



Resource Legislation Amendments 2017

RESOURCE LEGISLATION AMENDMENTS 2017 – FACT SHEET 5

A new optional streamlined planning process

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

Requesting a streamlined planning process

Previously the RMA had only one statutory process (the standard process) and timeframe to prepare and change policy statements or plans, no matter how simple or complex the proposal. Under the standard process it can take years to develop and finalise a regional policy statement (RPS), regional or district plan. It can take two years or more to complete a plan change and resolve any appeals, depending on the issues. These timeframes are too long for plans to be able to respond to urgent issues.

The RMA has been amended to enable councils to make a request to the Minister to use a streamlined planning process proportional to the issues being addressed, instead of the standard planning process, for a proposed policy statement, plan, plan change or variation.

The intent of this change is to provide greater flexibility in planning processes and timeframes, and allow these to be tailored to specific issues and circumstances.

This change comes into effect on 19 April 2017. More information about the streamlined planning process is provided below.

See also Fact Sheet 6 for an explanation of the new collaborative planning process and fact sheet 4 for changes to the existing plan making process.

Entry criteria for making a request

If a council wishes to use a streamlined planning process, it must make a request to the Minister for the Environment (or the Minister of Conservation, if the process is for a plan or plan change concerning the coastal marine area).

Before a council can make a request for a streamlined planning process, it must be satisfied that the proposed policy statement, plan, change or variation meets at least one of a set of entry criteria. These criteria are that the proposed policy statement, plan, change or variation:

- will implement national direction

- is urgent as a matter of public policy
- is required to meet a significant community need
- deals with an unintended consequence of a policy statement or plan
- will combine several policy statements or plans
- requires an expeditious process for a reason comparable to those listed above.

A council cannot request the streamlined planning process for a proposed policy statement, plan, plan change or variation if it has already either:

- notified the proposal under Part 1 of Schedule 1)
- given notice of its intention to use the collaborative process for the proposal under Part 4 of Schedule 1.

Information required in the request

Any request to the Minister for a streamlined planning process from a council must contain:

- a description of the planning issues and how the entry criteria are met
- an explanation of why a streamlined planning process is appropriate instead of the standard planning process
- a description of the process and timeframes the council proposes for a streamlined planning process
- the persons the council considers are likely to be affected by the proposed policy statement, plan, change or variation
- a summary of the consultation planned or undertaken on the proposed policy statement, plan, change or variation, including with iwi authorities
- the implications of the proposed streamlined planning process for any relevant iwi participation legislation or Mana Whakahono a Rohe: Iwi participation arrangements (Mana Whakahono).

Considerations for the Minister

In reaching a decision, the Minister must have regard to the council's request and whether sufficient information has been provided. The Minister is able to request further information, if required.

The Minister must have regard to any relevant obligations set out in iwi participation legislation or Mana Whakahono arrangement, and must ensure that the streamlined planning process is not inconsistent with these obligations. The Minister must have regard to any other relevant matters and the purpose of the streamlined planning process. The Minister must consult with:

- the council
- any relevant Ministers of the Crown
- any requiring authority that has agreed to the notice of requirement being included in the streamlined planning process,
- any private plan change requestor (if the request is for a private plan change).

The Minister may also consult any other person he or she considers necessary.

The Minister must either:

- grant the request, and issue a direction that sets out the streamlined planning process to be followed
- decline the request, providing reasons for decisions.

Issuing a direction for a streamlined planning process

A direction is the Minister's written instruction that a streamlined planning process applies. It specifies what procedural steps and timeframes must now be followed by the council. In addition, the direction will include a statement of expectations that the council must consider during the plan-making process.

When deciding on the contents of a direction, the Minister must have regard to:

- the purpose of the proposed streamlined planning process
- the council's request
- any additional information provided
- the views of those consulted.

A direction for a streamlined planning process must as a minimum include:

- consultation with affected parties, if not already undertaken
- public notification or limited notification
- an opportunity for written submissions
- a report showing how submissions have been considered, and any changes made to the proposed policy statement, plan, change or variation
- a section 32 and 32AA report, as relevant
- the time period in which the streamlined planning process must be completed.

A direction may also include:

- additional process steps
- any other timeframes
- reporting or other planning process requirements .

The direction is given in writing, dated and served on the council(s) concerned, and published in the *New Zealand Gazette*. After publication, the council must make the direction available for downloading, free of charge, from a website.

Amending or revoking the direction

A council can apply to the Minister to change the direction, for example if there has been a change of circumstances. The Minister may also change the direction. In either case, the Minister must follow the consultation process that was used when the original request was made, unless the change is minor or correcting a technical error.

The council can request in writing that the Minister extend any timeframes set in the direction.

Councils cannot extend the timeframe set out in the direction under section 37 but can still waive the failure of a person to comply with the time or method of serving a document.

The Minister may revoke all or part of the direction by giving notice in the *New Zealand Gazette*. Before doing so, the Minister must consult the relevant council and give public notice, with an opportunity for public comment. If the direction is revoked, the proposed policy statement, plan, change or variation is withdrawn. If the council wishes to continue with the proposal, it must start again using the standard process or the collaborative process, or request a whole new streamlined planning process.

Withdrawing the proposed policy statement, plan, change or variation

A council that is working under a direction can withdraw its proposed policy statement, plan, change or variation at any time up until the point at which the Minister makes a decision on it. If the direction relates to a private plan change, the person who requested the plan change may withdraw their request at any time up until the Minister makes a decision. The existing restrictions on a council withdrawing a private plan change apply (clause 28 Schedule 1).

The council must publicly notify the withdrawal, along with the reasons for it. At that point the direction is revoked and ceases to have effect.

Approval of the proposed policy statement, plan, change or variation

Once the council has undertaken the planning process set out in the direction, it must submit its proposed policy statement, plan, change or variation to the Minister for approval. It must provide:

- the proposed policy statement, plan, change or variation
- a summary report of the written submissions received
- a report showing how submissions have been considered and any modification to the proposed policy statement, plan, change or variation as a result
- a section 32 or 32AA report
- a summary document showing how the statement of expectations has been considered
- a summary document showing how the proposed policy statement, plan, change or variation complies with the RMA, any national direction and any regulations.
- any other information and documentation required by the direction.

The council can also provide additional information.

Making a decision

The Minister may decide to approve the proposed policy statement, plan, change or variation, or refer it back to the council for reconsideration, or decline to approve it.

Approved

If the Minister approves the document, he or she must notify the council of his or her approval and the reasons for the decision, and refer the document back to the council for public notification of the date on which it becomes operative. There are no further considerations of the document and the only decision for council to make is when it will be notified and become operative.

Reconsideration

If the Minister refers the document back to the council for reconsideration, he or she must notify the council of this decision and the reasons why, and may include any recommended changes.

The Minister can extend the timeframes to allow further consideration. In this case, the council must:

- reconsider the proposed policy statement, plan, change or variation in the light of the Minister's reasons
- consider any changes recommended by the Minister
- make any changes it considers appropriate
- consult with the requiring authority or heritage protection authority if the reconsideration relates to a notice of requirement, designation or heritage order
- resubmit the revised proposed policy statement, plan, change or variation to the Minister.

When the Minister receives a revised proposed policy statement, plan, change or variation, he or she must reconsider it, and decide whether it meets the grounds for approval.

Decline

If the Minister declines to approve the proposed policy statement, plan, change or variation, the Minister must notify the council and give reasons for the decision. The council must give public notification of this decline, and serve a copy of the public notice to all submitters.

Recommendations that relate to notices of requirement, heritage orders or designations are dealt with through separation provisions and do not follow the process as above, these are discussed later in the document.

Making the proposed policy statement, plan, change or variation operative

If and when the council receives the Minister's approval, it must give public notice. The proposed policy statement, plan, change or variation approved by the Minister will then become operative, in accordance with clause 20 of the Schedule 1 of the RMA.

A copy of the public notice, all the reports submitted to the Minister, and the Minister's decision, must be publicly available (in physical or electronic form) at the council office and in relevant public libraries.

A copy of the public notice must also be sent to all submitters, and if relevant the requiring authority, heritage protection authority or private plan change requestor.

No right of appeal

There is generally no ability to appeal provisions that were made through a streamlined planning process, except in relation to designations and notices of requirement (detailed further below).

Judicial review of any decisions made by the council or Minister as part of a streamlined planning process may be sought from the High Court.

Special provisions apply to designations, heritage orders and notices of requirement in a streamlined planning process

Inclusion of designations, heritage orders and notices of requirement

Designations, heritage orders and notices of requirement (NORs) can be included in a proposed district plan or plan change subject to a streamlined planning process, but special provisions apply, including appeal rights.

If the requiring authority or heritage protection authority agrees, new NORs can be considered with the proposed plan or plan change to be subject to a request for the streamlined planning process.

When seeking agreement to include new NOR in a proposed plan, the council must make it clear to requiring authorities and heritage protection authorities whether it intends to use a standard or collaborative planning process, or request a streamlined planning process.

If a requiring authority or heritage protection authority does not agree, then NORs cannot be included in the streamlined planning process request. In this case, the council may proceed with a request for a streamlined planning process but the NOR components must follow one of the paths set out in Part 8 of the RMA.

Designations, heritage orders or notices of requirement in the process

The Minister will consider the council's request, and issue the direction if the request is approved.

Once the direction has been followed, any recommendations that the council has on the designation, heritage order or NOR must be sent to the requiring authority or heritage protection authority for comment before being submitted to the Minister. The Minister then decides whether to approve the recommendations on the designations, heritage orders and NORs.

If the Minister approves the recommendations:

- the council must send the approved recommendations to the requiring authority
- the requiring authority or heritage protection authority must make a decision on the recommendations.

If the Minister refers the matter back to the council for reconsideration, or suggests changes, the council must seek comments on any NOR, heritage order or designation matters from the responsible requiring authority or heritage protection authority before resubmitting it to the Minister.

If the Minister has made a decision to decline the proposed plan, change or variation submitted the recommendation on any NOR, designation or heritage orders that are part of the proposal must be to decline.

The requiring authority then makes a decision on that recommendation but is not bound by the Minister's approved recommendation.

Appeal rights on designations, heritage protection orders and notices of requirement

If the requiring authority or heritage protection authority agrees to the recommendations, then appeals may be lodged on points of law only in the High Court on any accepted recommendation.

If the requiring authority or heritage protection authority rejects the recommendations, appeals may be lodged on points of merit in the Environment Court but only on the part of the recommendation that has been rejected.

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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:

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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