

RESOURCE LEGISLATION AMENDMENTS 2017 – FACT SHEET 4

Changes to the standard planning track (and related provisions)

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

This fact sheet outlines changes to the standard process for making and changing plans and regional policy statements under Part 1 of Schedule 1 of the Resource Management Act 1991 (RMA). It also outlines the following related changes:

- written notices to requiring authorities under clause 4
- limited notification of proposed changes to plans and policy statements
- extensions of the two-year timeframe between plan notification and decisions
- proposed regional policy statements in combined plans
- removal of financial contributions.

The specific changes come into effect at various times, as detailed in this fact sheet.

The new requirement for councils to consult with iwi on draft policy statements and plans is outlined in Fact Sheet 3.

Councils must advise requiring authorities of their intended planning process before notification

Before notifying a proposed district plan or plan review, councils must give written notice to requiring authorities under clause 4 of Schedule 1, to seek advice about whether to include designations in that process.

Previously these written notices did not refer to the optional streamlined or collaborative planning processes, as these are new processes (outlined in Fact Sheets 5 and 6).

Clause 4 of Schedule 1 of the RMA has been amended to require that these notices include which planning process the council intends to use: standard, streamlined or collaborative.

If the council intends to use the collaborative planning process, the notice must:

- include whether the council intends to include any of the requiring authority's designations in the matters that the collaborative group may consider
- ask the requiring authority to advise if they wish to be on the collaborative group, and a nomination for that representative if it does.

The intent of these changes is to enable existing designations to be considered and 'rolled over' in streamlined and collaborative planning processes.

This change comes into effect on 19 April 2017.

Designations and heritage orders in district plan review

Councils must review plan provisions under the RMA at least once every 10 years. To achieve this, a council may choose to review all of its plan provisions at once, or a selection of provisions through a series of plan changes over time.

Previously existing designations and heritage orders could be reviewed and rolled into a full district plan review. It was unclear whether designations and heritage orders could be rolled into a district plan review occurring in sections through a series of plan changes.

Clause 4 of Schedule 1 of the RMA has been amended to clarify that designations and heritage orders can be reviewed and rolled into any district plan reviews that occur through a series of plan changes (not only when the plan is reviewed in its entirety).

The intent of this change is to remove any uncertainty and support existing good planning practice.

This change comes into effect on 19 April 2017.

Limited notification of proposed plan changes

Previously all proposed plan changes had to be publicly notified, regardless of the scale of the proposed change, or the extent of its effects on the environment.

Full public notification can be disproportionate and inefficient in certain circumstances, such as a site-specific rezoning where the people directly affected can be directly identified.

Schedule 1 of the RMA has been amended to provide councils with the option to limit notification of a proposed policy statement change or variation, a proposed plan change or variation, and private plan change. In this segment's discussion, the term 'plan change' includes all of these options.

The intent of this change is to reduce time, costs and uncertainty for plan changes in circumstances where there is an identifiable group of directly affected persons.

This change comes into effect on 19 April 2017.

The limited notified plan change process is explained further below. This should be read in conjunction with Fact Sheet 3, which details changes to Māori participation in resource management processes (including plan changes).

When can a council limit notification of a proposed plan change?

A council can only limit notification on a proposed plan change if *all persons directly affected* by the proposed plan change are identified.

Councils need to assess who is directly affected by a proposed plan change on a case-by-case basis. A site visit could help with this. Examples of directly affected persons *might* include:

- people and businesses outside the subject area but still directly affected by the plan change
- requiring authorities responsible for designations in or adjacent to the subject area
- heritage protection authorities responsible for heritage orders in or adjacent to the subject area
- owners of infrastructure that passes through or is adjacent to the subject area.

If a council cannot identify and serve notice to all directly affected persons, the plan change is not eligible for limited notification under this clause and must be publicly notified.

Even if all directly affected persons can be identified, limited notification is not mandatory. The council retains discretion to publicly notify the plan change if the council considers it appropriate (see clause 5(1)(b) of Schedule 1 of the RMA).

When might a council consider using the limited notified process?

The requirement to identify everyone who is directly affected by the plan change means that limited notification is likely to be used for minor, small scale, or discrete plan changes, for example aligning zones to new property boundaries, or a spot-zoning.

Limited notification will generally be *inappropriate* for proposed plan changes that:

- cover areas frequently used by the public, such as public parks or the coastal marine area, because any member of the public who uses that area could be directly affected by the plan change
- include the type of proposed rules specified in section 86B(3) of the RMA (for example, to protect significant indigenous vegetation or historic heritage) as these rules manage resources with communal value.

What is the process for a limited notified plan change?

A limited notified plan change follows the standard Schedule 1 Part 1 process, but with some changes, as outlined below.

The council must:

- serve notice of the proposed plan change on all directly affected persons (clause 5A(3))
- provide copies of the proposed plan change to iwi authorities of the area and relevant central and local government agencies (clause 5A(8))
- make available a copy of the plan change at the central public library of the relevant district/region, and any other place considered appropriate (clause 5A(9)). Free access to an online version at the library may be sufficient to meet this requirement.

Clause 5A(4) requires that the notice served on directly affected persons contains the following information:

- where the proposed plan change can be inspected
- a statement that only those notified may make a submission
- the process for participating
- the closing date for submissions
- the address for service of the council.

The council may also provide any other information that it sees fit (clause 5A(5)).

Only the following people can make a submission in the prescribed form (clause 6A(1)) or a further submission (clause 8(1A)):

- those notified of the plan change
- those organisations that were provided a copy (for example relevant councils, iwi authorities, Ministries)
- a council in its own area.

The closing date for submissions must be at least 20 working days after limited notification (clause 5A(6)). A council can close the submission period early if it receives submissions, or written notices saying a submission won't be made, from all of the directly affected people that were notified (clause 5A(7)).

Clause 7(1A) only requires that notice about the summary of decisions requested in the submissions to be given to the people who were originally notified and to any organisations that were originally given copies of the plan change.

When can rules in a limited notified plan change have legal effect?

Rules in plans that are limited notified do not have any legal effect and cannot be treated as operative until after decisions on submissions (under Schedule 1 Clause 10) are publicly notified.

Applying to extend the two-year plan-making timeframe

In 2005 the RMA introduced a two-year time limit for councils to process proposed policy statements, plans and plan changes, from notification to making a decision.

Previously not all plan and plan change processes were completed within this timeframe.

The RMA has been amended to insert new clause 10A into Schedule 1, which requires councils to apply to the Minister for the Environment to extend this two-year timeframe if they are unlikely to meet it. This clause overrides the council's powers under section 37 of the RMA to extend the two-year timeframe.

The intent of this change is to encourage greater council compliance with the existing two-year time limit.

This change comes into effect on 18 October 2017, and only applies to proposed policy statements, plans and plan changes that are notified after that date.

How does a council apply to extend the timeframe?

It is important for councils to align their process to the two-year timeframe. If timeframes are tight, or the process is prone to delays, the council may consider options such as more frequent hearing days, extra staff to prepare section 42A reports, or staging the notification, submission and hearing of separate plan topics.

If a council expects its plan or plan change process, from notification to decisions, is likely to take longer than two years, it is important that the council gets in touch with the Ministry for the Environment as soon as possible. The Ministry may be able to help with alternatives, or with the preparation of an application to the Minister.

There is no specific form for councils to apply to the Minister for the Environment to request an extension to the two-year timeframe.

When applying, the council must consider:

- the interests of any person who may be directly affected by the extension
- the interests of the community in making sure the effects of the change are adequately assessed
- its duty to avoid unreasonable delay under section 21 of the RMA.

Any application to extend the timeframe must include:

- reasons for the request
- the length of extension needed.

What is the role of the Minister for the Environment?

The Minister may decline or agree to an extension, and will send the decision to the council. The Minister must consider the views of the Minister of Conservation before making a decision on the application if it is for a proposed regional coastal plan.

The Minister may grant a timeframe extension for a range of reasons, for example to incorporate a new plan variation or new national direction, or to allow pre-hearing meetings to encourage consensus.

What happens if an extension is granted?

The council must publicly notify the extension and comply with the revised timeframe.

What happens if an extension is declined?

The council must realign its plan-making process and may need to provide extra resources to meet the two-year timeframe. Alternatively, the council may re-notify part or all of the plan or plan change.

If the plan or plan change takes longer than two years for decisions to be notified, the council would be in breach of its RMA obligations. If this happens, the Minister has the option of taking remedial actions (see sections 24A to 26 of the RMA).

'Giving effect' to proposed RPS as part of combined plan

Regional and district plans prepared under the RMA must 'give effect' to any relevant regional policy statement. Some councils produce 'combined plans' that incorporate regional policy statements (RPSs), as well as regional plans, district plans or both, instead of producing separate documents.

Previously there was legal uncertainty about whether regional or district plan provisions in a proposed combined plan could give effect to a *proposed* RPS in the combined plan, or instead had to give effect to the previous *operative* RPS.

The RMA has been amended to insert section 80(6B), which amends the weighting of operative and proposed RPSs in making decisions on proposed combined plans (if those plans contain a proposed RPS). Councils can now give effect to the *proposed* RPS in the combined document, and must only have regard to the previous operative RPS.

The intent of this change is to remove the legal uncertainty that became apparent during the development of the Auckland Unitary Plan.

This change comes into effect on 19 April 2017.

Councils will no longer be able to require financial contributions to be paid under the RMA from 18 April 2022

Previously councils were able to charge financial contributions as conditions on resource consents to meet the purposes in the plan. This often included:

- financing the extension or development of bulk services or other infrastructure costs of a development
- providing reserves to meet the community needs generated by the project
- managing adverse effects on the environment that cannot be directly avoided, remedied, or mitigated (including ensuring positive effects to offset any adverse effect).

Councils may also charge development contributions under the Local Government Act 2002 (LGA) for infrastructure costs and community reserves. Variation and overlap in how different councils charge financial and development contributions has resulted in confusion and concerns about councils' charging under the two regimes.

The RMA has been amended so that from 18 April 2022, regional and district councils will no longer be able to require a financial contribution (of money or land) as a resource consent condition.

The change does not retrospectively remove any financial contributions conditions placed on resource consents; these may remain in place even after a plan change has been made to prevent them from being used in the future.

The intent of this change is to:

- clarify that that the costs of servicing new growth should be met through development contributions under the LGA
- make charging more certain and transparent for applicants.

The new requirements and timing of this change are described further below.

Removing financial contribution provisions

Councils do not need to use a RMA Schedule 1 process to remove provisions for requiring and calculating financial contributions from their RMA documents. Instead councils only need to give public notice of the change, as soon as practicable after making the change.

Councils can still include financial contribution resource consent conditions as long as the provisions allowing them are in the plan, up to 18 April 2022. Once issued, the financial contribution conditions in resource consents remain valid even after the plan provisions are removed.

Alternatives to financial contributions

When reviewing plans to remove financial contributions, councils may want to consider how the purposes for financial contributions that were specified in their plans can be achieved through other methods, such as:

- development contributions under the LGA, including developer agreements under sections 207A–F of that Act
- resource consent conditions to require developers to construct infrastructure directly related to the development, or to avoid, remedy or mitigate adverse environmental effects

- resource consent conditions the applicant proposes to generate positive environmental effects that mitigate or offset adverse environmental effects from the activity
- council construction of infrastructure and/or mitigation works, with targeted rates on the users of the new development to repay the investment
- alternative funding sources, such as the Housing Infrastructure Fund (for applicable councils).

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 following fact sheets contain information about other changes that relate to the standard planning process:

- 2: Revised functions for Resource Management Act 1991 decision-makers
- 3: Changes to Māori participation in the Resource Management Act 1991
- 13: Changes to public notices, electronic servicing and submission strike out.

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, or visit www.mfe.govt.nz/rma.

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