



Aide memoire: Statutory tests for calling in the Waimate waste to energy proposal

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Actions sought from ministers	
<i>Name and position</i>	<i>Action sought</i>
To Hon David PARKER Minister for the Environment	For noting only

Appendices and attachments
1. Subsection 142(3) of the RMA

Key contacts at Ministry for the Environment			
<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
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Aide Memoire: Statutory tests for calling in the Waimate waste to energy proposal

Purpose

1. This aide memoire gives you detail on the statutory requirements to call in a proposal of national significance, including whether the Minister can make this decision without requesting advice from the Environmental Protection Authority (EPA). This advice relates to requests from Zero Waste Network, Canterbury Regional Council, Waimate District Council, and the Applicant for you to call in a resource consent application for a proposed waste to energy facility in the Waimate District and is related to a previous briefing (BRF-2399 refers) and a discussion with official on 31 May 2023.

Key Messages

2. Environment Canterbury, Waimate District Council, and the applicant, South Island Resource Recovery Ltd, have all requested that you call in the resource consent application for a waste to energy plant at Waimate.
3. The Resource Management Act 1991 (RMA) includes a discretionary provision that the Minister may have regard to any advice provided by the EPA. There is no mandatory statutory obligation to seek EPA advice on a call in.
4. A more fulsome analysis is recommended to provide a clear rationale for your decision making on national significance.
5. The letters requesting a call in, from the applicant and both local authorities, provide a good indication of their views and is considered sufficient to inform Ministerial decisions.
6. Although there are no specific requirements under the Resource Management Act 1991 (RMA) relating to making directions on proposals of national significance, there is also merit in seeking the views of Ngāi Tahu as a factor in your decision making.

Background

7. Ministry for the Environment officials met with you on 31 May 2023 to discuss the resource consent application for a proposed waste to energy facility in the Waimate District, and whether you should call in the application as a proposal of national significance, under section 142 of the RMA.
8. Officials advised (BRF-2399 refers) that they consider that the proposal likely meets a number of the criteria in section 142(3) for calling in the application and recommended that you seek advice from the EPA.

- [REDACTED]
9. You have asked officials to advise you on the statutory tests for deciding if the proposal is of national significance and making the direction, and whether you are required to obtain advice from the EPA.

The Statutory Considerations

Deciding if the proposal is, or is part of, a proposal of national significance

10. Section 142(3) of the RMA sets out the matters the Minister may have regard to in deciding whether a proposal is, or is part of, a proposal of national significance (Appendix 1).
11. Officials' preliminary analysis suggests that the application likely triggers the following considerations under section 142(3)(a) of the Act:
- a. the proposed plant has aroused widespread public concern or interest regarding its actual or likely effect on the environment (including the global environment).¹
 - b. New Zealand's international obligations to the global environment, such as our international climate change agreements, could be impacted by even the most conservative estimates of greenhouse gas emissions from the plant.²
 - c. even at the conservative estimates, the amount of greenhouse gas emissions will result or is likely to result in or contribute to significant or irreversible changes to the environment (including the global environment).³
 - d. there are currently no municipal waste to energy plants in New Zealand. The proposal therefore involves technology, processes, or methods that are new to New Zealand and that may affect the environment.⁴
 - e. the concerns raised by Environment Canterbury, Waimate District Council and Papatipu Rūnunga include matters that are likely to be significant in terms of section 8 of the RMA.⁵
12. A more fulsome analysis is recommended to provide a clear evidential basis for your decision making on whether the proposal is of national significance. This can be provided by the EPA. Alternatively, this can be provided by the Ministry for the Environment along with a draft Direction if you wish to consider a call in.

Deciding whether to make a direction under subsection (2)

13. Section 142(4) requires that in deciding whether to make a direction to refer a call in matter to a Board of Inquiry or the Environment Court for determination,

¹ Section 143(3)(a)(i)

² Section 142(3)(a)(iv)

³ Section 142(3)(a)(v)

⁴ Section 142(3)(a)(vi)

⁵ Section 142(3)(a)(vii)

[REDACTED]

the Minister must have regard to the views of the applicant and the local authority, the capacity of the local authority to process the matter, and the recommendations of the EPA.

14. There is no mandatory statutory obligation to seek EPA advice. However, if advice is sought from the EPA, that advice will include whether the matter is of national importance⁶ and recommendations on the appropriate process⁷. The Minister may have regard to the EPA's advice on whether the matter is one of national significance⁸ and must have regard to their process recommendations⁹.
15. The letters requesting a call in, from the applicant and both local authorities, provide a good indication of their views and is considered sufficient to inform Ministerial decisions. These parties all indicate a preference to refer the matter to a Board of Inquiry for determination.
16. There is no specific requirement under the RMA for the Minister to consult hapū/iwi/Māori in relation to a call in of a consent. However, we consider it appropriate to seek these views as a factor in your decision making.
17. Te Rūnanga o Waihao has raised concerns about the impact of the proposed activities on Treaty Settlements (including freshwater matters). This is related to the arguments being made in proceedings in the High Court by Te Rūnanga o Ngāi Tahu against the Crown seeking to assert rangatiratanga over freshwater in the Ngāi Tahu takiwā (area). As such, a choice about whether to refer the matter to a Board of Inquiry or the Court for determination on matters including freshwater is something they may wish to comment on.
18. Officials have asked the EPA if they have sufficient capacity to provide advice and how quickly they could provide the advice. The EPA advised that they could provide advice on this matter within 5 working days of receiving a request.
19. Alternatively, the Ministry for the Environment can provide you with advice on whether the proposal is of national significance and a draft direction within a similar timeframe. Regardless of whether you seek advice from the EPA or MfE official, we suggest that you consult with Ngāi Tahu rūnanga to demonstrate partnership under Te Tiriti o Waitangi and minimise challenge to your decision making.

⁶ Section 144A(1)

⁷ Section 144A(4)

⁸ Section 142(3)(b)

⁹ Section 142(4)

[REDACTED]

Next steps

20. Officials await instruction on the next steps.

Signatures



Lorena Stephen

RM Implementation

Policy, Implementation and Delivery

27 July 2023

Hon David PARKER

Minister for the Environment

Date

Appendix 1: Section 142(3) of the Resource Management Act 1991

In deciding whether a matter is, or is part of, a proposal of national significance, the Minister may have regard to—

- (a) any relevant factor, including whether the matter—
 - (i) has aroused widespread public concern or interest regarding its actual or likely effect on the environment (including the global environment); or
 - (ii) involves or is likely to involve significant use of natural and physical resources; or
 - (iii) affects or is likely to affect a structure, feature, place, or area of national significance; or
 - (iiia) gives effect to a national policy statement and is one that is specified in any of paragraphs (c) to (f) and (j) to (m) of the definition of matter in section 141; or
 - (iv) affects or is likely to affect or is relevant to New Zealand's international obligations to the global environment; or
 - (v) results or is likely to result in or contribute to significant or irreversible changes to the environment (including the global environment); or
 - (vi) involves or is likely to involve technology, processes, or methods that are new to New Zealand and that may affect its environment; or
 - (vii) is or is likely to be significant in terms of section 8; or
 - (viii) will assist the Crown in fulfilling its public health, welfare, security, or safety obligations or functions; or
 - (ix) affects or is likely to affect more than 1 region or district; or
 - (x) relates to a network utility operation that extends or is proposed to extend to more than 1 district or region; and
- (b) any advice provided by the EPA.