



## Aide memoire: Next Steps for calling in the Waimate waste to energy proposal following EPA Advice

Date submitted: 10 August 2023

Tracking number: BRF-3749

Security level: [REDACTED]

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

Appendices and attachments
1. Cabinet Office Circular CO (06) 7

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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Director	Caroline Hart	027 270 8535	

# Aide Memoire: Next Steps for calling in the Waimate waste to energy proposal following EPA Advice

## Purpose

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1. This aide memoire gives you detail on the next steps if you decide to call in a resource consent application for a proposed waste to energy facility in the Waimate District as a proposal of national significance, following receipt of Environmental Protection Authority (EPA) advice.

## Background

2. MFE 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 Resource Management Act 1991 (RMA).
3. 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.
4. Officials advised (BRF-2677 refers) that although the 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. Officials recommended that you ask the EPA for advice about whether the proposal is of national significance and where the proposal might be referred to.
5. The EPA advised (ENQ-46507-B7V3L2 refers) that having considered each factor listed in section 142(3)(a) of the RMA, they consider that the proposal is of national significance. The EPA, despite being required to make a recommendation under section 144A (4), were unable to make a recommendation on whether to refer the proposal to a Board of Inquiry or the Environment Court, due to insufficient time to gather information from the applicant and Councils. Instead the EPA has recommended matters to consider for each option.
6. You have asked officials to advise you on the next steps, including the process and estimated timeframes if you decide to refer the proposal to a Board of Inquiry (BOI).

## The Board of Inquiry Process

7. If the matter is referred to a BOI, the following process and estimated times are:
  - After the EPA receives the direction that the matter is to be called in and referred to a BOI, the EPA will begin discussions with MfE officials in relation to the required and desirable skills for a BOI - 5 working days;

- EPA staff will screen potential candidates and analyse possible Chair/member combinations in consultation with MfE officials – 10 working days;
- MfE officials prepare a briefing note to the Minister seeking preference on make-up of BOI, using the shortlist from EPA – 15 working days;
- MfE officials prepare a briefing note to the Minister to support an appended draft Appointments and Honours (APH) Cabinet Paper seeking APH confirmation of recommended BOI appointees – 20 working days;
- MfE officials will advise the EPA of Cabinet's confirmation of BOI candidates – 2 working days;
- Minister's Office to advise selected candidates, with letter of appointment, terms of reference and a draft letter of acceptance - 2 working days;
- BOI appointed - 2 working days.

8. The estimated timeframes are based on what occurred for the Exclusive Economic Zone Act BOI process.

9. It is the practice for Government to exercise restraint in making significant appointments in the pre-election period. If you choose to make appointments during the pre-election period, we do not consider these appointments to be classified as 'significant' in relation to Cabinet Office guidance on appointments during this period (CO (23)1), as this independent body appointed under statute will operate within a technical capacity. It will make recommendations on the proposal using statutorily defined processes, in accordance with the RMA and relevant case law. Out of Scope

10. However, given the EPA's recommendation that the draft directions include an instruction to the EPA to delay giving public notice under section 149D of the RMA pending lodgement of additional application for a water permit, if a complete application is not received before the election, any BOI appointments will not need to occur over the pre-election period.

### **Cabinet Office Circular CO (06) 7**

11. The EPA advice to you notes that Cabinet Office Circular CO (06) 7 requires that you consult with Cabinet prior to making a call in decision<sup>1</sup>. This Circular is attached at Appendix 1.

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<sup>1</sup> Para 71 Advice and Recommendation of the EPA Under Section 144A RMA: Request to call in Project Kea Resource Consent Applications

- [REDACTED]
12. We have recently confirmed with the Cabinet Office, that despite its age (and possible irrelevance 17 years later) this Circular continues to apply until it is revoked or replaced.
  13. We are undertaking further analysis about whether there is benefit in modernising and replacing the Circular. As the Cabinet Office Circular continues to apply, we could prepare a short cabinet paper seeking confirmation of a decision to call-in this application (ie, ensure compliance with the Circular while we undertake further work).
  14. Noting that as the applicant is 60 per cent foreign owned, the application to the Overseas Investment Office was called in for a Ministerial decision by Minister O'Connor on 29 May 2023, and was also called in by Minister Robertson on discretionary national interest grounds on 28 May 2023. As a result a number of members of Cabinet will be familiar with the proposal.

### **EPA Recommendation on Referral**

15. It is noted that section 144A (4) of the RMA states that the EPA must, upon request from the Minister, provide a recommendation to the Minister on whether the proposal is or is part of a proposal of national significance, and where to refer the matter.
16. As a result of limited time for consideration, the EPA have not provided a recommendation about where to refer the matter but have recommended matters to consider for each option. The EPA took a similar approach in their advice to you on the WaterCare application.
17. The EPA advise that they can provide a recommendation about where to refer the application but will require up to an additional 10 working days if the Minister requires this. EPA's advice could be sought, whilst the short cabinet paper referred to in paragraph 13 is being drafted.

### **Next steps**

18. Officials await instruction on the next steps.

### **Signatures**

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Caroline Hart

**Implementation – Resource  
Management and System oversight**

**10 August 2023**

Hon David PARKER  
**Minister for the Environment**  
**Date**



## Appendices

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Appendix 1: Cabinet Office Circular CO (06) 7

Withheld under section 18(d)

Publicly Available here: <https://www.dPMC.govt.nz/publications/co-06-7-ministerial-interventions-under-resource-management-act-1991>