

## Explanation of the Proposed Plan Change:

### **Proposed District Plan Change 28 – Non-notification statements in the Operative District Plan**

The Resource Management Amendment Act 2003 (the Amendment Act), recently enacted by Parliament, has created a technical anomaly in the operation of the Wellington City Operative District Plan. The existing Plan uses ‘non-notification’ statements that are intended to provide for certain resource consent applications to be assessed without the need for written approvals from affected persons or the application being publicly notified. A typical non-notification statement reads (in this instance for Rule 5.2.6 for residential buildings in the Tawa Flood Hazard Area):

The written approval of affected persons will not be necessary in respect of items 5.2.6.1 and 5.2.6.2 and applications need not be notified.

Items 5.2.6.1 and 5.2.6.2 are the matters controlled by the rule. A full copy of the rule shows how the non-notification statement relates to the body of the rule i.e.

**5.2.6 In the Tawa Hazard (Flooding) Area the construction, alteration of, and addition to residential buildings, including accessory buildings, that**

- ∉ **is not a Permitted Activity; and**
- ∉ **has a floor level above the 1 in 100 year flood event**

**is a Controlled Activity in respect of:**

**5.2.6.1 building location within the site**

**5.2.6.2 building floor area.**

...

#### *Non-notification*

**The written approval of affected persons will not be necessary in respect of items 5.2.6.1 and 5.2.6.2 and applications need not be notified.**

Non-notification statements have been a feature of the District Plan since it was notified as a Proposed District Plan in 1994. The rules they should apply to, and the circumstances in which they apply have been thoroughly debated during the development of the District Plan (via submissions, Council hearings and decisions, and appeals and decisions from the Environment Court). The District Plan was signed off by the Court as a finished document (made ‘operative’) in 2000.

The District Plan includes non-notification statements for those rules that are most fairly or efficiently decided by Council without the involvement of neighbours, other potentially affected persons or the general public. The statements are commonly used where Council needs to assess technical matters such as traffic safety or urban design, which are best assessed by specialists such as traffic engineers and urban designers.

### Why this plan change is necessary:

The Amendment Act introduced a new mechanism of 'limited notification' for resource consent applications. This can best be described as a half-way state between the previous non-notified and notified processes. It is designed for situations where an applicant can not secure the written approval of neighbours or other 'affected persons' but the nature of the application does not warrant full public notification.

Under the new process of limited notification Council determines who is adversely affected and 'serves a notice' on these people by sending them a letter. These people can then make a submission on the application but no other person can take part in the process i.e. the application is not publicly advertised.

The Amendment Act [section 94D(3)] provides for a district plan to include a statement indicating that, for any given rule, notice of an application does not need to be served on an affected person. There is currently no mention of 'serving notice' in the existing non-notification statement because serving notice is new concept introduced by the Amendment Act. The consequence is a legal obligation on Council to serve notice of an application on affected persons and to invite submissions from them even though the intent of the non-notification statement in the Plan is clearly that Council will not require the written approval of affected persons.

The impact on the Wellington City District Plan and other district and regional plans was not anticipated by the Ministry of the Environment when it drafted the Amendment Act. It therefore did not provide any transitional provisions in the Amendment Act, as it did for other changes to the legislation.

### The plan change proposal:

The Operative District Plan has 79 rules with non-notification statements, covering all rule sections in the Plan, from Residential Areas through to Utilities.

The proposed plan change (see Appendix One) would insert the following words to the existing 'non-notification' statements:

notice of applications need not be served on affected persons

Most of the individual non-notification statements in the Plan use the same structure in their wording. A typical statement would be amended to read: using the example of Rule 5.2.6 above:

The written approval of affected persons will not be necessary in respect of items 5.2.6.1 and 5.2.6.2. Notice of applications need not be served on affected persons and applications need not be notified.

The plan change document lists all the non-notification statements that use the same structure. It goes on to detail each of the other non-notification statements that don't use the standard structure in their wording.

Importance of the plan change:

The proposed change to the non-notification statements will restore the function of the District Plan i.e. the notification processes for resource consent applications will work in exactly in the same way as they did prior to the Amendment Act.

The change does not seek to alter any of the individual guidelines about non-notification, written approvals or public notification to make them in any way different from the ones that were adopted when the District Plan was made operative in 2000.

Section 32 analysis:

Section 32 of the Resource Management Act requires that Council must carry out an evaluation to consider alternatives to adopting a new objective, policy, rule, or method in the District Plan and the benefits and costs of adopting a new objective, policy, rule, or method.

A separate section 32 is included as part of the proposed plan change.