

Proposed District Plan Change 2

NOTIFICATION PROCEDURES AND ASSESSMENT CRITERIA

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Proposed District Plan Change 2 - Notification Procedures and Assessment Criteria

Section 32 Report

1. Prior to the Resource Management Amendment Act 2003 two provisions allowed the processing of resource consent applications without notification at all. Section 94(1)(b) and 94(1A) both provided that an application for a resource consent need not be notified in accordance with Section 93, if the activity to which the application relates was a controlled activity, or a restricted discretionary activity: *“and the plan expressly permits consideration without the need to obtain the written approval of affected persons.”*
2. The rules in Chapter 17.2 of the District Plan were written to comply with the above provisions.
3. The current provisions are now different and the three relevant sections now read as follows:

“93. When public notification of consent application is required -

- (1) *A consent authority must notify an application for a resource consent unless-*
 - (a) *the application is for a controlled activity; or*
 - (b) *the consent authority is satisfied that the adverse effects of the activity on the environment will be minor.*
- (2) *If subsection (1) applies, the consent authority must notify the application by-*
 - (a) *publicly notifying it in the prescribed form; and*
 - (b) *serving notice of it on every person prescribed in regulations.”*

“94. When public notification of consent applications is not required -

- (1) *If notification is not required under section 93(1), the consent authority must serve notice of the application on all persons who, in the opinion of the consent authority, may be adversely affected by the activity, even if some of those persons have given their written approval to the activity.*
- (2) *However, a consent authority is not required to serve notice of the application under subsection (1) if all persons who, in the opinion of the consent authority, may be adversely affected by the activity have given their written approval to the activity.”*

“94D. When public notification and service requirements may be varied -

....

(2) Despite section 93(1)(b), a consent authority is not required to notify an application for a resource consent for a restricted discretionary activity if a rule in a plan or proposed plan expressly provides that such an application does not need to be notified.

(3) Despite section 94(1), a consent authority is not required to serve notice of an application for a resource consent for a controlled or restricted discretionary activity if a rule in a plan or proposed plan expressly provides that notice of such applications does not need to be served.”

4. Therefore the above amendments to the Resource Management Act effective from 1 August 2003 have altered the law and Section 94D(3) means that even if notification is not required [in terms of section 93(1)(b)] the service of notice required by Section 94(1) can be dispensed with only if the Plan expressly so provides.
5. Taking the above matters into account the amendments made to the Resource Management Act have made the current rules in Chapter 17 of the District Plan inadequate as the rules do not explicitly state that no service of notice is required (see Environment Court case W70/2003).
6. Rules in the District Plan relating to notification procedures must now include explicit statements:
 - That the consent of any persons will not be required.
 - Applications shall not be publicly notified.
 - Notice of application will not be served on any person.
7. Proposed Plan Change 2 corrects the current deficiency in the notification procedure rules in Chapter 17 of the District Plan as a result of legislative changes.
8. Also as a result of legislative changes Proposed Plan Change 2 substitutes the new Section 104B for the previous Section 105 in the assessment matters for discretionary activities in all activity areas and general rules.