allowing the proposed activity to go ahead.

The first step in the council's decision-making process is to determine whether the application should be processed on a non-notified, limited notified or fully notified basis. For limited notified applications, notice is served to people who will be or are likely to be adversely affected by the proposed activity to a degree that is minor or more than minor (but not less than minor). Only those people can make a submission on the application. Applications are fully notified if the adverse effects on the environment are assessed as being more than minor. Notice of the proposal is posted in a newspaper circulating the entire area likely to be affected, and anybody can make a submission on the proposal.

This guide is aimed at people identified as being adversely affected by a proposed activity, described in the RMA as 'affected persons'. It explains:

- » who an affected person is, and what being an affected person means
- » what 'giving written approval' means
- » what you need to do when you're asked for written approval
- » what happens if you do give written approval
- » what happens if you don't give written approval.

It also explains some technical terms that you might hear throughout the resource consent process, like 'conditional approval' and 'side agreements'. If you become involved in an application as an affected person, you should also look at the other RMA guides in this series. They will help to explain the different types of consents and functions of councils and other agencies involved in the planning process.

This guide is intended for affected persons involved in local council resource consents. For more information about resource consent applications decided by boards of inquiry or the Environment Court (which may be directly referred to the Court by the applicant, or may be proposals of national significance), see 'An Everyday Guide to the RMA' booklet *1.4 National Level Guidance and Processes*.



Who is an affected person?

Every day, people ask their local council for resource consents to do things – putting up a garage, subdividing their property, building a multi-storey apartment block, taking water from a stream.

A **resource consent** is permission from the local council for an activity that might affect the environment, and that isn't allowed 'as of right' in the district or regional plan.

An application for resource consent will be **publicly notified** if the proposed activity will have or is likely to have adverse effects on the wider environment that are more than minor. An application may also be publicly notified if requested by the applicant, if special circumstances exist, or if the district/regional plan or a national environmental standard says it must. Being publicly notified means that the application is advertised in the newspaper and people can make submissions. Submitters can be for or against an activity, or be neutral but wanting to provide additional information. They can ask to be heard in support of their submission. Publicly notified applications usually involve a public hearing.

If a council does not publicly notify an application, it must still decide if there are people who will be adversely affected by the activity. The council must notify these people of the application (**limited notification**) unless a rule in a district/regional plan or national environmental standard precludes it. Where an application is limited notified, only those affected are served notice and can make a submission on the application.

The RMA test for whether someone is an affected person is whether the proposal has adverse effects on them that are 'minor or more than minor (but are not less than minor)'. Some examples of affected persons are shown in the highlighted box on next page.

The RMA and associated case law also specifies how the council decides whether there are any affected persons. For example, in making its decision, it may disregard an adverse effect of the activity on the person if a rule in a plan or a national environmental standard permits an activity with that effect (the 'permitted baseline').

If the council decides that the adverse effects on the wider environment will be no more than minor and that there will be no adversely affected persons (or where all affected persons have given their written approval),

the application will usually be '**non-notified**'. The only exceptions being if the applicant requests full notification, the council considers that special circumstances warrant full notification, or a rule in a district/regional plan or national environmental standard requires public notification.

The Environmental Protection Authority (EPA) is responsible for determining how a proposal of national significance is notified. For more information see 'An everyday guide to the RMA' booklet 1.4 *National Level Guidance and Processes*.

An affected person could be:

- » somebody whose privacy will be reduced by a sleepout built in the neighbour's backyard
- » tāngata whenua whose kaimoana could be affected by the discharge of wastewater into the estuary
- » a sailing club whose use of a river mouth for regattas could be affected by the extension of a jetty
- » a community group whose interests in protecting a nature reserve could be affected by the widening of a road.

What does being an affected person mean?

If you're an affected person:

- » You may be asked by an applicant to give written approval to an application for a resource consent. Remember, if *all* affected persons give their approval, and the potential effects from the activity on the wider environment are not more than minor, the application will be processed by the council as a 'non-notified' application. If only *some* affected persons give written approval, and the potential wider environmental effects from the activity are not more than minor, the council will limited notify the application. If the activity's adverse environmental effects are likely to be more than minor, the application will be publicly notified – whether or not affected parties give their written approval.
- » You don't have to give written approval if you're unhappy with what is being proposed.
- » You are entitled to make a written submission on an application if you, or any other affected party, decide not to give your written approval.



What does giving written approval involve?

Giving your written approval involves signing a number of documents. The applicant will usually ask you to sign and date:

- » a copy of the application form
- » a copy of the plans, if there are any
- » a copy of the assessment of environmental effects (AEE)
- » an affected person approval form.

The **application form** sets out the details of the application for resource consent.

The **plans** show what the applicant wants to do.

The **AEE** states what the environmental effects will be and how the applicant proposes to address them.

The **affected person approval form** is the form you sign and date to show that:

- » you understand the activity and its effects
- » you give your approval to the activity
- » you understand that the decision-maker can't consider the effects on you after you've given written approval, unless you lodge a submission or withdraw your approval.

Sometimes, the approval form is called an affected person consent, an affected party approval, or a neighbour's approval. You might be asked to sign just the application and/or the plans. If you are asked for your written approval:

- » study all the documents carefully so you understand exactly what's involved
- » make sure the applicant gives you enough information for you to understand the proposal and how it could affect you
- » remember that you can take your time, and you don't have to sign.

Another point to consider is that once you have signed a written approval, then you will not be served notice of the application should the council decide that it needs to go through the limited notification process. You will no longer be able to make a submission on the matter, or appeal the decision if you disagree with it.

Take your time

Before you give your written approval, you need to think carefully about the possible effects of the activity on you. These might include short-term effects associated with construction, such as noise and dust, as well as longer-term effects associated with the activity (such as glare from lights, or a building blocking your sun). You might also need to think about your future relationship with the applicant, especially if you're neighbours.

If you give your written approval, you're saying the activity is fine by you. This means that the council cannot consider any adverse effects on you when it decides whether to notify the application and, later, whether to grant or decline the application.

There is no legal time limit on how long you can take to give your written approval – but be fair. You should let the applicant know what you think as soon as you feel you understand what the application might mean for you.

Don't feel you have to sign anything straight away. You can:

- » ask the applicant to leave the plans and the AEE with you
- » ask the applicant for more information or clarification about particular aspects of the proposal
- » get advice from a lawyer, engineer, planning consultant or other expert
- » ask council staff for guidance about the process.

Where can I get help?

As most applications for resource consent are processed by local councils, council staff can provide some help and information. They can:

- » tell you about the resource consent process
- » answer your questions about the application itself.

Council staff can't:

- » tell you whether you should or should not give your written approval
- » enforce a side agreement (see page 10, *Can I bargain about other things?*)
- » accept a conditional approval.

YOUR RIGHTS AS AN 'AFFECTED PERSON'

Community Law Centres can sometimes give you free advice and assistance, as can the Citizens' Advice Bureau.

The Ministry for the Environment can provide information about RMA processes (but not advice). Information about RMA processes and how to get involved is available on our website: www.mfe.govt.nz/rma/rma-processes-and-how-get-involved.

You don't have to sign

You don't have to sign anything if you're not sure about the proposed activity. Remember that while the applicant would usually like you to sign so the application won't be notified, the decision is up to you.

Can I ask for changes to the application?

Yes. If you'd be happy to approve the application after some changes, you can ask the applicant to amend the documents and bring them back for you to sign. These amendments might involve changing the position of a driveway, altering the height of a building extension, or moving a discharge point in a stream.

If you ask for amendments:

- » make sure you're signing the amended version of the plans, application form, and the AEE
- » make sure the affected person approval form refers to the amended documents, not the originals
- » make sure all the plans and drawings indicate which version they are and when they were modified
- » initial every page of the documents you're signing, so it's clear to the council that these are the versions you've seen and approved
- » make sure you date your signature.

Some changes or conditions could be dealt with through a side agreement (see *Can I bargain about other things?* on page 10).

Can I give conditional approval?

Conditional approval means that you write on the plans something like: 'I give my approval on the condition that the driveway is moved half a



metre to the right of the boundary'. This is generally not a good idea. Most councils will not accept a conditional approval. They are very likely to treat it as non-approval, and will notify the application to all affected persons or ask the applicant to re-see your unconditional approval.

So if you want changes, ask the applicant to amend the application documents and then sign the amended copies. This will give you more certainty about what will happen and will mean that this is what the council will be considering.

Can I bargain about other things?

Discussions over obtaining written approval may lead you to reach a private agreement, sometimes called a **side agreement**, with the applicant. A side agreement might include:

- » a neighbour wants to build an additional storey on their house. Your agreement may be that they pay for opaque glass to be installed in your bathroom window to protect your privacy
- » a neighbour wants to double the size of a garage on your property boundary. Your agreement may be that they will seal the driveway that you both share
- » an applicant wants to establish a transport depot next door. Your agreement may be that they build a close-boarded fence along your common boundary to absorb the noise of moving trucks.

A side agreement is useful for sorting out disagreements or potential disputes without involving the council or the courts.

A side agreement might also be called a letter of undertaking, or a deed of agreement.

There are no limits to what you might ask for in a side agreement. But to be fair, you should think about how you might be affected and limit what you might request to things that might reduce or remove that effect.

A side agreement is a private matter between you and the applicant. It has nothing to do with the council. The council won't enforce it for you and will not get involved if you can't reach agreement. If you're worried about what you're being asked to agree to, think about getting legal advice before you sign a side agreement.



What happens if I do sign?

If you do give your written approval, and all other affected parties also give written approval, the council will probably consider the application without notification to anyone, and approve or decline the resource consent. Giving your written approval doesn't mean the council will automatically approve the application.

Remember that if you do give your written approval:

- » the adverse effects on you will not be considered when the council decides whether to notify the application, or to grant or decline the application
- » you can't appeal the decision after the resource consent has been approved and issued.

Can I change my mind?

Yes. You can formally withdraw your approval in writing any time before the resource consent is granted. If you do change your mind make sure you:

- » keep copies of everything you sign as a record of what you've approved
- » withdraw your approval as soon as you can after you change your mind
- » write a letter to withdraw your approval – a phone call isn't enough. You should also send a copy of the letter to the applicant and to the council.

What happens if I don't sign?

If you (or any other affected persons) decide not to give your written approval, notice of the application will be served on you. This means you, and other affected persons who have not given written approval, can **make a submission** on the application. If any submitter or the applicant wants to be heard, there will be a hearing. For more information see 'An Everyday Guide to the RMA' booklet 3.3 *Appearing at a Council Resource Consent Hearing*.

A **submission** is a written statement that supports or opposes an application, or is neutral about it. It can support or oppose part or all of the application, or simply provide additional information. A submission can request conditions of consent.

To save the time and cost of notification, the applicant might decide to:

- » withdraw the application
- » change what is being proposed so a resource consent isn't needed
- » change the application so you're no longer an affected person.

It isn't underhand or sneaky for the applicant to change the application so your written approval is no longer needed. It means the applicant has accepted that the activity could have adversely affected you, and has changed it so this is no longer the case. If the applicant does change the application, it's up to the council to decide whether you're still an affected person.

Do I have to make a submission?

When you're thinking about whether to give written approval, ask yourself whether you would want to make a submission if the consent was notified. If you don't give your written approval and the application is notified, you don't legally have to make a submission.

But if you aren't interested in making a submission, that might indicate that the proposal isn't too much of a concern for you. Remember that refusing to give your written approval when you're not especially concerned about what is proposed and it doesn't really affect you just creates a lengthy and expensive process for the applicant.

Today, you're an affected person. Next week, or next month, you might be an applicant needing *your* neighbour's written approval for an activity. When it's used properly, the 'affected person' approvals process can help resolve issues in communities and neighbourhoods and keep them great places for everyone to live, work and play.



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Disclaimer

Although every effort has been made to ensure that this guide is as accurate as possible, the Ministry for the Environment will not be held responsible for any action arising out of its use. This includes the diagram on page 2 which is a very generalised overview of the resource consent process. The diagram is intended to be indicative only and should not be relied upon. Direct reference should be made to the Resource Management Act and further expert advice sought if necessary.

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