

**From:** Eric Perry [redacted]  
**Sent:** Monday, 19 July 2021 4:30 PM  
**To:** GRPAC Local Board Devonport-Takapuna <GRPACLocalBoardDevonport-Takapuna@aucklandcouncil.govt.nz>  
**Cc:** Tristan [redacted] helle Riley  
<[redacted]>  
**Subject:** Advice and information - notice of motion, Takapuna civic square (item 13)

Good afternoon members:

As you'll be aware, you will be considering a notice of motion (NOM) at item 13 on your agenda for tomorrow's meeting that concerns a resource consent application for 30-38 Hurstmere Road and 40 Anzac St relating to the development of the Takapuna civic square. I wanted to provide you with some advice and information around the process and governance aspects of the NOM that you may find useful when considering your decision.

My apologies for the relative late notice for this. However I wanted to provide you advice in writing in advance of the meeting, as I do not wish to get directly involved in the debate and discussion tomorrow as I could be accused of getting involved in the board's politics. Ultimately whatever you do with the NOM is a decision for the board to make, not staff - but it is our responsibility to provide you with advice to ensure you have the best information available to make a good decision, particularly when there are concerns around the process / governance implications of what has been proposed.

Attached is a briefing note that I've put together which includes advice and information around aspects of the resource consenting process and the local board's governance role in relation to the regulatory activities of council. I am neither a subject matter expert on resource consents or the RMA, so the attached should be taken as a basic overview intended to provide you with a general understanding of key aspects of what a consenting authority must consider when making decisions.

The attached note provides advice and guidance around:

- the background / context of the application discussed in the NOM;
- an overview of restricted discretionary vs controlled activities;
- where adverse effects may be considered 'more than minor';
- 'special circumstances' that consenting authorities may consider when making decisions regarding notification; and
- the local board governance role in resource consents.

I suspect many of you will have some understanding of the above matters. Given the complexities of the resource consenting process, the legislation / rules surrounding it and the unique nature of council's governance structure I thought it would be useful to ensure that you all have a basic understanding of the landscape underpinning your consideration of the NOM recommendations.

In putting together this note, information has been sourced from:

- materials readily available to local board members, in particular training materials provided through council's Kura Kawana programme in relation to the role of local board members when it comes to the RMA;
- advice provided by subject matter experts from council's Regulatory, Local Board Services and Legal Services teams;
- council's Allocation of Decision-Making Responsibility for Non-Regulatory Activities; and
- reputable public information resources found on the internet in relation to the application of the RMA in New Zealand.

#### **Concerns around the NOM recommendations - process and governance**

Based on the information gleaned through the above sources, I have concerns around several aspects of the NOM in relation to process and governance. Many of these concerns have been raised previously with the Chairperson and the mover of the NOM in the interest of addressing them before consideration by the full board, with advice offered around how the NOM could be reframed to mitigate them.

Staff have concerns around the following aspects:

1. Legal advice received about the application in question indicates that its scope is narrow in question, limited to activities required to establish a civic square (primarily land subdivision and earthworks to enable civic square development). As such, the scope of the issues that are actually relevant from a regulatory perspective as part of this application are equally narrow. Legal advice concludes, therefore, that any perceived public interest in the development of the civic square itself (historical or future) is not relevant and is highly unlikely to meet legal precedent as a valid special circumstance to enable public notification of the consent. Furthermore, any perceived adverse effects caused by the future development of buildings on the site are irrelevant as part of this application, and may be considered as part of future resource consents associated with the civic square development. **It is therefore highly likely that this application will be non-notified for the reasons outlined here, and that the public interest considerations highlighted in the NOM are not enough of a special circumstance to warrant public notification.**

In the interest of full disclosure, the above determination is based on a legal opinion that has been supplied by the applicant in support of the application. However, this opinion cannot be provided here in full as legal privilege has not been waived.

2. The NOM recommends that the local board provide a 'submission' on the substance of the consent application, along with other actions to undertake in support of that submission (refer recommendations b) and c) i) to c) iv). Putting aside the language issues by use of the word 'submission' (local boards are unable to lodge submissions on resource consents, only provide local views / feedback), the recommendations as written give the impression that the local board has the ability to take such action under all circumstances, which is misleading and incomplete. **The local board only has the authority to provide local views / feedback on the substance of notified consents - there are no provisions in place for a local board to provide comment on the substance of applications if the decision has been made that it be non-notified.**

The above advice was provided to the Chairperson and the mover of the NOM, along with suggested wording to make conditional those activities outlined in recommendations b) and c) i) to c) iv) only in the event that planners decide that the consent be notified in a way that enables the local board to provide feedback on the substance of the application. This advice has not been accepted to date, with members stating that advice has been received that the local board can in fact provide feedback on the substance of a non-notified application. Staff have requested further information from the members making these claims as to where, how and by whom this advice has been provided, as it conflicts with staff understanding of advice received from subject matter experts and contained within the attached briefing note. To date no further information has been provided by members.

3. **Staff are concerned that the recommendations outlined within this NOM are drafted in a misleading fashion, as they imply that the local board has powers or abilities with regard to the regulatory functions of council that it does not have.** Staff are concerned that, in the event the NOM recommendations are adopted as written, unrealistic or unachievable expectations will be created amongst local board members, the media and the wider public that the board will be able to influence the application in ways that it cannot. Furthermore, in the event such expectations are created, there is potential reputational risk to council as it will not be able to act upon the decisions of the local board. This is either because:
  - legal opinion and precedent does not align with the direction provided by the local board; or
  - the local board does not have the statutory, allocated or delegated authority to undertake the actions identified within the NOM if the consent is non-notified.

My apologies for the relatively lateness of this lengthy email and associated attachment, but I am concerned that without this advice the local board could make a decision in the absence of a fuller understanding of the implications of the recommendations put forward. It is the local board's decision as to how to proceed with this notice of motion, but it should do so based on an acknowledgement of what can and cannot happen afterwards.

Thanks and regards

**Eric Perry**

Local Area Manager - Devonport-Takapuna and Kaipatiki Local Boards

Local Board Services

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Location:

Mon	Tues	Wed	Thurs	Fri
KLB	D/T	KLB	D/T	C or WFH

KLB = Kaipatiki LB office (Glenfield); D/T = Devonport-Takapuna LB office (Takapuna); C = City (Albert St); WFH = Work from home