



Information for affected persons

3.1



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. If you are uncertain about issues raised in this guide then direct reference should be made to the Resource Management Act and further expert advice sought if necessary.

This document may be cited as: Ministry for the Environment. 2021. *Information for affected persons. An everyday guide to the Resource Management Act: 3.1*. Wellington: Ministry for the Environment.

Published in February 2021 by the
Ministry for the Environment
Manatū Mō Te Taiao
PO Box 10362, Wellington 6143, New Zealand

ISBN: 978-1-99-003325-4
Publication number: ME 1537

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This document is available on the Ministry for the Environment website:
environment.govt.nz.

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Introduction

The Resource Management Act 1991 (usually called the RMA) is the main piece of legislation that sets out how we should manage our environment. It's based on the idea of the sustainable management of our resources, and it encourages us (as communities and as individuals) to plan for the future of our environment.

The RMA means that councils set rules and requirements to manage activities ranging from building houses, clearing vegetation, moving earth, or taking water from a stream. The purpose is to ensure activities won't harm our neighbours or communities, or damage the air, water, soil and ecosystems that we and future generations need to survive.

About this guide

This guide is the eighth in a series of 13 guides called An Everyday Guide to the RMA (see more details about the series below).

It is aimed at people identified as being adversely affected by a proposed activity, described in the RMA as '[affected persons](#)'. They may be affected by local council resource consents or a [deemed boundary permitted activity](#).

The guide explains:

- who an affected person is, and what being an affected person means
- what 'giving written approval' means
- what 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'.

The guide has a glossary of RMA terms at the end. Words defined in the glossary are coloured [light blue](#).

About the everyday guides

These guides are intended to help people work with their councils. If you're dealing with the Environmental Protection Authority (EPA), a board of inquiry, or the Environment Court (see the glossary to learn more about these), you might need more technical advice from the EPA (www.epa.govt.nz) or the Environment Court (environmentcourt.govt.nz).

For more information about specific parts of the RMA process, see the [full set of guides](#) on our website.

MORE INFORMATION

If you become involved in an application as an affected person, you should also look at the [Applying for a resource consent guide](#).

This contains detailed information about resource consents, making an application, notifications, and other key steps in the process.

What is a resource consent?

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](#). Every day, people apply to their local council for resource consents to do things – put up a garage, subdivide their property, build a multi-storey apartment block, take water from a stream.

Types of resource consent application

Part of the council's decision-making is to determine whether to process the application as [publicly notified](#), [limited notified](#), or [non-notified](#).

Publicly notified

This is generally when the council assesses if a proposal will have or is likely to have adverse effects on the environment that are more than minor. The council publishes its notice of proposal on the internet, and a summary in a newspaper available in the area likely to be affected. Anybody can make a [submission](#) on the proposal. 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](#).

An application may also be publicly notified if the [applicant](#) requests it, if special circumstances exist, or if the district/regional plan or a national environmental standard says it must.

Limited notified

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 to a degree that is at least 'minor', known as affected persons. See the box on page 8 for some examples.

The council must notify them of the application unless a rule in a district/regional plan or national environmental standard prevents this. Only those people will be served notice and can make a submission on the application.

Non-notified

The council may decide that the general public need not be involved if the adverse effects on the environment are no more than minor and there are no adversely affected persons (unless they have given their approval). In fact, most resource consent applications fall into this category, which means there is no submission process.

Consent applications may also be non-notified if the applicant has consulted with any potentially affected persons before application, and received their written approval.

MORE INFORMATION

- [Consultation for resource consent applicants](#)

Who is an affected person?

The RMA test for whether someone is an affected person is whether the proposal has adverse effects on them that are at least 'minor'. These proposals are in the [limited notification](#) category. See the box below for some examples.

The RMA and case law also outlines 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 you are not satisfied with the council's decision on notification, it can be challenged through a judicial review to the High Court. You should seek legal advice on this first.

The only exceptions are if the [applicant](#) requests public notification, the council considers that special circumstances warrant public notification, or a rule in a district/regional plan or national environmental standard requires public notification.

If the activity is on a boundary, owners of an allotment with an infringed boundary may be considered an affected person.

Examples of an affected person could be:

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

What does being an affected person mean?

If you're an affected person:

- An applicant may ask you to give written approval to an application for a resource consent, before they lodge it (apply) with the council. 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 council will usually process the application 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 assess the application as [limited notified](#). This means they contact the other affected people (who have not given written approval), and give them the opportunity to make a submission.

If the activity's adverse environmental effects are likely to be more than minor, the application will be [publicly notified](#) – whether or not affected persons 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 [consent 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 the environmental effects 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
- give your approval to the activity
- understand that the decision-maker can't consider the effects on you after you've given written approval, unless you make 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.

IMPORTANT

When you have signed a written approval, the council will not notify you about the application if they 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 from construction, such as noise and dust, as well as longer-term effects from 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 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 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?

Councils

Most applications for resource consents are processed by local councils, and 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 [Can I bargain about other things?](#))
- accept a conditional approval.

Community law centres can sometimes give you free advice and assistance, as can the Citizens' Advice Bureau:

- communitylaw.org.nz
- www.cab.org.nz.

The Ministry for the Environment can provide information about RMA processes (but not advice).

See [guidance](#) on RMA processes and how to get involved on our website.

You don't have to sign

You don't have to sign anything if you're not sure about the proposed activity. Remember that although 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 (make changes) to 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 that:

- you're signing the amended version of the plans, application form, and the AEE
- the affected person approval form refers to the amended documents, not the originals
- all the plans and drawings indicate which version they are and when they were modified
- you 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
- you date your signature.

You could deal with some changes or conditions through a [side agreement](#) (see [Can I bargain about other things?](#)).

Can I give conditional approval?

[Conditional approval](#) means that you would 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-seek 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?

Side agreements

Discussions about 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 set up 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, or pay for insulation / double glazing for the neighbour.

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

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 your requests 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 persons also give written approval, the council will probably consider the application without notifying anyone, and approve or decline the resource consent. Giving your written approval doesn't mean the council will automatically approve the application.

If you do give your written approval:

- the council will not consider any effects on you when they decide 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 the council to withdraw your approval – a phone call isn't enough. You should also send a copy of the letter to the applicant.

What happens if I don't sign?

If you (or any other affected persons) decide not to give your written approval, the council will notify you of the application. 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.

MORE INFORMATION

- [Appearing at a hearing about a proposed plan or resource 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 they have accepted that the activity could have adversely affected you, and have 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.

WHAT IS A SUBMISSION?

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 also request conditions for the consent.

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.

If you aren't interested in making a submission, it is likely that the proposal isn't too much of a concern for you, and it doesn't really affect you. If this is the case, remember that refusing to give your written approval just creates a long and expensive process for the applicant.

MORE INFORMATION

- [Making a submission about a proposed plan or resource consent](#)

Glossary

The purpose of this glossary is to help you understanding the meaning of terms used in this guide. Some of these terms have specific legislative definitions in section 2 of the RMA.

Affected person	Is someone identified by the consent authority (usually the council) as likely to experience adverse effects of a proposal which are at least minor.
Affected person approval form	A form for a person to sign and date confirming they understand the activity and its effects and they give their approval.
Appeal	Request for a decision to be changed, predominately to the Environment Court.
Applicant	Person applying for a resource consent, change to existing consent conditions, or a private plan change.
Assessment of environmental effects (AEE)	A report that the applicant must give to the council with their resource consent application. It outlines the effects that the proposed activity might have on the environment.
Board of inquiry	A special body appointed by the Minister(s) to hear and decide proposals of national significance.
Consent application form	Sets out the details of the application for resource consent.
City or district council	The bodies primarily responsible for managing the environmental effects of activities on land.
Conditional approval	Where an affected person provides a condition for a resource consent for which their approval is reliant on. The council might not accept this.
District plan	A plan prepared by city or district councils to help them carry out their functions under the RMA.
Environment Court	A specialist court where people can appeal decisions made by councils on a policy statement or plan, or on a resource consent application; or where they can apply for an enforcement order or seek a declaration.
Hearing	Gives people who have already written submissions the chance to speak to the decision-maker, about what a council or an applicant is proposing.

Limited notification	A council only notifies people who are affected by a resource consent application or plan change, and only those people can make a submission.
National environmental standard (NES)	Regulations that prescribe technical and non-technical standards, methods or other requirements for land use and subdivision, use of the coastal marine area and beds of lakes and rivers, water take and use, discharges, or noise. Each regional, city or district council must enforce the same standard. In some circumstances where specified in the NES, councils can impose stricter or more lenient standards.
Non-notified application	A resource consent application which a council decides does not require submissions (see publicly notified and limited notification).
Publicly notified	Means that any person can make a submission on the consent application before the closure date.
Regional council	Primarily manage resources like the air, water, soils and the coastal marine area.
Regional plan	Can be prepared by regional councils, to help them manage the resources they are responsible for.
Resource consent	Permission from the local council for an activity that might affect the environment, and that isn't allowed 'as of right' under the district or regional plan.
Resource Management Act 1991 (RMA)	New Zealand's main piece of environmental legislation. It provides a framework for managing the effects of activities on the environment.
Side agreement	A private agreement between an applicant and another person relating to a resource consent.
Submission	Comments, opinions, concerns, support or opposition about a proposed development, a designation, or a proposed policy statement or plan.
Tangata whenua	In relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area.