

## Resource Legislation Amendments 2017

### RESOURCE LEGISLATION AMENDMENTS 2017 – FACT SHEET 1

## New options for national direction

This is part of a series of 16 fact sheets that give an overview of recent resource legislation amendments.

National direction sets out how specific resources should be managed under the Resource Management Act 1991 (RMA).

The RMA enables the Government to set national direction through national policy statements (NPS), New Zealand Coastal Policy Statements (NZCPS), national environmental standards (NES), regulations, and new national planning standards. Councils implement national direction in various ways through their functions under the RMA, including developing regional policy statements, regional and district plans, and issuing and monitoring resource consents.

This fact sheet outlines changes to the options and processes for creating national direction, which come into effect on 19 April 2017, unless otherwise indicated.

The changes to the RMA do not alter any existing NPSs, NESs or regulations, but may be applied in the future to review existing instruments and develop new ones. Any particular actions that councils are required to take will be made clear if and when national direction is made or amended.

## Change of potential scope of NPSs, NZCPSs and NESs

### Expansion of content of NPSs

**Previously** the RMA set out the purpose of NPSs (to state objectives and policies) and NZCPSs (to state policies).

**The RMA has been amended** to insert new section 45A, which sets out the types of matters that may be covered by a NPS, including an NZCPS, as follows. A NPS:

- must state objectives and policies
- may (but is not obliged to) state:
  - matters councils must consider in policy statements and plans
  - methods or requirements that apply, and any specifications for how councils must apply those methods or requirements (including the use of models or formulas)
  - matters councils must achieve or provide for in policy statements and plans
  - constraints or limits on the content of policy statements and plans

- objectives or policies that must be included in policy statements and plans
- directions to collect and publish specific information to achieve the objectives of the NPS
- directions to monitor and report on matters relevant to the NPS
- any other matter relating to the purpose or implementation of the NPS.

If a NPS sets out a constraint or limit, councils must amend their plans and policy statements (without using a Schedule 1 process) when necessary, to make the plan or policy statement consistent with the constraint or limit.

**The intent of this change** is to enable NPSs (including NZCPSs) to include more specific direction on how objectives and policies are to be given effect to in policy statements and plans.

## **Objectives are included in the purpose of an NZCPS**

**Previously** the purpose of an NZCPS was to state policies to achieve the purpose of the RMA in relation to New Zealand's coastal environment.

**Section 56 of the RMA has been amended** to add objectives to this purpose statement.

**The intent of this change** is to align this purpose statement with the:

- purpose of NPSs (section 45(1))
- content of NZCPSs (section 58) that already include objectives.

## **Councils must take any action directed by a NPS**

**Previously** section 55(3) of the RMA required councils to take any other action specified in a NPS.

**Section 55(3) of the RMA has been amended** to replace the words 'specified in', so a council must take any other action that is 'directed by' a NPS.

**The intent of this change** is to align section 55(3) with section 55(2), which sets out how councils amend regional policy statements, regional plans and district plans if directed to do so by a national policy statement.

## **NES, NPS or NZCPS can be area-specific**

**Previously** a NES could apply to specific areas in New Zealand, but there was no ability for a NPS or NZCPS to apply at a sub-national level.

**The RMA has been amended** to:

- make more explicit that a NES can apply either generally, within any specified district or region of any council, or within a specified part of New Zealand
- enable a NPS to apply either generally, within any specified district or region of any council, or within a specified part of New Zealand
- enable an NZCPS to apply either to the coastal environment generally, or to a specified part of the coastal environment.

Any proposed NES, NPS or NZCPS must still be notified nationally, even if it is only proposed to apply to a specific area of New Zealand.

**The intent of this change** is to increase the flexibility of these national direction instruments, allowing the Government to target national direction to particular parts of New Zealand if required.

## Allowing councils to charge for monitoring permitted activities under a NES

**Previously** councils were not able to recover the costs of monitoring any activities that were deemed permitted by a NES.

**The RMA has been amended** to insert new section 43A(8), which enables councils to charge to monitor any permitted activities that are specified in a NES if the NES allows this.

If this power is used, a NES will not require councils to recover the costs of monitoring permitted activities, but will enable them to do so if they choose.

The process for setting a charge is set out in new section 36(1)(cc) of the RMA. Councils that choose to levy charges must do so under the existing fees and charges process, set out in section 150 of the Local Government Act 2002. The RMA continues to require that the sole purpose of any charge is to recover the reasonable costs incurred by the council in respect of the activity the charge relates to (this existing provision can now be found in section 36AAA(2) of the RMA).

This change does not allow councils to charge for monitoring permitted activities generally – only those specified in a NES, where the NES allows it.

**The intent of this change** is to allow councils to recover their costs for monitoring activities that are deemed permitted through a NES, where the NES allows it.

## Specifying non-technical methods or requirements in a NES

**Previously** a NES could specify technical standards, methods or requirements. This did not allow for non-technical methods or requirements that could be more suitable to managing the environmental effects covered by the particular NES (for example methods of reporting to the public).

**The RMA has been amended** to insert new section 43(2)(da), which enables a NES to specify non-technical methods or requirements.

**The intent of this change** is to ensure that NESs are flexible enough to address resource management issues as they arise, and to increase the Government's ability to influence council actions to ensure that environmental standards are met.

## Specifying that rules or resource consents may be more lenient

**Previously** councils could make rules or resource consents more stringent than standards set in a NES, if that NES allowed it. A NES could not allow councils to set rules or resource consents that were more lenient, however.

**Section 43B of the RMA has been amended** to allow councils to make a rule or resource consent that is more lenient than a NES, if that particular NES allows it.

In some circumstances there may be justification for councils to include rules that are more lenient than those specified in a NES (for example, taller structures than what is specified in a NES might be more appropriate in a particular area).

The change does not:

- enable councils to make more lenient requirements than NESs generally – only when specifically enabled by the NES
- require councils to make rules or consent conditions more lenient than those specified in the NES, even if a NES enables them to do so.

Two consequential changes have also been made to the RMA:

- section 44A(2)(b) has been amended to clarify that a plan or proposed plan will conflict with the provisions of a NES if it contains a rule that is more lenient than the provision, and the NES does not expressly say that a rule may be more lenient; section 43E has been amended to enable bylaws to be more lenient than a NES, if the NES allows it.

**The intent of these changes** is to enable particular NESs to:

- increase consistency of plans through directional guidance, while allowing some difference in local application where it is appropriate
- establish a minimum level of permitted development in certain cases, while enabling councils to permit further development if they deem it appropriate.

## Specifying the duration of a consent

**Previously** it was unclear whether a NES could specify duration (expiry dates) for resource consents. Restricting consent duration can be an important tool to manage resources under the RMA (for example, to manage cumulative environmental effects of multiple activities, or to allocate limited resources such as water or coastal space).

The RMA also specified a 20-year minimum consent duration for aquaculture activities, except under certain circumstances.

**Section 43A(2)(a)(1) of the RMA has been amended** to clarify that a NES can specify resource consent duration. This can only occur within the existing parameters of the RMA.

**Section 123A of the RMA has been amended** to enable a NES to specify consent durations of less than 20 years for aquaculture activities.

These amendments do not change the expiry date of any existing resource consents; only consent applications lodged after a relevant NES (specifying consent duration) comes into effect will be subject to this amendment. If an existing aquaculture consent has changes to its duration triggered by a NES, these changes would be implemented when those consents come up for renewal.

**The intent of this change** is to give certainty over how NESs can manage the effects of activities, by specifying the duration of resource consents, including for aquaculture activities.

## Directing a regional council to review land use consents

**Previously** a NES could only be used to direct a regional council to review conditions of coastal, water and discharge permits, but not land use consents.

**Sections 43B and 128 of the RMA have been amended** so that a NES can direct regional councils to also review land use consents they administer.

In these circumstances, regional councils will be able to change land use consent conditions in relation to the requirements of the NES. Any review of consent conditions will remain subject to existing constraints set out in sections 128 to 133A of the RMA, however. These changes do not affect city and district council land use consents.

**The intent of this change** is that NESs can direct regional councils to review their land use consents where those consents affect or threaten the life-supporting capacity of air, water, soil or ecosystems, or the health and safety of people and communities.

## National direction instruments can incorporate electronic materials by reference

Sometimes it is necessary to incorporate information in national direction by reference, rather than by publishing it within the instrument (for example if the material was developed by another organisation, or is too large to print in the instrument). Schedule 1AA of the RMA sets out the process for incorporating material by reference into NESs, NPSs, NZCPSs and section 360 regulations.

A copy of material incorporated by reference must be kept by the Ministry for the Environment, be made available for inspection during working hours, and copies must be available for purchase.

**Previously** Schedule 1AA was unclear whether:

- electronic materials (such as tools, models and databases) could be incorporated by reference into a NES, NPS, NZCPS or regulation
- the requirement for the Ministry for the Environment to provide a copy could be met electronically.

Schedule 1AA has been amended to clarify:

- electronic materials can be incorporated by reference into a NES, NPS, or NZCPS
- any requirement to provide a copy can be satisfied electronically, as an alternative to providing a hard copy
- **The intent of this change** is to clarify that digital material and electronic delivery can be used to provide material incorporated by reference in national direction.

## Development of new national planning standards by 2019

**Previously** there has been no national direction for how councils should structure or format their district and regional plans and regional policy statements under the RMA. In some cases, this has resulted in complex, long, and internally inconsistent plans and policy statements. Councils have also ended up duplicating effort in developing provisions that could be shared at a national level.

**The RMA has been amended** to introduce new sections 58B to 58J, to create a new type of national direction called national planning standards. These will form a standardised national framework for RMA plans and policy statements.

The intent of this change is to:

- provide greater national consistency in plans and policy statements
- reduce the complexity and cost of creating plans and policy statements
- improve user-friendliness of plans and policy statements.

Information about national planning standards, and requirements for developing and implementing them, is set out below.

## Scope and implementation of national planning standards

When preparing a standard, the Minister may have regard to a number of matters, including whether it is desirable to have national consistency on the resource management issue under consideration. National planning standards must give effect to NPSs, and be consistent with any NES, RMA regulations, and water conservation orders.

Standards can require councils to include specific provisions in plans or policy statements, or choose from a suite of provisions to suit their local circumstances.

The timeframe councils have to amend their RMA documents to implement any particular standard depends on the type of change proposed.

Type of change in standard	Timeframe for councils to change their plans or policy statements	Schedule 1 RMA process required
Specific mandatory provisions	One year after gazetting of the standard	No
A suite of options that councils must choose from	Timeframe will be specified in the standard	Yes
Any other change	Change to be notified one year after gazetting of the standard	Yes

The standard itself may allow different timeframes, and specify whether the standard is to be applied generally or to specific areas of New Zealand.

## Development of the first national planning standards

The first set of national planning standards must be gazetted within two years of Royal Assent of the Bill. These standards may be reviewed and updated as needed, but must cover the following topics:

- a standard structure and form for policy statements and plans, including references to NPSs, NESs and regulations
- standardised definitions
- requirements for electronic functionality and accessibility of plans and policy statements.

Different timeframes apply to the implementation of the first set of standards. If a schedule 1 process is required, amendments must be made within 5 years of gazetting (unless a different time is specified in the first set). For plans that have been notified but are not yet operative, the implementation period in relation to changes required by the RMA Schedule 1 process only starts to run once the plan is operative, (unless a time is specified with the national planning standard).

The Ministry for the Environment will engage with stakeholders (including councils and iwi authorities) to develop the first national planning standards.

## New regulations can be made under the RMA

A range of amendments expand the types of regulations that can be made under the RMA by Order in Council, as detailed below.

The particular **intent** of any regulations, and any actions required of councils, will be articulated if and when those regulations are developed.

### Prescribing criteria for Court Registrar to waive, reduce, or postpone fee payment

New section 360(1)(baa) enables regulations to be made to specify decision-making criteria for the Registrar of the Environment Court when considering whether to waive, reduce or postpone payment of a fee under section 281A.

If such regulations are made, after applying the criteria, the Registrar can waive, reduce or postpone payment of a fee if they are satisfied that either of the following apply:

- the person responsible for paying the fee is unable to pay the fee in whole or in part

- in the case of proceedings concerning a matter of public interest, the proceedings are unlikely to be commenced or continued if the powers are not exercised.

## **Prescribing the form and content of water discharge permits**

New section 360(1)(da) enables regulations to be made to prescribe the form, content, and conditions of water permits and discharge permits.

If made, these regulations could result in councils reviewing their processes to consider future consent applications, but cannot retrospectively change existing consent conditions.

## **Standardising monitoring by councils**

Amendments to section 360(1)(hk) enables regulations to be made to standardise council practice for monitoring any of the matters set out in section 35(2) of the RMA.

If made, these regulations would likely standardise information collation, comparison between councils, and improve the overall quality and consistency of information for initiatives such as the National Monitoring System.

These regulations could address:

- pre-existing council monitoring duties (such as the state of the environment, or the efficiency and effectiveness of plan provisions, the exercise of resource consents, and any responsibilities it has transferred under section 33)
- new duties for councils to monitor efficiency and effectiveness of their processes (detailed further in Fact Sheet 2).

## **Excluding stock from waterways**

New sections 360(1)(hn) and (ho) enable regulations to be made to prescribe measures to exclude stock from waterways and prescribing related infringement offences. These regulations may set infringement fees of up to \$100 per animal, up to a maximum of \$2000, rather than the maximum \$1000 that applies to other infringement notices under the RMA.

Any district or regional plan rules that are more stringent than requirements set in section 360(hn) regulations prevail over the regulations. The regulations may require a council to withdraw or amend plan rules that are inconsistent with them without using an RMA Schedule 1 process.

A draft regulation on stock exclusion is already being developed as part of the Government's freshwater reforms. A proposal is being developed to create a national regulation excluding dairy cattle (on milking platforms) and pigs from water bodies by 1 July 2017, and other stock types at later dates. The proposal is outlined in the document *Clean Water*, available on the Ministry for the Environment website at <http://www.mfe.govt.nz/publications/fresh-water/clean-water-90-of-rivers-and-lakes-swimmable-2040>.

## **Use of models**

New section 360(1)(hp) enables regulations to be made relating to modelling under the RMA (which is often used by regional councils to manage freshwater resources).

Regulations would not require the use of any particular model.

## **Providing national direction through regulation**

New section 360D enables regulations to be made to prohibit or remove rules that duplicate, overlap with, or deal with subject matter that is included in other legislation. This power does not apply to rules made in relation to the growing of crops that are genetically modified organisms.

These regulations may:

- apply generally, or to any specified part of New Zealand
- incorporate material by reference under Schedule 1AA of the RMA.

The process for making a section 360D regulation requires the Minister for the Environment to:

- notify the public (nationally), relevant councils, and relevant iwi authorities;
- establish a process that gives the public, councils and iwi authorities adequate time and opportunity to comment on the proposed regulations and require a report and recommendation to be made to the Minister on these comments;
- prepare a section 32 evaluation report, and have particular regard to this report when deciding whether to recommend regulations be made.

The intent of this regulation-making power is to reduce duplication between Acts by removing or prohibiting rules where a council makes rules that either needlessly duplicate, or overlap with, the provisions of another Act.

## **Activities that councils must fix charges for**

New section 360E enables regulations to be made to create a schedule of activities that consent authorities must fix charges for under section 36.

The regulation will not fix actual charge amounts, which will be left to councils. See Fact Sheet 11 for more information about this regulation-making power.

## **Fast-tracking activities and information requirements**

New section 360F enables regulations to be made to prescribe particular:

- activities or classes of activities subject to the fast-track resource consenting process
- methods that a consent authority must use to identify activities or classes of activities to be subject to fast-track resource consenting process
- information that must be included in a fast-track application, instead of the information requirements that apply to standard resource consent applications under Schedule 4 of the RMA.

See Fact Sheet 8 for more information about fast-track activities.

This regulation-making power comes into force on 18 October 2017.

## **Prescribing activities to be precluded from notification or have restrictions on limited notified applications**

New section 360G enables regulations to be made to prescribe particular activities as:

- being precluded from public notification
- being precluded from limited notification
- having restrictions on who can be considered affected for the purpose of limited notification.

These regulations can only be recommended by the Minister for the Environment if the nature and likely effects of the particular activities are unlikely to warrant notification (either public or limited, depending on the type of regulation proposed). The regulation-making power only applies to resource consents, not plan changes.

See Fact Sheet 9 for more information about changes to the process of determining whether to notify resource consent applications.

This regulation-making power comes into effect on 18 October 2017.

## Combining the statutory process in the development of NESs and NPSs

**Previously** separate statutory processes were required to develop NESs, NPSs and the NZCPS under the RMA.

**Changes to section 46A of the RMA** will result in a single consultation process to apply to NESs and NPSs (including the NZCPS), called a proposal for national direction. The Minister will use the single process to consult on the development of a NES, a NPS, or a combined NES and NPS on the same subject. The particular elements of NESs and NPSs to be covered would be specified when a proposal is notified.

The intent of this change is to:

- increase flexibility in the development of national direction
- improve integration between different instruments about the same topic
- reduce costs when instruments are developed concurrently.

### Proposed national direction process

The new process is similar to the previous section 44 process for proposed NESs, but the Minister for the Environment will be able to use an optional board of inquiry process (currently this is restricted to development of NPSs).

The amended 46A procedure replaces the public consultation process requirements for NESs (section 44) and NPSs (sections 46 and 46A).

The new process does not include the previous requirement to consult on the wording of a proposed NPS. Instead, the Minister for the Environment (and the Minister for Conservation for NZCPSs) has the option to consult on the draft wording of the proposed national direction at any stage.

Consultation processes for particular regulations and national planning standards are set out separately in the RMA. However, if public consultation on a proposal for national direction indicates that a regulation or a national planning standard would be a better response (either partial or complete) to the issue, these options may also be pursued. The potential outcome of a consultation on a proposal for national direction could be one or more of the following:

- a recommendation to make a NES
- the issuing of a NPS or NZCPS
- a recommendation to commence a regulation-making process under section 360 to section 360G (noting that public and iwi authority consultation requirements may be considered to be satisfied if they are on the same subject)
- a recommendation to commence the process to make a national planning standard (which will require specific consultation requirements for planning standards to be undertaken).

Any NPSs, NESs or section 360 regulations that result from a proposal for national direction will remain as separate instruments.

## National direction under the EEZ Act

**Previously** there was no statutory tool available for the Government to issue national direction to assist applicants, iwi, stakeholders and decision-makers with marine consent applications under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act).

**The EEZ Act has been amended** to enable the Minister for the Environment to adopt EEZ policy statements. The process to develop a particular EEZ policy statement, including public notification requirements, is set out in sections 37A to 37F of the EEZ Act. This includes opportunities for iwi and stakeholders to help ensure statements are clear.

**The intent of this change** is to enable the Government to state objectives and policies to support decision-making on marine consent applications in accordance with the purpose of the EEZ Act.

### Fact sheets in this series

This is one of a series of 16 fact sheets providing an overview of amendments to the:

- Resource Management Act 1991
- Conservation Act 1987
- Reserves Act 1977
- Public Works Act 1981
- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

The full set of fact sheets is available on our website:

<http://www.mfe.govt.nz/publications/rma/resource-legislation-amendments-2017-fact-sheet-series>

### Find out more

Contact the Ministry for the Environment by emailing [info@mfe.govt.nz](mailto:info@mfe.govt.nz), or visit [www.mfe.govt.nz/rma](http://www.mfe.govt.nz/rma).

For more information on the EEZ Act changes, please see [www.mfe.govt.nz/marine/legislation/eez-act](http://www.mfe.govt.nz/marine/legislation/eez-act)

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