

## 2. IMPLICATIONS OF A RECENT COURT OF APPEAL DECISION ON NOTIFICATION

RR 9745

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Corporate Plan Output: Corp Plan Output, Resource Consents	

The purpose of this report is to inform the Committee of a Court of Appeal decision which has led to changes when considering the issue of notification of resource consent applications.

A recent Court of Appeal Decision (known commonly as the Bayley decision) regarding a resource consent which had been processed on a non-notified basis has meant some changes in the way the Council exercises its discretion regarding notification.

Sanctuary Developments Ltd obtained a resource consent in late 1997 for a 57-unit residential complex in Manukau. The application had been processed as non-notified without the consent of adjoining neighbours under Section 94. Section 94 specifies situations where applications need not be notified. In essence, to be non-notified, the Council has to be satisfied under Section 94 that:

- The adverse effect on the environment of the activity for which consent is sought will be minor; and
- Written approval is obtained from every person the Council is satisfied may be adversely affected by the granting of the resource consent, unless the Council considers it is unreasonable in the circumstances to require the obtaining of every such approval.

The Council's decision in the Sanctuary Development's case was challenged through judicial review in the High Court and was subsequently considered by the Court of Appeal. The Council's decision was set aside.

The Court of Appeal decision is significant in that it provides interpretation of how Section 94 of the Act should be applied. The interpretation of the Court is such that it is likely in some instances that more neighbours' consents will be required to enable applications to be dealt with on a non-notified basis, and that more applications will be notified.

Some of the key points to come from the decision are:

- If there are **any** adverse effects, even if they are minor, then the written consent of the affected person is required unless those effects are trivial or de minimus.
- Confirmation that **all** effects of a proposal must be taken into account with an application for a non-complying activity or a discretionary activity (where discretion is not limited).
- The Council must have regard to any consequential effects which arise from non-compliances such as intensified use of the site.
- The Court noted that the sheer size of the development may have been appropriately considered as a special circumstance warranting notification of the application.

These factors have led staff responsible for making decisions to make several changes with regard to considering the issue of notification.

- In some instances where neighbours' consents would not have been required in the past, due to the small degree of non-compliance, these consents may now be required, unless the effects are trivial. In this regard it is worth noting that a proposed amendment to the Resource Management Act 1991 may introduce a definition of the word "minor", which will change the interpretation back to the way it has been interpreted.
- Where an activity is for a discretionary or non-complying activity, an assessment of effects submitted by the applicant needs to consider all the effects on the environment, not just those relating to specific rule non-compliance.
- Where there is a range of non-compliances on site, written consents of owners and occupiers in the vicinity will now be required in relation to the effects associated with the intensification of development on the site relative to what the District Plans permit.

Council staff will continue to endeavour to exercise the discretion in a sensible and consistent way, but they are bound by the Court of Appeal decision.

**Recommendation:** That the information be received.

**Chairman's**

**Recommendation:** That the officer's recommendation be adopted.