



Ministry for the  
**Environment**  
*Manatū Mō Te Taiao*

# A technical guide to Resource Consent Notification

UNDER THE RESOURCE MANAGEMENT ACT 1991

(resulting from changes made by the Resource  
Legislation Amendment Act 2017)

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## Acknowledgements

The Ministry for the Environment would like to thank the local authorities who provided feedback on this guidance in its draft form.

This document may be cited as: Ministry for the Environment. 2017. *A Technical Guide to Resource Consent Notification*. Wellington: Ministry for the Environment.

Published in September 2017 by the  
Ministry for the Environment  
Manatū Mō Te Taiao  
PO Box 10362, Wellington 6143, New Zealand

ISBN: 978-1-98-852520-4 (online)

Publication number: ME 1329

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# Introduction

## Purpose of this guide

The purpose of this guide is to help consent authorities understand and implement the changes made to the notification provisions of the Resource Management Act 1991 (RMA) introduced by the Resource Legislation Amendment Act 2017 (RLAA17) which come into effect on 18 October 2017.

This guide provides practical assistance to consent authorities and covers:

- why and what changes have been made to the RMA
- what these changes mean for consent authorities in the day-to-day processing of resource consent applications.

The guide has been written for a local authority audience. Local authorities are welcome to share this guide with the public, or to use information in the guide to develop their own customer information.

Please note this guide has no legal status and is not a legal interpretation of the RMA or RLAA17.

## Background to the 2017 RMA amendments

Prior to the 2017 amendments to the RMA, unless a rule in a plan or National Environmental Standard (NES) specified the notification pathway for an activity, the consent authority would use the “effects tests” (laid out in section 95D and section 95E of the RMA) to determine whether to give public or limited notification of a resource consent (or process it on a non-notified basis).

Although several plans have non-notification clauses in them, there is considerable variability in the number and type of activities to which these rules apply. Most consent applications have still been subject to a comprehensive effects-based assessment by the consent authority before determining the notification outcome — even for proposals where there is a high level of certainty about how localised or widespread adverse environmental effects will be. For applicants, this has meant there has been a reasonably high level of uncertainty about whether their application is going to be notified or not.

The RMA has been amended to:

- replace the previous public and limited notification assessment processes for resource consent applications with a new explicit step-by-step process
- remove the general discretion for councils to publicly notify resource consent applications
- introduce new preclusions on public and limited notification, primarily for housing-related resource consents
- introduce a 10-working-day timeframe for councils to make notification decisions on fast-track applications
- provide a coordinated notification process for some joint Reserves Act and RMA resource consent processes

- provide a new regulation making power, allowing central government to specify that certain activities must not be publicly notified, must not be limited notified, or to limit who may be considered an affected person
- replace the 'discretion' to notify, with a 'requirement' to notify, if special circumstances exist
- extend the consideration of special circumstances for notification decisions to both publicly and limited notification.

In addition, the RLAA17 has introduced the following changes also relating to the notification decision:

- full public notices to be published on a *freely accessible internet site* (instead of a newspaper) with a short summary of the online notice published in at least one local newspaper
- limit the scope of appeals to the Environment Court on decisions on resource consents
- new Part 6AA and Part 8 provisions for the notification of additional matters for Nationally Significant Proposals and notices of requirement for designations and heritage orders to maintain the pre-RLAA17 approach to notification for these processes.

## When the provisions take effect

The consenting provisions of the RLAA17 come into effect on 18 October 2017. These changes do not have retrospective effect. This means applications lodged:

- before 18 October 2017 are subject to the un-amended provisions of the RMA
- on or after 18 October 2017 are subject to the amended requirements of the RMA, as covered in this guide.

Any applications for a change or cancellation of a consent condition (s127 application) lodged after 18 October 2017 (for a resource consent granted prior to this date) are subject to the new notification provisions covered in this guide.

# Scope of notification changes

## ‘Fast track’ resource consents

The RLAA17 has amended the RMA to introduce a new fast track process for particular types of resource consent applications (s87AAC). These applications must be processed within 10 (instead of the standard 20) working days. They are applications that are district land use activities with a controlled activity status, where the applicant has supplied an electronic address for service (or an activity prescribed by regulations made under s 360G(1)(a) as being eligible to be fast tracked).

Applicants can opt out of the process if they wish (at the time of lodging the application).

Section 95 has been amended to introduce a 10-working day timeframe for consent authorities to make their notification decision on fast track consents.

A fast track consent ceases to be continued as a fast track application if the consent authority determines either:

- the application needs to be *publicly notified*:
  - under s95C (public notification after request for further information), or
  - if special circumstances exist (s95A(9)), or
- the application needs to be *limited notified*:
  - because there are certain affected groups/persons who must be notified (s95B(2) – (4)) or if special circumstances exist in relation to the application (s95B(10)), or
  - a *hearing is required* (for a non-notified consent).

The application then continues to be processed via the standard resource consent process (depending on the notification path it follows). The relevant timeframes that apply, and the date of lodgement of the original (fast track) consent remains the same.

Section 37 (waivers and extension of time limits) has not changed. Consent authorities can still apply this section to extend the timeframes outlined in the RMA, where criteria in section 37A are met.

## New notification decision process (s95A & 95B)

The new notification decision process retains the current two stage process. Public notification is addressed first and limited notification is being then addressed if public notification is not required. The process is however fundamentally different — the consent authority must move through a sequential mandatory step-by-step process to make its notification decision.

Sections 95A and 95B have been replaced with this step-by-step process, outlined in the flowcharts on pages 15 and 16 of this technical guidance — and in detail in the following chapters.

The notification process changes do not change the consent authority’s powers to:

- defer processing an application under s91, if the authority determines additional consents are needed, or
- request further information (under s92) if necessary to support their notification determination.

## Notification decisions for ‘bundled’ consent applications

It is common practice for an application to be prepared based on a proposed development, which often involves many activities requiring resource consent. However, an applicant may apply for consents for a proposal in separate applications.

In circumstances where there are multiple applications relating to the same proposal, the council has two interrelated decisions to make before making a notification decision:

- Firstly, the council must determine whether all necessary consents have been lodged. In some situations, a council may determine not to proceed with their notification decision until other related applications (that will help with a better understanding of the proposal as a whole) are made (s91). This may include consent applications that need to be processed by other consent authorities (in such cases, these applications may be processed as a joint application).
- Secondly, the consent authority must decide whether to treat those applications separately or as one overall activity (a ‘bundle’). If the decision is made that separate applications should be bundled, they are assessed together as a whole, and the overall activity status of the ‘bundle’ is generally that of the most restrictive rule applying to the proposal.

This decision has implications for the way in which the preclusions on, and requirements for, notification apply under the new step-by-step notification process. This is explained in more detail later in this guidance, but in brief:

### Preclusions to notification for bundled consents

- All activities in a ‘bundle’ of applications must fall within the scope of a given preclusion in a plan or national environment standard, for the preclusion on notification to apply (s95A(5)(a), s95B(6)(a)).
- All activities within a ‘bundle’ of applications must include only activities listed in s95A(5)(b)(i), (ii) and/or (iv) for the preclusions on public notification to apply, and must include only activities listed in s95B(6)(b)(i) and (ii) for the preclusions on limited notification to apply.
- ‘Boundary Activities’<sup>1</sup> (which are precluded from public notification by virtue of their definition in s87AAB) cannot form part of a ‘bundle’.

### Requirements for notification for bundled consents

Only one activity within a bundle of applications needs to fall within the scope of a mandatory notification requirement outlined in a plan or national environment standard for the whole of the bundle to require public notification (s95A(8)(a)).

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<sup>1</sup> Defined in s87AAB (refer to page 21 of this guidance)

## Notification due to special circumstances (s 95A(9) and s95B(10))

The concept of ‘special circumstances’ in the context of public notification is not new. The presumption for notifying based on special circumstances has however changed. If the consent authority determines special circumstances exist, it MUST publicly notify the application (ie, it will no longer be discretionary).

The determination of special circumstances in relation to limited notification is new. If the consent authority determines special circumstances exist in the application that warrants the limited notification of the application to persons that have either:

- been precluded from being served notice (due preclusions listed in s95B(6)), or
- are not eligible persons (in the case of boundary activities or prescribed activities) (under s95B(7)).

then the consent authority must serve notice on those persons (ie, process the application on a limited notified basis).

### What are ‘special circumstances’?

Current case law has defined ‘special circumstances’ (in the context of decisions on public notification of resource consent applications) as those “*outside the common run of things which is exceptional, abnormal or unusual, but they may be less than extraordinary or unique.*”<sup>2</sup>.

Although the purpose is slightly different, this definition can also be applied to the treatment of special circumstances for limited notification, in that a special circumstance would be one which makes limited notification desirable, despite provisions excluding consideration being given to whether particular persons are ‘affected’.

The following case law outlines certain cases where the courts have considered special circumstances in relation to the public notification of resource consent applications. The case law summaries are not an exhaustive list of cases that relate to special circumstances and should be read in conjunction with the cases themselves for full context. These cases may simply be a helpful starting point for consent authorities in determining whether special circumstances exist for the limited notification of resource consent applications.

**Table 1: ‘Special circumstances’ case law summary**

Case name & citation	Notes
<i>Murray v Whakatane DC</i> [(1997) NZRMA 433 (HC)]	This case concerned an application for subdivision to complete a residential development. The plaintiffs (occupiers of land near the proposed subdivision) challenged the Whakatane District Council’s decision not to publicly notify the applications. The Court found the Council was wrong in deciding not to notify the applications, as there was likely to be high public interest in development of the site, given previous development proposals had been the subject of wide public opposition, and several parties (including DOC) had indicated they wished to submit on the applications. The Court rejected the Council’s view that the proposed subdivision conformed with the Transitional District Plan and so alleviated any public interest concerns, as the Court observed the Transitional District Plan in itself was contentious.

<sup>2</sup> *Far North DC v Te Runanga-iwi o Ngati Kahu* [2013] NZCA 221 at [36].



Case name & citation	Notes
<i>Urban Auckland v Auckland Council</i> [(2015) NZHC 1382, (2015) NZRMA 235]	This case concerned a resource consent to extend a wharf in Waitemata Harbour, obtained by Ports of Auckland Ltd. on a non-notified basis. The plaintiffs challenged the Council's decision not to notify the application based on special circumstances. The Court concluded special circumstances existed in this case, because of high level of public interest in the proposal, significant plans for future development of the site, and the applicant was a Council-owned entity.
<i>Housiaux v Kapiti Coast District Council</i> [HC Wellington CIV-2003-485-2678 19 March 2004]	<p>This case concerned a resource consent for the construction of a heavy vehicle access onto a farm, which was granted on a non-notified basis. The plaintiff, who owned the neighbouring property, challenged the Council's decision not to notify the application, on the basis there were special circumstances, namely she and another party had written to the Council requesting to be consulted about the application. The Court held that concern on the part of neighbouring residents did not amount to special circumstances. According to the Court, if that was the case, "every application would have to be advertised where there was any concern expressed by people claiming to be affected".</p> <p>The plaintiff also challenged the Council decision on the basis the application was a precursor to a possible future subdivision on the neighbour's property, which constituted a "special circumstance triggering notification". The Court held the possibility of future subdivision applications was outside the scope of the application and therefore could not constitute a special circumstance.</p>
<i>Creswick Valley Residents Association Inc v Wellington City Council</i> [HC Wellington CIV-2011-485-2438]	The plaintiffs, neighbouring residents of a property, challenged the Council's decision to grant an earthworks consent for the property on a non-notified basis. The plaintiffs argued the Council's actions, in previously advising the plaintiffs they would be given the opportunity to comment before any significant change to the site occurred, amounted to special circumstances. The Court accepted the plaintiffs had an arguable case and granted them an interim injunction, preventing the developer from commencing earthworks on the site, pending a full hearing. However, at the hearing, the Court decided it unnecessary to decide the special circumstance issue, as the Court had already ruled the Council's decision invalid for another reason.
<i>Fullers Group Ltd v Auckland RC</i> [(1999) NZRMA 439 (CA)]	The plaintiff challenged the Council's decision not to notify an application for a coastal permit for a floating pontoon in Waitemata Harbour to load and unload boat passengers. The plaintiff, an adjacent ferry operator, argued the proposed pontoon would create safety issues for the plaintiff, but the Council found no evidence of any safety risks. The Court concluded it is unlikely any special circumstances could be found in the absence of such evidence.

## New regulation-making powers (s360H)

The RLAA17 also includes a new regulation-making power, enabling the Minister to make regulations prescribing types of resource consents which must be processed without public and/or limited notification — and restrict the persons eligible to be considered affected by that activity (identified in the regulations).

There are currently no regulations made under this section.

## Requirements in relation to public notices (s2AB)

Once the decision is made to publicly notify an application under s95A, the consent authority must give public notice of the application.

Previously when giving public notice, the consent authority was required to publish a notice in a newspaper circulating in the entire area likely to be affected by the proposal, with the option to publish the notice on the internet as well.

RLAA17 has introduced a new section 2AB, requiring:

- public notices be published (along with all relevant information) on a freely accessible internet site, instead of a newspaper
- a short summary of the online notice be published in at least one newspaper circulated in the whole area affected by the topic of the notice, along with a web address directing readers to the full notice
- the notice and short summary be worded in a clear and concise way.

### Public notices

The public notice should include enough information about the application and the location to enable any person to decide whether or not to view the complete application for the purpose of making a submission. Notices must still comply with any relevant form in the Resource Management (Forms, Fees and Procedure) Regulations 2003.

There is no minimum length of time public notices must remain on a website. A general guideline is notices should be available online for at least the entire period the notice is relevant to the public (for example, the submission period it relates to). Some councils may choose to store public notices online after this period, for reference purposes.

The requirement for decision-makers to serve public notices to particular people has not changed (ie, they must be served on every person prescribed in Regulation 10 of the Resource Management (Forms, Fees and Procedure) Regulations 2003).

### Short summaries

Short summaries for public notices should cover the following information:

- the name of the relevant consent authority
- the name of the applicant
- a clear and concise description of the proposal
- a clear and concise description of the location
- the closing date of submissions (if applicable)
- web link to the full public notice (Note [tinyurl.com](https://tinyurl.com) is a useful tool to make web links more concise in length).

Appendix C provides a template of a short summary.

### Site Notices

Regulation 10A of the Resource Management (Forms, Fees and Procedure) Regulations 2003 has been amended so the consent authority only needs to affix the short summary of the

public notice (instead of the full public notice as previously), and details of the internet page where they can find the full public notice to the site (note: this remains a discretionary option).

## Requirements for the electronic service of documents (s352)

RLAA17 amends section 352 of the RMA to make electronic delivery the default method of service for RMA processes. If a person provides an electronic address, for the matter to which the document relates, and does not request another method of service listed in section 352(1)(b), documents under the RMA must be served using the electronic address provided (unless a court directs otherwise).

People are not required to provide an electronic address as their address for service, however, this is encouraged (it is faster and less expensive than non-electronic methods).

- When a council notifies an application, and serves notice on affected persons (and groups), if those persons have provided an electronic address for service (for this purpose), the consent authority *must* serve notice to them via this electronic address for service.
- When a submission is received on a notified resource consent application, any further documents sent to the submitter (such as notification of the hearing, copy of the decision etc) should be sent to their electronic address for service, if they have provided one for this purpose.

## Limited scope for appeals (s120)

Under section 120 of the RMA, an applicant/consent holder, or any person who made a submission on the application (or review of consent conditions) can appeal to the Environment Court against the whole or any part of a decision of a consent authority for a resource consent. RLAA17 has however amended the scope of this right to appeal, including section 120(1A) — which states if the resource was for a *boundary activity* (as defined in s87AAB<sup>3</sup>), and/or a *subdivision consent* or a *residential activity* (as defined in s95A(6)<sup>4</sup>) then the decision cannot be appealed (unless the proposal was a non-complying activity).

If multiple resource consents for the same proposal are considered together in a 'bundle', and one or more of those resource consents can be appealed, the entire 'bundle' of consents can be appealed together.

In addition, s120 has been amended so a submitter can only appeal to the Environment Court if their appeal is both:

- related to a matter raised in their submission
- their submission, or the part to which the appeal relates, has not been struck out under (new) section 41D of the RMA.

People can still challenge decisions to the High Court through judicial review regarding errors of process.

Applicants can also lodge an objection to the consent authority under s357A about the decision on a notified resource consent, if either no submissions were received, or all

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<sup>3</sup> Refer to page 21 for this definition

<sup>4</sup> Refer to page 19 for this definition

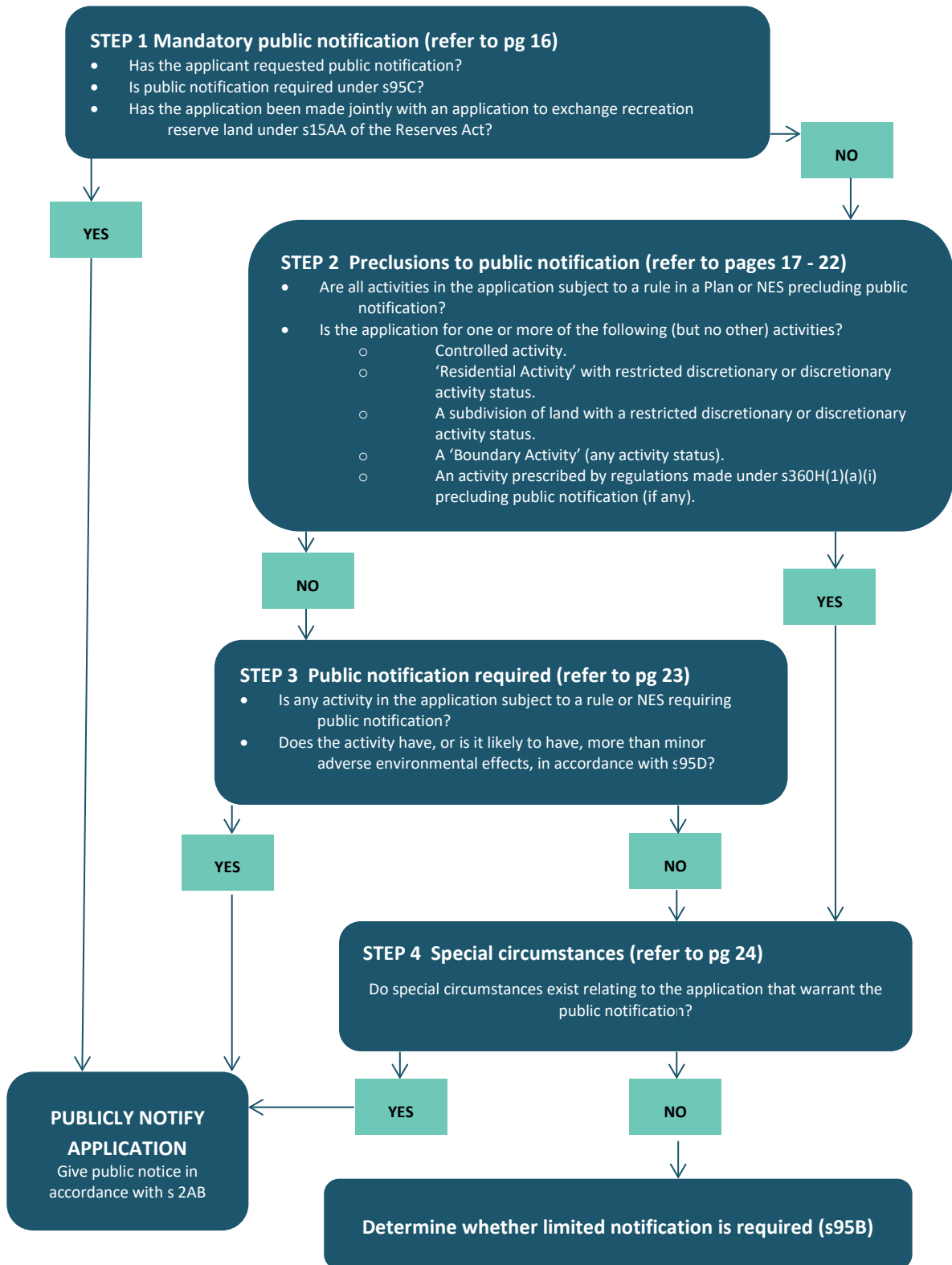
submissions were withdrawn. In such cases, the applicant may request their objection is heard by a hearing commissioner. If they make that request, the consent authority must arrange for the objection to be heard and decided, by one or more Commissioners who are not members of the consent authority. The appeal rights subsequent to a decision on an objection have been retained. However for boundary activities, subdivisions and residential activities where appeals are excluded under s120A, there is no right of appeal on the decision on an objection.

Any advice by a consent authority to applicants or submitters must be consistent with the new changes to appeal rights.

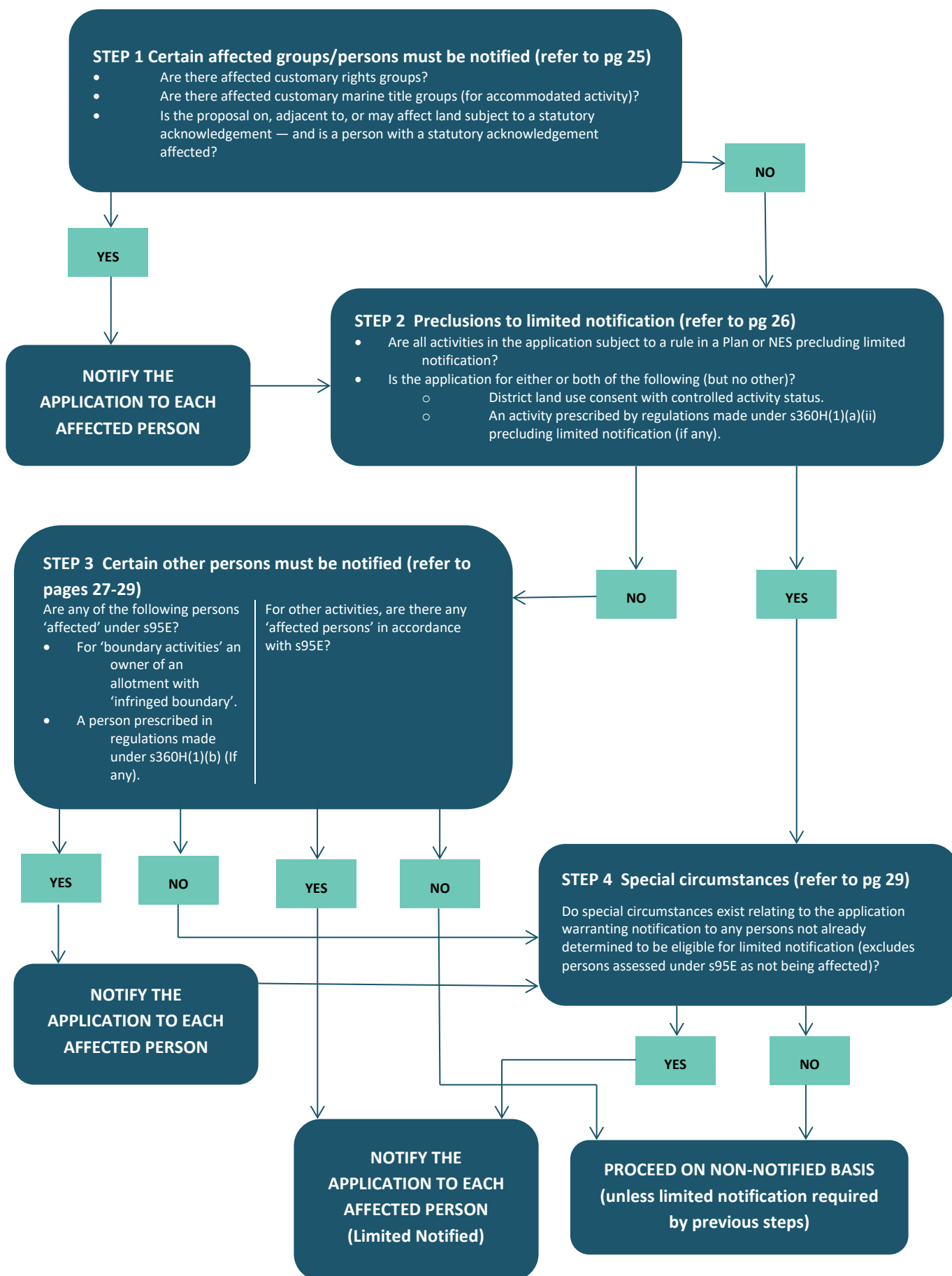
For example, a note on a resource consent for a boundary activity, a subdivision consent or a residential activity should specify whether the applicant has appeal rights. If the proposal is for a subdivision consent with a discretionary activity status, the consent note might say “There are no rights of appeal to the Environment Court in relation to this decision”.

# Flowcharts – new step-by-step notification decision process

## Stage 1 - Public notification decision process (s95A)



## Stage 2 - Limited notification decision process (s95B)



# Stage 1 of notification decision process - should the application be publicly notified?

## Step 1 – Mandatory public notification

If the application meets any of these three criteria, the application must be publicly notified:

### Criteria (a): The applicant has requested public notification (s95A(3)(a))

This provision is unchanged by the amendments.

Has the applicant requested public notification?	
Yes	Publicly notify application. No further notification assessment necessary.
No	Continue through step 1.

### Criteria (b): Public notification is required under s95C (s95A(3)(b))

This provision is unchanged by the amendments. An application must be publicly notified if either:

- the consent authority makes a request for further information under s92(1) of the RMA before making a notification decision and the applicant refuses to provide the information, or does not provide it before the deadline
- the consent authority notifies the applicant they will be commissioning a report under s92(2) of the RMA before making a notification decision, and the applicant refuses to agree to the commissioning, or does not respond before the deadline.

Is public notification required under s95C?	
Yes	Publicly notify application. No further notification assessment necessary.
No	Continue through step 1.

### Criteria (c): The application is made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977 (s95A(3)(c))

This is a new provision, as a consequence of the integrated process for Reserves Act and Resource Management Act permissions for exchange of Recreation Reserve land for other land to be held for the same purpose.

If the Recreation Reserve is administered by the council, an application can be made jointly under s88A of the RMA and s15AA(4) of the Reserves Act. If a joint application has been made, the application must be publicly notified.

The flowchart on the Ministry’s website ([Joint reserve exchange - RMA process initiation flowchart](#)) will help to determine whether a joint process can be applied to a reserve exchange request with a resource consent application:

Has the application been made jointly with an application to exchange recreation reserve land?	
Yes	Publicly notify application. No further notification assessment necessary
No	Move to Step 2

### JOINT EXCHANGE OF RESERVE LAND EXAMPLE

The ABC Council administers a specific recreation reserve. DEF Limited has a housing development adjacent to this reserve and proposed to Council they extend the development into a small part of the reserve. They propose to exchange an equivalent area from their site, also adjacent to the reserve. The Council has determined this matter can be addressed by a consent application, not a plan change. The joint Reserves Act/resource consent application must be publicly notified.

## Step 2 – Public notification precluded in certain circumstances

For any applications not required to be publicly notified under step 1, public notification is precluded (ie, not allowed) in certain situations, unless special circumstances apply (see step 4).

*Note:* This step does not involve any consideration of the proposal’s environmental effects (which happens at Step 3, if the application makes it that far). This is quite a significant shift from the previous notification assessment process.

The criteria outlining which circumstances preclude public notification are:

### Criteria (a): All activities in the application are subject to one or more rules or national environmental standards that preclude public notification (s95A(5)(a))

Local authorities can include rules in their plans which state certain types of resource consent applications shall not be publicly notified. Similarly, a NES can include provisions specifying particular activities be precluded from being publicly notified. Such preclusions will typically be either for a certain class of activity or particular types of activities.

The only NES which currently contains a preclusion on public notification is the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 [Regulation 9].

If the application involves numerous activities requiring consent, or a bundle of applications are being processed together as a ‘bundle’, then public notification of the application as a whole is only precluded under this criterion if each of those activities is precluded public notification by a rule in a plan or a NES.



If public notification is precluded under this criterion, step 3 doesn't apply and instead the consent authority must determine whether there are special circumstances that warrant the public notification of the application (step 4).

Are all activities in the application precluded from public notification by a rule in a plan or a NES?	
Yes	Move to step 4 (special circumstances).
No	Continue through step 2.

## Criteria (b): The application is for one (or more) of the following types of activities:

### A controlled activity (s95A(5)(b)(i))

This is a new provision. It does not however represent a major departure from current practice, as very few controlled activities were previously publicly notified. In many cases, councils will already have a rule in their plan precluding notification for controlled activities (refer criteria (a) above). The preclusion of controlled activities under s95A(5)(b) will therefore pick up any controlled activities without rules precluding notification in a plan or by a NES.

The main purpose of this provision is to provide certainty for applicants. If an application is for a controlled activity (but no other activity other than those listed below [relating to the subdivision of land, residential activities, boundary activities or prescribed activities]), then it cannot be publicly notified, unless special circumstances exist. This provision applies to both district and regional resource consents.

Is the application as a whole for a controlled activity?	
Yes	Move to step 4 (special circumstances).
No	Continue through step 2.

### CONTROLLED ACTIVITY EXAMPLE

In the district plan for ABC Council, erecting a wind powered turbine is identified as a controlled activity in the residential C zone (subject to standards). Ms Smith has applied to the Council for consent for a turbine in this zone, which meets the relevant standards. No other aspects of the proposal require consent. Unless the council determines special circumstances exist, it may not publicly notify the consent.

### Subdivision of land, or a residential activity (s95A(5)(b)(ii))

#### *Subdivision of land*

This is a new provision, representing a significant departure from current practice. The provision precludes public notification of resource consents for the subdivision of land, unless the consents have a non-complying activity status, or special circumstances apply. This preclusion applies to the subdivision of any land, in all zones and regardless of the intended use of the subdivided land.

If the proposal also needs resource consent for a land use activity, and the applications are being processed together as a 'bundle', the notification criteria for the land use consent will

also need to be considered and the most restrictive activity status applied. Public notification would only be precluded for the application as a whole if each individual activity is precluded from public notification, by virtue of falling within the scope of the categories listed in s95A(5)(b)(i), (ii) or(iv).

Note: the subdivision of land that is a controlled activity is precluded from public notification under the controlled activity preclusion above (s95A(5)(b)(i)).

Is the activity a restricted discretionary or discretionary activity for the subdivision of land?	
Yes	Move to step 4 (special circumstances).
No	Continue through step 2.

*Residential activity*

This is a new provision, and a departure from the current process.

Resource consent applications for “residential activities”, with restricted discretionary or discretionary status, are precluded from public notification under new section 95A(5)(b)(ii) of the RMA.

*A **residential activity** is defined in new s95A(6) as “an activity that requires resource consent under a regional or district plan and that is associated with the construction, alteration, or use of 1 or more dwelling houses on land that, under a district plan, is intended to be used solely or principally for residential purposes.”*

To determine if a resource consent application is precluded from public notification on the basis that it is a “residential activity”, consent authorities need to assess the proposal in terms of the following two questions. Is the activity requiring consent:

- “associated with the construction, alteration, or use of one or more dwelling houses”?
- proposed on “land that, under a district plan, is intended to be used solely or principally for residential purposes”?

If the answer to either or both questions is “no”, then public notification is not precluded for any aspect of the resource consent application on this basis.

If the answer to both questions is “yes”, the consent authority should proceed to step 4 to determine whether the application should be publicly notified on the basis of special circumstances.

The consent authority should record the rationale behind this determination.

The following provides guidance to support consent authorities with making these determinations. Note this guidance is not intended to provide legal interpretation of section 95A(6), and there may be other situations where proposals fall into or out of this preclusion. If you are a council consent planner, and unsure if a particular resource consent application meets either of these tests, you should discuss this with your in-house legal support.

**Guidance: What does “associated with the construction, alteration or use of one or more dwelling houses” mean?**

Consent authorities need to decide if a particular aspect of a proposal is “associated with” the construction, alteration or use of one or more dwelling houses.

“Dwelling house” is defined in section 2 of the RMA, and was not amended by the Resource Legislation Amendment Act 2017.

*Dwelling house means any building, whether permanent or temporary, that is occupied, in whole or part, as a residence; and includes any structure or outdoor living area that is accessory to, and used wholly or principally for the purposes of, the residence; but does not include the land upon which the residence is sited.*

There may be a range of activities “associated with” the construction, alteration or use of a dwelling house that could be captured here, for example:

- any activities required to undertake the construction or alteration of a dwelling house (including drilling/laying foundations, building, plumbing, electricity etc)
- land modifications required to enable construction, alteration or use of a dwelling house (eg, vegetation clearance or earthworks to create building platforms, yards or driveways)
- infrastructure connections required to service the dwelling house for use (such as three waters, electricity or telecommunications).

**Guidance: What is “land that ... is intended to be used solely or principally for residential purposes”?**

Consent authorities need to determine if the activity proposed is “on land that, under a district plan, is intended to be used solely or principally for residential purposes”.

To inform this determination, consent authorities should review the relevant provisions of the operative district plan<sup>5</sup>. Depending on how the district plan is written, relevant provisions might include any of the following:

- the ‘underlying zoning’ of the site
- the objectives and policies of the plan applying to that zone
- any ‘policy overlays’ applying to that land, and the applicable objectives and policies
- any heritage orders or designations applying to that land.

In many cases, the provisions of the district plan will make it clear the sole or principal intended use for the land is for residential purposes.

This determination may however require more assessment if the district plan envisages different types of activities within a certain area. For example, some district plans contain ‘mixed-use’ zones, which envisage both residential and other types of activities (for example commercial or rural), or overlays covering different district policy issues (such as significant vegetation or heritage protection). In these cases, the relevant objectives and policies of the district plan should inform the determination about if the ‘principal’ intended land use in that area is residential.

It is unlikely land covered by a designation for a non-residential activity (for example, a school or future road) could be considered ‘solely or principally intended’ for residential purposes under the district plan, given the purpose of the designation will be different (despite any underlying zoning provisions).

Territorial authorities may wish to do an overall assessment of all land covered by their district plan, to determine which locations are covered by this test and which ones aren’t, before the changes come into effect. If they do this, territorial authorities are encouraged to share the outcomes of this assessment with the relevant regional council (as the preclusions also apply to regional consents for residential activities). Otherwise, consent authorities will need to undertake this assessment on a case-by-case basis.

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<sup>5</sup> note, the use of the term “district plan” in this context does not include proposed district plans (only operative plans and operative plan changes - see definition of “district plan” in section 43AA)

Note: Controlled activities that would otherwise fall within the definition of a residential activity are precluded from public notification, under the controlled activity preclusion above (s95A(5)(b)(i)).

Is the activity a restricted discretionary or discretionary activity for a 'residential activity'?	
Yes	Move to step 4 (special circumstances).
No	Continue through step 2.

### RESIDENTIAL ACTIVITY EXAMPLE

Ms Smith applies to the ABC District Council for consent to build a house on her property within an area principally intended for residential use. The house will cover 45 per cent of the section and district plan rules only allow for 35 per cent site coverage. The Council determines the district land use consent is for a discretionary activity. Ms Smith also needs a regional land use consent, as the house is identified as being in a hazard zone, due to a nearby fault line. The ZYX Regional Council determines the activity is a restricted discretionary activity. Unless either Council determines special circumstances exist, the proposal may not be publicly notified.

### Boundary activities (s 95A(5)(b)(iii))

This is a new provision, and a departure from current practice. This criterion applies to district plans only. A boundary activity is defined in new s87AAB as:

(1) An activity is a **boundary activity** if —

- (a) the activity requires a resource consent because of the application of 1 or more boundary rules, but no other district rules, to the activity; and
- (b) no affected infringed boundary is a public boundary

2) In this section, —

**boundary rule** means a district rule, or part of a district rule, to the extent that it relates to

—

- (a) the distance between a structure and 1 or more boundaries of an allotment; or
- (b) the dimensions of a structure in relation to its distance from 1 or more boundaries of an allotment

**infringed boundary**, in relation to a boundary activity, —

- (a) means a boundary to which an infringed boundary rule applies;
- (b) if there is an infringement to a boundary rule when measured from the corner point of an allotment (regardless of where the infringement is to be measured from under the district plan), means every allotment boundary that intersects with the point of that corner;
- (c) if there is an infringement to a boundary rule that relates to a boundary that forms part of a private way, means the allotment boundary that is on the opposite side of the private way (regardless of where the infringement is to be measured from under the district plan).

**Public boundary** means a boundary between an allotment and any road, river, lake, coast, esplanade reserve, esplanade strip, other reserve, or land owned by the local authority or by the crown.

If an application is for a boundary activity (and has not been identified as being eligible as a ‘deemed permitted boundary activity’ through the process defined in s87BA) then it may not be publicly notified (unless special circumstances apply).

Refer to the [technical guidance on Deemed Permitted Activities](#) for further information about boundary rule infringement exemptions.

A ‘boundary activity’ with a controlled activity status is precluded from public notification under the controlled activity preclusion above (s95A(5)(b)(i)).

Is the activity a boundary activity (any activity status)?	
Yes	Move to step 4 (special circumstances).
No	Continue through step 2.

#### BOUNDARY ACTIVITY EXAMPLE A

Ms Smith applies to ABC District Council for resource consent, because her proposed house extensions come within 1 metre of the boundary and the setback rule in her zone is 1.5 metres. No other rule infringements occur. The infringed boundary is with a privately-owned property. She has not been able to get written approval from her neighbour. The Council determines the consent application is for a restricted discretionary activity. This is an application for a boundary activity and may not be publicly notified, unless special circumstances apply. The application may however require limited notification under s95B.

#### BOUNDARY ACTIVITY EXAMPLE B

DEF Limited applies to ABC District Council for an extension to its factory which infringes a boundary rule. The infringed boundary is with a privately-owned property. No other rule infringements occur. The Council determines the consent application is for a non-complying activity. This is an application for a boundary activity and may not be publicly notified (however may still be limited notified under s95B).

#### A prescribed activity (s95A(5)(b)(iv))

This is a new provision and is a significant departure from current practice. A new regulation-making role has been established, specifically for notification of resource consent applications (s360H(a)(i)). The regulations can “*prescribe particular activities or classes of activities, or the methods or criteria that a consent authority must use to identify particular activities or classes of activities, for the purpose of section 95A(5)(b)(iv) (to preclude public notification of an application for a resource consent for the activity).*”

There are currently no regulations to be considered for this criterion.

Is the activity prescribed by regulations made under s360H(1)(a)(i)?	
Yes	Move to step 4 (special circumstances).
No	Move to step 3.

## Step 3 – Public notification required in certain circumstances

For any applications not precluded from public notification under Step 2, public notification may then be required if it meets either of the following criteria:

### Criteria (a): A rule or national environmental standard requires public notification (s95A(8)(a))

This provision is equivalent to an existing provision (previously within s95A(2)(c)). The new step-by-step process, however, has changed the priority of the criterion. Previously, an activity where a rule or NES provision required public notification would prevail over any other considerations. The RLAA17 amendments mean if the activity meets the preclusions outlined in step 2 above, then these prevail over the requirements of a rule or provision requiring public notification. Such a rule or provision may, however, contribute to a consideration regarding special circumstances. If the application is being processed as a ‘bundled consent’<sup>6</sup>, and any of the activities within that application are subject to a rule or NES requiring public notification, the application as a whole must be publicly notified.

Is any activity in the application subject to a rule or NES requiring public notification?	
Yes	<b>Publicly notify</b> application. No further notification assessment required.
No	Continue through step 3.

### Criteria (b) - Adverse effects on the environment that are more than minor (s95A(8)(b))

This is an existing provision (previous section 95A(2)(a)), however, the new step-by-step process has changed the primacy that this section has. Previously, only a rule or NES provision precluding public notification would have priority over this provision. Now the determination of whether the adverse environmental effects are more than minor for the purpose of notification need only be undertaken if all of the above criteria in steps 1 (mandatory public notification), 2 (preclusions to public notification) and 3 (a rule in a plan requires public notification) do not apply.

Despite the change in the priority, the practice of applying the adverse effects test to applications remains largely unchanged (s95D).

<sup>6</sup> Refer to page 8 for further guidance

Does the activity have, or likely to have, adverse effects on the environment that are more than minor in accordance with s95D?	
Yes	<b>Publicly notify</b> application
No	Move to step 4 (special circumstances)

**ADVERSE EFFECTS MORE THAN MINOR EXAMPLE**

ABC Limited has applied to GHI Regional Council for a discharge permit for smoke from its incinerators. The Council has determined the proposal is a restricted discretionary activity. Odour from the smoke will be evident over a wide area on occasions. The Council has determined the effects of the odour are more than minor. The application must be publicly notified.

## Step 4 – Public notification in special circumstances

If the application has not been publicly notified because of any of the previous steps, then the consent authority must consider whether special circumstances exist that warrant the public notification of the application. See page 8 of this document for guidance on what might constitute special circumstances.

This is a new provision, similar to the existing provision. The main change is the action that the consent authority took on finding special circumstances existed was discretionary prior to RLAA17. The new provisions define that if the consent authority determines that special circumstances do exist, then they *must* publicly notify the application.

Do special circumstances exist that warrant the public notification of the application?	
Yes	<b>Publicly notify</b> application.
No	Determine whether limited notification is required under s95B.

# Stage 2 of notification decision process - should the application be limited notified?

If public notification is not required under s95A, the consent authority must assess if limited notification is required under s95B as follows:

## Step 1 - Certain affected groups and affected persons must be notified

The following criteria have been worded slightly differently from the current legislation, with the same effect.

### (a): There are affected protected customary rights groups (s95B(2)(a))

This provision is a rewording of the current provision, but has the same effect (previous section 95B(1)). If an application is for an activity within a *protected customary rights area*, the consent authority must decide, with reference to s95F, whether a *protected customary rights group* is affected.

The terms *protected customary rights group*, *protected customary rights order* and *protected customary rights area* are defined in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011.

Are there any affected protected customary rights groups?	
Yes	Protected Customary Right Group served notice. Continue through step 1.
No	Continue through step 1.

### (b): There are affected customary marine title groups (in an application for a resource consent for an accommodated activity) (s95B(2)(b))

This provision is a rewording of the current provision, but has the same effect (previous section 95B(1) and 95B(4)).

When a consent authority is considering an application for an *accommodated activity*, within a *customary marine title area* (both defined in the Marine and Coastal Area (Takutai Moana) Act 2011), they must decide if the customary marine title group is affected (with reference to s95G).

If the council determines there is an affected customary marine title group (for a resource consent for an accommodated activity) the application must proceed on a limited notified basis, and the customary marine title group(s) must be served notice.

For applications for an accommodated activity, is there an affected Customary Marine Title Group?	
Yes	Customary Marine Title Group served notice. Continue through step 1.
No	Continue through step 1.



### **(c): Statutory acknowledgements (s95B(3))**

If the proposed activity is on or adjacent to, or may affect, land the subject of a statutory acknowledgement made in accordance with an act specified in Schedule 11 of the RMA; and the consent authority determines the person to whom the statutory acknowledgement is made is affected under s95E, then, unless that person has provided written approval, the application must proceed on a limited notified basis, and the affected person(s) must be served notice.

Schedule 11 of the RMA includes Settlement Acts which include statutory acknowledgments.

Is the proposal on or adjacent to, or may affect, land the subject of a statutory acknowledgement, and is the person to who the statutory acknowledgement is made considered affected?	
Yes	Affected person(s) notified. Go to step 2.
No	Move to step 2.

## **Step 2 - Limited notification precluded in certain circumstances**

Under this step, the consent authority must determine whether limited notification is precluded for the application (ie, not required). The criteria where this is the case are:

### **(a): The application is for a resource consent for one or more activities, and each activity is subject to a rule or national environmental standard that precludes limited notification (s95B(6)(a))**

The wording of this provision is similar to the current provision. If a plan or NES includes a rule waiving or precluding limited notification of all activities forming part of the application, then step 3 does not apply and instead the consent authority needs to consider if there are special circumstances existing that may warrant the limited notification of the application to any persons to whom limited notification is precluded (refer to step 4 below).

If the application is being processed as a ‘bundled consent’<sup>7</sup>, then limited notification of the application as a whole is only precluded under this criterion if each of those activities is precluded from limited notification by a rule in a plan or a NES.

Are all the activities in the application subject to one or more rules or NES precluding limited notification?	
Yes	Go to step 4 (special circumstances).
No	Continue through step 2.

<sup>7</sup> Refer to page 8 for guidance on ‘bundled consents’

**(b): The application is for either or both of the following, but no other activities (s95B(6)(b)):**

**A controlled activity, requiring consent under a district plan (other than a subdivision)**

This is a new provision, significantly reducing the number of applications requiring a limited notification decision. If an application is for a district land use consent with a controlled activity status, the application cannot be limited notified. The special circumstances test in step 4 however applies.

This preclusion does not apply to controlled activity subdivision consents or any resource consents processed by a regional council.

Is the application for a district land use controlled activity?	
Yes	Go to step 4 (special circumstances).
No	Continue through step 2.

**An activity prescribed by regulations made under section 360H(1)(a)(ii), precluding limited notification**

This is a new provision and a significant departure from current practice. A new regulation-making role has been established for notification of resource consent applications (s360H(1)(a)(ii)). Any regulations made under this section can prescribe “...particular activities or classes of activities, or the methods or criteria that a consent authority must use to identify particular activities or classes of activities...to preclude limited notification of an application for a resource consent for the activity.”

There are currently no regulations to be considered for this criterion.

Is the activity prescribed by regulations to preclude limited notification?	
Yes	Go to step 4 (special circumstances).
No	Move to step 3.

**Step 3 - Certain other affected persons must be notified**

If the activity is not precluded from limited notification under step 2 above, then subject to the eligibility clauses mentioned below for boundary activities and activities prescribed by regulations, a person is an affected person if the consent authority decides the activity’s adverse effects on the person are minor or more than minor (but not less than minor) (s 95E).

**For ‘boundary activities’ (s95B(7)(a))**

If the proposed activity is a ‘boundary activity’<sup>8</sup>, the only persons eligible to be considered as an affected person(s) is an owner (not an occupier) of an allotment with an ‘infringed boundary’<sup>9</sup>.

<sup>8</sup> Refer to page 21 for definition

<sup>9</sup> Refer to page 21 for definition

If an application is for a boundary activity and has not been identified as being eligible as a ‘deemed permitted boundary activity’ through the process defined in s87BA, the consent authority must decide if the owner (not the occupiers) with the ‘infringed boundary’ is an affected person using the criteria in s95E. No other person(s) can be considered as an affected person with respect to a ‘boundary activity’.

This is a new provision, significantly changing the notification decision for many district land use consents.

If the owners with an allotment with an ‘infringed boundary’ are determined to be affected persons, they must be served notice. If they are not considered to be affected (in accordance with an assessment under s95E), consideration needs to be given as to whether there are special circumstances that exist that may warrant to limited notification of the application to any other persons (ie, persons who are not owners with an allotment with an infringed boundary). Refer to step 4 below.

If the activity is a boundary activity, is the owner of an allotment with an infringed boundary ‘affected’ under s95E?	
Yes	Notify the application to each affected person and proceed to step 4 (special circumstances).
No	Proceed to step 4 (special circumstances).

### For activities prescribed by regulations (s95B(7)(b))

This is a new provision, representing a significant departure from current practice. A new regulation making role has been established specifically related to notification. The regulations can prescribe “for the purpose of section 95B(7) (to limit who may be considered an affected person in respect of an application for a resource consent),—(i) particular activities or classes of activities, or the methods or criteria that a consent authority must use to identify particular activities or classes of activities: (ii) particular persons or classes of persons, or the methods or criteria that a consent authority must use to identify particular persons or classes of persons.”

If the proposed activity is prescribed by regulations, the only persons eligible to be considered as an affected person(s) is a person that has been prescribed by those regulations. No other person(s) can be considered as an affected person with respect to a prescribed activity.

There are currently no regulations to be considered for this criterion, however if such regulations are made, and the prescribed person(s) eligible is not determined to be an affected person in accordance with s95E, then consent authorities must consider if special circumstances exist to warrant the limited notification of the application to other persons. Refer to step 4 below.

If the activity is prescribed under s360H(1)(b), is a person prescribed in these regulations considered “affected” under s95E?	
Yes	Notify the application to each affected person and proceed to step 4 (special circumstances).
No	Proceed to step 4 (special circumstances).

### For any other activities (s95B(8))

If the activity is not a ‘boundary activity’ or prescribed by regulations under s360H(1)(b), the consent authority must determine if any persons affected by the proposal in accordance with s95E, and serve notice on those persons who are determined to be affected.

Apart from the significant changes to the limited notification criteria above, the wording of s95E remains similar. As previously, a person is not considered to be affected if they have given written approval for the proposal.

For any other activity, are there any affected persons under s95E?	
Yes	Notify the application to each affected person and proceed on a <b>limited notified</b> basis
No	Application can proceed on a <b>non-notified</b> basis.

## Step 4 – Further notification in special circumstances

This is a new provision in the Act.

Section 95B(10) states the consent authority should “Determine whether special circumstances exist in relation to the application that warrant notification of the application to any other persons not already determined to be eligible for limited notification under this section (excluding persons assessed under s95E as not being affected persons).”

Refer to page 8 of this guidance for further discussion and existing case law regarding ‘special circumstances’ (in the context of public notification). The policy intent associated with the new test for special circumstances in the context of limited notification is that such circumstances are those that are “exceptional, abnormal or unusual but may be less than extraordinary or unique.”<sup>10</sup>

If the consenting authority determines special circumstances reside in the application, and any persons (or groups) who have not otherwise been notified because limited notification is precluded, those persons (or groups) must be notified of the application. If not, the application can proceed on a non-notified basis.

### If a proposed activity is precluded from limited notification under step 2

If the proposed activity is precluded from limited notification under step 2 above (ie, a rule in a plan or NES precludes limited notification, or the proposal is a district land use controlled activity or a prescribed activity), before proceeding on a non-notified basis, the consent authority needs to consider if any special circumstances warrant the notification of the application to any persons precluded from limited notification under step 2:

#### Where a rule in a plan or NES precludes limited notification (precluded under s95B(6)(a)):

The consent authority needs to determine if there are any special circumstances to the proposal that do not seem to fit with what the plan or NES anticipated, and subsequently if there are any persons that should be notified of the proposal due to these circumstances. If so, the consent authority must process the application on a limited notified basis, and notify those persons of the application.

#### Where the proposal is a district land use controlled activity (precluded under s95B(6)(b)):

Taking into consideration the consent authority must grant the application in accordance with s104A, and a controlled activity is one which (in general) is considered to be an anticipated

<sup>10</sup> Far North DC v Te Runanga-iwi o Ngati Kahu [2013] NZCA 221 at [36].

activity in the district plan, the consent authority needs to determine if there are any special circumstances in the application which do not seem to fit within what the district plan anticipated, and subsequently if there are any persons that should be notified of the proposal due to these circumstances. If so, the consent authority must notify those persons of the application, and process the application on a limited notified basis.

**Where the activity is a prescribed activity (precluded under s95B(6)(b)):**

There are no prescribed activities yet. However, once in place, the consent authority will need to determine if there any special circumstances — and if any persons that need to be notified of the proposal.

**If certain persons are not considered eligible to be considered as affected under step 3**

**For boundary activities**

In the case of a ‘boundary activity’, even if the owner of an allotment with an ‘infringed boundary’ has been deemed by the consent authority to not be an affected person (in accordance with s95E), the consent authority assess if there are special circumstances (exceptional, abnormal or unusual reasons) warranting the notification of the application to a person (other than the owner of an allotment with an infringed boundary). This is not intended to be an assessment as to whether those other persons are considered affected in accordance with s95E.

**For activities prescribed by regulations**

For an activity prescribed by regulations in the future, even if the prescribed person in respect of the proposed activity has provided their written approval (or the consent authority has deemed the prescribed person is not an affected person in accordance with s95E), the consent authority must make an assessment as to whether there are special circumstances (exceptional, abnormal or unusual reasons) warranting the notification of the application to other persons (ie, other than prescribed persons). This is not intended to be an assessment as to whether those other persons are considered affected in accordance with s95E.

Do special circumstances exist warranting notification to any other persons not already determined to be eligible for limited notification?	
Yes	Notify the application to each of these person(s) and proceed on a <b>limited notified</b> basis.
No	Application can proceed on a <b>non-notified</b> basis.

## SPECIAL CIRCUMSTANCES EXAMPLE

A developer applies for resource consent to develop a block of land into a complex to accommodate 60 new apartments. The proposed apartment complex is a residential activity with a restricted discretionary activity status, and the site is zoned residential. The council determines public notification is precluded, and no special circumstances exist warranting the public notification of the application. The project complies with all the bulk and location requirements of the district plan, and discretion is restricted to design, site access traffic and parking. The district plan precludes limited notification of this type of activity.

Directly across the road from the site is an industrial facility classed as a 'major hazard facility' under the Health and Safety at Work (Major Hazard Facilities) Regulations 2016. Due to the potential reverse sensitivity impact on the facility's operation, and the increased risk resulting from a much higher number of people living in close proximity to the major hazard facility, the council has concluded this constitutes special circumstances. In response, the council decides to notify the owner of the industrial facility and also WorkSafe New Zealand (in its role in regulating major hazard facilities) under s95B(10)(a).

# Appendices

Appendix A: How RLAA17 has addressed notification process issues

Appendix B: RLAA 17 Text Changes

Appendix C: Template for Short Summary of Public Notice

# Appendix A: How RLAA17 has addressed notification process issues

The issue	How RLAA17 addresses this
<b>Resourcing implications</b>	
<p>The volume of work for a consent authority to make their notification decision on most resource consent applications has been significant, particularly given the relatively conservative use of rules precluding public and/or limited notification in plans.</p> <p>The potential for notification also meant the consent authority must (for most applications) make a determination on the type of notification for each application (ie, non-notification, limited notification, or public notification). This decision is significant and important in every case, and can be subject to appeal in the High Court (judicial review).</p>	<p>The new step-by-step process will ensure decisions on notification will be clearer to both the applicant and the consent authority (particularly in relation to housing related consents).</p>
<b>Lack of proportionality</b>	
<p>The current provisions require every application must be rigorously considered in terms of its adverse effects, unless specific provisions in the plan or a NES preclude notification. There are some types of activity where such a consideration is disproportionate to the scale of effects.</p> <p><b>Controlled activities</b></p> <p>The current notification tests are not proportionate in terms of consent activity status. Activities identified as controlled activities in plans have been considered as appropriate when the plan was approved and decisions made at the plan-making stage are subject to potential re-litigation through the consent process.</p> <p><b>Boundary issues</b></p> <p>The adverse effects associated with activities that breach rules relating to the location relative to a boundary are generally extremely localised and fall only on the neighbour sharing the boundary where the rule is breached. However, the current process drives consent authorities to assess effects beyond the adjacent property to where the breach occurs.</p> <p><b>Subdivision and residential activities</b></p> <p>Submissions and appeals delay residential developments and may prevent them from occurring. This is despite the types of developments planned to occur in residential areas are relatively well defined and known to neighbours and the public.</p> <p><b>Scope of submissions/appeals</b></p> <p>The scope of submissions on resource consents is currently very wide, and can be made on any</p>	<p>The changes will contribute towards the outcome of scaling RMA processes and costs to reflect the specific circumstances.</p> <p>These changes will remove, as much as possible, the cost and time burden of obtaining resource consent for residential activities and housing related consents.</p> <p><b>Controlled activities</b></p> <p>Activities identified as controlled activities generally can't be publicly notified (unless the applicant requests it, or the applicant has not provided further information requested, or the application was made jointly with an application to exchange reserve land, or there are special circumstances). Limited notification of controlled activities is also precluded for some types of consents.</p> <p><b>Boundary issues</b></p> <p>Resource consents for infringements of boundary rules will not generally be publicly notified, regardless of consent activity status. Limited notification will generally be restricted to owners sharing the boundary where the infringement occurs.</p> <p><b>Subdivision and residential activities</b></p> <p>Residential activities and subdivision will not generally be publicly notified if the proposed activity was anticipated by a plan (controlled, restricted discretionary and discretionary). Limited notification of controlled activities is also precluded for district land use consents.</p>



The issue	How RLAA17 addresses this
<p>aspect of a notified application. Any person who makes a submission can appeal the decision to the Environment Court. This means development with particular effects, eg, a residential subdivision in a residential zone, or the construction of houses within residentially subdivided land can be appealed, even if those effects have been anticipated and accepted at the plan-making stage.</p>	<p><b>Scope of submissions/appeals</b></p> <p>Opportunities for appeal will be reduced, thereby supporting the devolution of decision-making to the most local level.</p> <p>The focus of community input should be on the plan-making stage of the process, rather than allowing the re-litigation of planning decisions at the consenting stage.</p>
<b>National consistency/direction</b>	
<p>There is currently no ability to provide national direction on the notification of resource consents except, through a NES. At present, any resource consent application may be notified, except where the relevant district or regional plan stipulates otherwise.</p>	<p>RLAA17 has introduced new powers allowing central government to make regulations to preclude notification for certain activities and to prescribe who may be considered eligible to be an affected person (for limited notification) in relation to certain activities.</p> <p>The intent of making the new regulation powers is to provide national consistency on the notification requirements for specific proposals with limited effects.</p>

# Appendix B: RLAA 17 Text changes

## Amended sections

In relation to the notification processes described in this guide, the following sections of the RMA are amended, replaced or inserted by RLAA17:

RMA section number	RMA section name	RLAA17 change
Section 2AA	Definitions relating to notification	Amended
Section 2AB	Meaning of Public Notice	Inserted
Section 95	Time limit for public notification or limited notification	Replaced
Section 95A	Public notification of consent applications	Replaced
Section 95B	Limited notification of consent applications	Replaced
Section 95C	Public notification of consent application after request for further information or report)	Amended
Section 95D	Consent authority decides if adverse effects likely to be more than minor	Amended
Section 95E	Consent authority decides if person is affected person	Replaced
Section 95F	Status of protected customary rights group	Amended
Section 95G	Status of customary marine title group	Amended
Section 120	Right to appeal	Amended
Section 360H	Regulations relating to notification of consent applications	Inserted
Sections 149ZCB–149ZCF	Notification requirements for Notices of Requirement for designations and heritage orders	Inserted

## Full text changes to relevant sections of RMA

Repealed text is shown in strikethrough and new text is shown in **bold**.

### 2AA Definitions relating to notification

- (1) The definitions in subsection (2) apply only in relation to—
- (a) an application for a resource consent for an activity; or
  - (b) any of the following matters:
    - (i) a review of a resource consent:
    - (ii) an application to change or cancel a condition of a resource consent:
    - (iii) a notice of requirement for a designation or heritage order:

- (iv) a notice of requirement to alter a designation or heritage order:
- (v) an application or proposal to vary or cancel an instrument creating an esplanade strip:
- (vi) a matter of creating an esplanade strip by agreement.

~~(2) In this Act, unless the context requires another meaning,—~~

~~**affected person** means a person who, under [section 95E](#), is decided to be an affected person in relation to the application or matter~~

~~**limited notification** means serving notice of the application or matter on any affected person within the time limit specified by [section 95](#)~~

~~**notification** means public notification or limited notification of the application or matter~~

~~**public notification** means doing the following within the time limit specified by [section 95](#):~~

- ~~(a) giving public notice of the application or matter in the prescribed form; and~~
- ~~(b) serving notice of the application or matter on every prescribed person.~~

**(2) In this Act, unless the context otherwise requires,—**

***affected customary marine title group* has the meaning given in section 95G**

***affected person* means a person who, under section 95E or 149ZCF, is an affected person in relation to the application or matter**

***affected protected customary rights group* has the meaning given in section 95F**

***limited notification* means serving notice of the application or matter on any affected person within the time limit specified by section 95, 169(1), or 190(1)**

***notification* means public notification or limited notification of the application or matter**

***public notification* means giving public notice by—**

- (a) giving notice of the application or matter in the manner required by section 2AB; and**
- (b) giving that notice within the time limit specified by section 95, 169(1), or 190(1); and**
- (c) serving notice of the application or matter on every prescribed person.**

## **2AB Meaning of public notice**

**(1) If this Act requires a person to give public notice of something, the person must—**

- (a) publish on an Internet site to which the public has free access a notice that—**
  - (i) includes all the information that is required to be publicly notified; and**
  - (ii) is in the prescribed form (if any); and**
- (b) publish a short summary of the notice, along with details of the Internet site where the notice can be accessed, in 1 or more newspapers circulating in the entire area likely to be affected by the matter to which the notice relates.**

**(2) The notice and the short summary of the notice must be worded in a way that is clear and concise.**

## 95 Time limit for public notification or limited notification

- (1) A consent authority must, within ~~20 working days after the day an application for a resource consent is first lodged~~, **the time limit specified in subsection (2),—**
  - (a) decide, **in accordance with sections 95A and 95B** whether to give public or limited notification of the application **for a resource consent**; and
  - (b) notify the application if it decides to do so.
- (2) **The time limit is,—**
  - (a) **in the case of a fast-track application, 10 working days after the day the application is first lodged; and**
  - (b) **in the case of any other application, 20 working days after the day the application is first lodged.**

## 95A Public notification of consent applications ~~at consent authorities discretion~~

- ~~(1) A consent authority may, in its discretion, decide whether to publicly notify an application for a resource consent for an activity.~~
  - ~~(2) Despite subsection (1), a consent authority must publicly notify the application if—~~
    - ~~(a) it decides (under section 95D) that the activity will have or is likely to have adverse effects on the environment that are more than minor; or~~
    - ~~(b) the applicant requests public notification of the application; or~~
    - ~~(c) a rule or national environmental standard requires public notification of the application.~~
  - ~~(3) Despite subsections (1) and (2)(a), a consent authority must not publicly notify the application if—~~
    - ~~(a) a rule or national environmental standard precludes public notification of the application; and~~
    - ~~(b) subsection (2)(b) does not apply.~~
  - ~~(4) Despite subsection (3), a consent authority may publicly notify an application if it decides that special circumstances exist in relation to the application.~~
- (1) A consent authority must follow the steps set out in this section, in the order given, to determine whether to publicly notify an application for a resource consent.

### *Step 1: Mandatory public notification in certain circumstances*

- (2) Determine whether the application meets any of the criteria set out in subsection (3) and,—
  - (a) if the answer is yes, publicly notify the application; and
  - (b) if the answer is no, go to step 2.
- (3) The criteria for step 1 are as follows:
  - (a) the applicant has requested that the application be publicly notified;
  - (b) public notification is required under section 95C;
  - (c) the application is made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977.

### *Step 2: if not required by step 1, public notification precluded in certain circumstances*

- (4) Determine whether the application meets either of the criteria set out in subsection (5) and,—
  - (a) if the answer is yes, go to step 4 (step 3 does not apply); and
  - (b) if the answer is no, go to step 3.
- (5) The criteria for step 2 are as follows:
  - (a) the application is for a resource consent for 1 or more activities, and each activity is subject to a rule or national environmental standard that precludes public notification:

- (b) the application is for a resource consent for 1 or more of the following, but no other, activities:
  - (i) a controlled activity;
  - (ii) a restricted discretionary or discretionary activity, but only if the activity is a subdivision of land or a residential activity;
  - (iii) a restricted discretionary, discretionary, or non-complying activity, but only if the activity is a boundary activity;
  - (iv) a prescribed activity (*see* section 360H(1)(a)(i)).
- (6) In subsection (5), residential activity means an activity that requires resource consent under a regional or district plan and that is associated with the construction, alteration, or use of 1 or more dwellinghouses on land that, under a district plan, is intended to be used solely or principally for residential purposes.

*Step 3: if not precluded by step 2, public notification required in certain circumstances*

- (7) Determine whether the application meets either of the criteria set out in subsection (8) and,—
  - (a) if the answer is yes, publicly notify the application; and
  - (b) if the answer is no, go to step 4.
- (8) The criteria for step 3 are as follows:
  - (a) the application is for a resource consent for 1 or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification;
  - (b) the consent authority decides, in accordance with section 95D, that the activity will have or is likely to have adverse effects on the environment that are more than minor.

*Step 4: public notification in special circumstances*

- (9) Determine whether special circumstances exist in relation to the application that warrant the application being publicly notified and,—
  - (a) if the answer is yes, publicly notify the application; and
  - (b) if the answer is no, do not publicly notify the application, but determine whether to give limited notification of the application under section 95B.

## 95B Limited notification of consent applications

- ~~(1) If a consent authority does not publicly notify an application for a resource consent for an activity, it must decide (under sections 95E to 95G) whether there is any affected person, affected protected customary rights group, or affected customary marine title group in relation to the activity.~~
  - ~~(2) The consent authority must give limited notification of the application to any affected person unless a rule or national environmental standard precludes limited notification of the application.~~
  - ~~(3) The consent authority must give limited notification of the application to an affected protected customary rights group or affected customary marine title group even if a rule or national environmental standard precludes public or limited notification of the application.~~
  - ~~(4) In subsections (1) and (3), the requirements relating to an affected customary marine title group apply only in the case of applications for accommodated activities.~~
- (1) A consent authority must follow the steps set out in this section, in the order given, to determine whether to give limited notification of an application for a resource consent, if the application is not publicly notified under section 95A.

***Step 1: Certain affected groups and affected persons must be notified***

- (2) Determine whether there are any—
  - (a) affected protected customary rights groups; or
  - (b) affected customary marine title groups (in the case of an application for a resource consent for an accommodated activity).
- (3) Determine—
  - (a) whether the proposed activity is on or adjacent to, or may affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11; and
  - (b) whether the person to whom the statutory acknowledgement is made is an affected person under section 95E.
- (4) Notify the application to each affected group identified under subsection (2) and each affected person identified under subsection (3).

***Step 2: If not required by step 1, limited notification precluded in certain circumstances***

- (5) Determine whether the application meets either of the criteria set out in subsection (6) and,—
  - (a) if the answer is yes, go to step 4 (step 3 does not apply); and
  - (b) if the answer is no, go to step 3.
- (6) The criteria for step 2 are as follows:
  - (a) the application is for a resource consent for 1 or more activities, and each activity is subject to a rule or national environmental standard that precludes limited notification;
  - (b) the application is for a resource consent for either or both of the following, but no other, activities:
    - (i) a controlled activity that requires consent under a district plan (other than a subdivision of land);
    - (ii) a prescribed activity (see section 360H(1)(a)(ii)).

***Step 3: if not precluded by step 2, certain other affected persons must be notified***

- (7) Determine whether, in accordance with section 95E, the following persons are affected persons:
  - (a) in the case of a boundary activity, an owner of an allotment with an infringed boundary; and
  - (b) in the case of any activity prescribed under section 360H(1)(b), a prescribed person in respect of the proposed activity.
- (8) In the case of any other activity, determine whether a person is an affected person in accordance with section 95E.
- (9) Notify each affected person identified under subsections (7) and (8) of the application.

***Step 4: further notification in special circumstances***

- (1) Determine whether special circumstances exist in relation to the application that warrant notification of the application to any other persons not already determined to be eligible for limited notification under this section (excluding persons assessed under section 95E as not being affected persons), and,—
  - (a) if the answer is yes, notify those persons; and
  - (b) if the answer is no, do not notify anyone else.

**95C Public notification of consent application after request for further information or report**

- (1) ~~Despite section 95A(1), a consent authority must publicly notify an application for a resource consent if~~ **A consent authority must publicly notify an application for a resource consent (see section 95A(2) and (3)) if -**
  - (a) it has not already decided whether to give public or limited notification of the application; and

- (b) subsection (2) or (3) applies.
- (2) This subsection applies if the consent authority requests further information on the application under section 92(1), but the applicant—
  - (a) does not provide the information before the deadline concerned; or
  - (b) refuses to provide the information.
- (3) This subsection applies if the consent authority notifies the applicant under section 92(2)(b) that it wants to commission a report, but the applicant—
  - (a) does not respond before the deadline concerned; or
  - (b) refuses to agree to the commissioning of the report.
- (4) This section applies despite any rule or national environmental standard that precludes public or limited notification of the application.

#### 95D Consent authority decides if adverse effects likely to be more than minor

A consent authority that is deciding, for the purpose of section ~~95A(2)(a)~~ **95A(8)(b)** whether an activity will have or is likely to have adverse effects on the environment that are more than minor—

- (a) must disregard any effects on persons who own or occupy—
  - (i) the land in, on, or over which the activity will occur; or
  - (ii) any land adjacent to that land; and
- (b) may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect; and
- (c) in the case of a ~~controlled or~~ restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard ~~reserves control or~~ restricts discretion; and
- (d) must disregard trade competition and the effects of trade competition; and
- (e) must disregard any effect on a person who has given written approval to the relevant application.

#### 95E Consent authority decides if person is affected person

- ~~(1) A consent authority must decide that a person is an affected person, in relation to an activity, if the activity's adverse effects on the person are minor or more than minor (but are not less than minor).~~
- ~~(2) The consent authority, in making its decision,—~~
  - ~~(a) may disregard an adverse effect of the activity on the person if a rule or national environmental standard permits an activity with that effect; and~~
  - ~~(b) in the case of a controlled or restricted discretionary activity, must disregard an adverse effect of the activity on the person that does not relate to a matter for which a rule or national environmental standard reserves control or restricts discretion; and~~
  - ~~(c) must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.~~
- ~~(3) Despite anything else in this section, the consent authority must decide that a person is not an affected person if—~~

- ~~(a) the person has given written approval to the activity and has not withdrawn the approval in a written notice received by the authority before the authority has decided whether there are any affected persons; or~~
- ~~(b) it is unreasonable in the circumstances to seek the person's written approval.~~

- (1) For the purpose of giving limited notification of an application for a resource consent for an activity to a person under section 95B(4) and (9) (as applicable), a person is an affected person if the consent authority decides that the activity's adverse effects on the person are minor or more than minor (but are not less than minor).
- (2) The consent authority, in assessing an activity's adverse effects on a person for the purpose of this section,—
- (a) may disregard an adverse effect of the activity on the person if a rule or a national environmental standard permits an activity with that effect; and
- (b) must, if the activity is a controlled activity or a restricted discretionary activity, disregard an adverse effect of the activity on the person if the effect does not relate to a matter for which a rule or a national environmental standard reserves control or restricts discretion; and
- (c) must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.
- (3) A person is not an affected person in relation to an application for a resource consent for an activity if—
- (a) the person has given, and not withdrawn, approval for the proposed activity in a written notice received by the consent authority before the authority has decided whether there are any affected persons; or
- (b) the consent authority is satisfied that it is unreasonable in the circumstances for the applicant to seek the person's written approval.
- (4) Subsection (3) prevails over subsection (1).

#### 95F ~~Status of~~ *Meaning of affected protected customary rights group*

~~A consent authority must decide that a protected customary rights group is an affected protected customary rights group.~~ **A protected customary rights group is an affected protected customary rights group** in relation to an activity in the protected customary rights area relevant to that group, if—

- (a) the activity may have adverse effects on a protected customary right carried out in accordance with the requirements of Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011; and
- (b) the protected customary rights group has not given written approval for the activity or has withdrawn approval for the activity in a written notice received by the consent authority before the authority has made a decision under this section.

#### 95G ~~Status of~~ *Meaning of affected customary marine title group*

~~A consent authority must decide that a customary marine title group is an affected customary marine title group.~~

**A customary marine title group is an affected customary marine title group**, in relation to an accommodated activity in the customary marine title area relevant to that group, if—

- (a) the activity may have adverse effects on the exercise of the rights applying to a customary marine title group under subpart 3 of Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011; and
- (b) the customary marine title group has not given written approval for the activity in a written notice received by the consent authority before the authority has made a decision under this section.



## 120 Right to appeal

- (1) Any 1 or more of the following persons may appeal to the Environment Court in accordance with section 121 against the whole or any part of a decision of a consent authority on an application for a resource consent, or an application for a change of consent conditions, or on a review of consent conditions:
- (a) the applicant or consent holder:
  - (b) any person who made a submission on the application or review of consent conditions:
  - (c) in relation to a coastal permit for a restricted coastal activity, the Minister of Conservation.
- (1A) However, there is no right of appeal under this section against the whole or any part of a decision of a consent authority referred to in subsection (1) to the extent that the decision relates to 1 or more of the following, but no other, activities:**
- (a) a boundary activity, unless the boundary activity is a non-complying activity:**
  - (b) a subdivision, unless the subdivision is a non-complying activity:**
  - (c) a residential activity as defined in section 95A(6), unless the residential activity is a non-complying activity.**
- (1B) A person who has a right of appeal under subsection (1)(b) may appeal only in respect of a matter raised in the person's submission (excluding any part of the submission that is struck out under section 41D).**
- (2) This section is in addition to the rights provided for in sections 357A, **357AB**, 357C, and 357D (which provide for objections to the consent authority).

## 352 Service of Documents

- ~~(1) Where a notice or other document is to be served on a person for the purposes of this Act, it may be served—~~
- ~~(a) by delivering it personally to the person (other than a Minister of the Crown); or~~
  - ~~(b) by delivering it at the usual or last known place of residence or business of the person; or~~
  - ~~(c) by sending it by pre-paid post addressed to the person at the usual or last known place of residence or business of the person; or~~
  - ~~(ca) [Repealed]~~
  - ~~(d) by posting it to the Post Office box address that the person has specified as an address for service; or~~
  - ~~(e) by leaving it at a document exchange for direction to the document exchange box number that the person has specified as an address for service; or~~
  - ~~(f) by sending it to the fax number that the person has specified as an address for service; or~~
  - ~~(g) by sending it to the email address that the person has specified as an address for service; or~~
  - ~~(h) by serving it in the manner that the Environment Court directs in the particular case.~~
- (1) Where a notice or other document is to be served on a person for the purposes of this Act,—**
- (a) if the person has specified an electronic address as an address for service for the matter to which the document relates, and has not requested a method of service listed in paragraph (b), the document must be served by sending it to the electronic address:**

- (b) if the person has not specified an electronic or other address as an address for service or if the person has requested any of the following methods of service, the document may be served by the requested method or any of the following methods:
  - (i) delivering it personally to the person (other than a Minister of the Crown):
  - (ii) delivering it at the usual or last known place of residence or business of the person:
  - (iii) sending it by pre-paid post addressed to the person at the usual or last known place of residence or business of the person:
  - (iv) posting it to the PO box address that the person has specified as an address for service:
  - (v) leaving it at a document exchange for direction to the document exchange box number that the person has specified as an address for service:
  - (vi) sending it to the fax number that the person has specified as an address for service.
- (1AA) However, if the document is to be served on a person to commence, or in the course of, court proceedings, subsection (1) does not apply if the court, whether expressly or in its rules or practices, requires a different method of service.

### 360H Regulations relating to notification of consent applications

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
  - (a) prescribing particular activities or classes of activities, or the methods or criteria that a consent authority must use to identify particular activities or classes of activities,—
    - (i) for the purpose of section 95A(5)(b)(iv) (to preclude public notification of an application for a resource consent for the activity):
    - (ii) for the purpose of section 95B(6)(b)(ii) (to preclude limited notification of an application for a resource consent for the activity):
  - (b) prescribing, for the purpose of section 95B(7) (to limit who may be considered an affected person in respect of an application for a resource consent),—
    - (i) particular activities or classes of activities, or the methods or criteria that a consent authority must use to identify particular activities or classes of activities:
    - (ii) particular persons or classes of persons, or the methods or criteria that a consent authority must use to identify particular persons or classes of persons.
- (2) The Minister must not—
  - (a) make a recommendation for the purpose of subsection (1)(a)(i) unless the Minister is satisfied that the nature and likely effects of the activities are unlikely to warrant public notification of a relevant application or review in accordance with section 95D; or
  - (b) make a recommendation for the purpose of subsection (1)(a)(ii) unless the Minister is satisfied that the nature and likely effects of the activities are unlikely to warrant limited notification of a relevant application or review in accordance with section 95B(1) to (9); or
  - (c) make a recommendation for the purpose of subsection (1)(b) unless the Minister is satisfied that the nature and likely effects of the activities referred to in subsection (1)(b)(i) are unlikely to warrant limited notification of a relevant application or review in accordance with section 95B to affected persons referred to in section 95B(8) other than persons or classes of persons referred to in subsection (1)(b)(ii).

- (3) In subsection (2), relevant application or review, in relation to an activity, means an application for a resource consent for the activity, a review of a resource consent for the activity, or an application to change or cancel a condition of a resource consent for the activity.**
- (4) Section 360(2) and (4) applies to regulations made under this section.**

## Appendix C: Template for short summary of public notice

***Publicly Notified Resource Consent Application: {Address/Location}***

***[Name of applicant]*** has applied to ***[name of consent authority]*** for a resource consent to ***[brief description of the proposal]*** at ***[brief description of the proposal's location]***. Submissions close on ***[date]***.

To view the full public notice, visit ***[web link]***.