

Natural and Built Environment Bill Reform Series: Resource Consent Participation

When a third party can be involved in a resource consent process

A range of new and revised provisions are proposed in the Natural and Built Environment Bill (**NBE Bill**) to change the notification rules for applications and the ability of third parties to become involved in the resource consent process. Limited or public notification remain for any consent application, but the assessment to determine who should be notified has more steps. Due to the reduction in activity statuses from six to four and changes to the permitted status, affected parties can now be involved where there is no need for a resource consent. Permission from 'affected persons' must be obtained in some situations to enable a permitted activity.

In summary:

- The activity statuses are now permitted, controlled (despite the name, functions similar to the current restricted discretionary status), discretionary and prohibited;
- All discretionary activity applications must be publicly notified and all controlled activities must not be publicly notified (unless otherwise stated in the plan or NPF);
- Public notification is required where there is uncertainty as to meeting outcomes or breaching limits, there are clear risks that cannot be mitigated by the proposal, there are relevant concerns from the community or the scale or significance warrants it;
- Limited notification is required where appropriate to notify any person who may represent the public interest, the scale or significance warrants it or there is an 'affected person';
- There must be no notification where the activity is clearly aligned with the outcomes or targets in

legislation or plans and there is no 'affected person';

- The 'affected person' test now considers new factors including weighing the positive effects against the negative effects on a person, considering whether information from the person is necessary to understand the extent and nature of effects or contributions towards outcomes and considering whether their involvement will have a material effect on the decision or conditions; and
- Applicants must supply an assessment of persons affected by the proposed activity in the AEE. Consent authorities must then make decisions on notification and affected persons.

There are three other processes where a third party may become involved in the consent process once a submission has been made. Preliminary meetings (replacing pre-hearing meetings) must produce a report setting out the expected nature of evidence and a proposed hearing timetable. Failure to attend such meetings when required may result in the consent authority disregarding the submission or declining the application. The Regional Alternative Dispute Resolution (**ADR**) process is aimed at addressing small, isolated areas of dispute. Regional ADRs are limited to one day and a failure to agree means the decision-maker will decide for the parties. Mediation is also available for limited or publicly notified consent hearings and does not require that agreement be reached.

General themes from submissions in relation to resource consenting include:

- Concern that the language is inconsistent throughout the Bill. The language sets up two approaches to managing effects, the first being a consenting pathway and the second an outcomes-based pathway. Two approaches that are not clearly demarcated will cause confusion for members of the public.

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(Continued)

- Concerns new definitions in the Bills create uncertainty and will increase the cost of resource consents via litigation.
- Concern that funding guidance for all the new processes and procedures established under the bills has not yet been allocated. Additional concern that funding of consenting, monitoring and enforcement will fall solely to local government and will be picked up by local rate payers and an increase in consenting fees.
- Concern at potential implementation issues due to the illogical order of some provisions in the Bill.

Want to know more?

Please contact a member of our [Environments, Planning and Natural Resources Team](#) if you would like to know more.