

Resource Legislation Amendments 2017

RESOURCE LEGISLATION AMENDMENTS 2017 – FACT SHEET 6

A new optional collaborative planning process

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

Using the collaborative planning process

Previously the Resource Management Act 1991 (RMA) had only one statutory process for preparing or changing policy statements or plans. Councils were required to use this, no matter how simple or complex they were.

Schedule 1 of the RMA has been amended to enable councils to adopt a collaborative planning process as an alternative planning track when undertaking a review or change, or preparing a new plan or policy statement, including a combined regional and district document.

The intent of this is to provide a process for the community to participate at the front end of the planning process where alternatives, costs and benefits of various options can be debated for informed decision-making, to produce plans that better reflect community values and reduce litigation costs and lengthy delays later.

The CPP is a process that is designed to provide a robust planning process while at the same time incentivising participation in collaborative planning and encouraging the collaborative group to reach consensus on difficult issues by ensuring this is reflected in the final plan or policy statement.

The collaborative planning process is based on the recommendations of the Land and Water Forum, and is useful for developing solutions to complex problems, where different values are at play and there is increasing pressure on resources. Part 4 of Schedule 1 of the RMA outlines minimum requirements that a council and participants must follow if undertaking the collaborative planning process. This change comes into effect on 19 April 2017.

See also fact sheet 5 for an explanation of the new streamlined planning process.

Benefits of the collaborative planning process

The collaborative planning process encourages greater front-end public participation and deliberation in order to produce plans that better reflect community values. The process can improve community awareness of the issues, increase understanding of others' positions and views and generate community designed outcomes which are mutually beneficial.

The basic idea of collaboration is that people with differing views work together to build a common understanding of the issues and test alternative options (including the costs and benefits) at an early stage in the planning process, rather than challenging the merits of a single proposal through an appeals process at the end. The expectation is that this will result in planning decisions that are better supported, because they have been developed by community representatives and transparently tested with the wider community.

In the long term, collaboration can increase the capacity of the community to engage in council planning processes, help develop new community leaders, and improve implementation of resource management programmes.

The prescribed process incentivises participation in the collaborative planning process and encourages the collaborative group to reach consensus on difficult issues. The process gives weight and protection to the consensus decisions of the collaborative group and assurance that where consensus is reached, this is given effect to in the plan, *and* it will not be undone through appeals unless those circumstances where appeals are available are met.

The main impacts expected to result from the collaborative planning process are:

- greater representation of community views incorporated early in the planning process
- generation of community-driven solutions leading to robust and durable plans and policy statements
- cost savings to council and submitters through reduced appeals, due to wide community representation in developing plan content
- the values and interests of iwi/Māori being incorporated, through involvement in the collaborative group and in direct relationships with the council.

Collaborative processes require significant resourcing and support, can take time, and are most successful when there are high levels of participation by the wider community. Before deciding to use this track, councils should consider whether a collaborative process is likely to be the most effective approach.

More information about the collaborative planning process is provided below. Clauses referred to below are those in Schedule 1 of the RMA.

Overview of the collaborative planning process

Deciding whether to use a collaborative process

Councils must consider a range of matters in deciding whether to use a collaborative planning process, which are listed in clause 37.

If a council decides **to use** a collaborative planning process, they must give public notice of that decision under clause 38. From that point on, the council may not withdraw from the collaborative planning process, unless:

- a collaborative group can't be appointed
- the collaborative group breaches its terms of reference, and is unable to resolve this through dispute resolution
- there are insufficient consensus recommendations on which to draft a plan/policy statement

The remaining sections of this fact sheet apply if the council decides to use a collaborative planning process.

Appointing a collaborative group

The council must appoint a collaborative group under clause 39. Criteria for appointing the group are set out in clause 40. This includes a number of mandatory appointments including at least one person chosen by iwi authorities to represent tangata whenua. It also includes a requirement that membership reflects a balanced range of the community's interests, values, and investments in the area, as they relate to the issues to be considered.

Clause 41 requires the council to set terms of reference for the collaborative group (in consultation with the group), and lists matters to be included in the terms of reference.

Clause 42 requires the council to give public notice, detailing the appointments and where the terms of reference can be viewed. Collaborative groups must determine their own procedure (within their terms of reference), and are treated the same as a council committee under section 43 of the Local Government Act 2002 for the purpose of indemnification.

Presenting a consensus report

Clause 43 requires the collaborative group to provide the council with a consensus report in accordance with their terms of reference. The consensus report must include:

- recommendations that the group reached consensus on and reasons why
- a summary of the costs and benefits identified
- any alternatives considered
- a record of matters on which the group did not reach consensus
- a summary of how the group obtained and considered the views of the community in coming to its recommendations.

Clause 44 requires the council to then give public notice detailing where the collaborative group report can be viewed.

Drafting and notifying a proposal based on the consensus report

Clause 45 requires the council to draft a proposed policy statement or plan, which must '*give effect to the consensus recommendations of the collaborative group*'. The council can draft its own provisions on parts of the plan or policy statement where the group has not reached consensus, provided those matters are within the terms of reference given to the collaborative group.

Advice must be sought from iwi authorities on the draft (clause 46). The council must also prepare and consider a section 32 evaluation report on the proposal (clause 47). The council must then publicly notify the planning instrument under clause 48, and call for submissions under clause 49. Once submissions are received and analysed, the council must prepare a report on the submissions, and call for further submissions. No later than 3 months after the closing date for further submissions the council must prepare a report on whether the decision requested are consistent with the consensus recommendations and provide a copy of that report to the collaborative group and iwi authorities for comment (clause 50).

Review panel

A review panel must be established by the council under clause 63, in accordance with the criteria for appointing members set out in clause 64.

The review panel must hold a hearing under clause 51, and operate its procedures in accordance with clauses 66 to 73 (which includes the ability to require mediation and undertake cross-examination). The collaborative group may appoint one of its members to assist the review panel for the particular purposes listed in clause 52.

The review panel must provide a report to the council (with recommendations) under clause 53.

The review panel must not recommend any changes to a proposed policy statement or plan unless:

- changes are required to ensure compliance with legislative or regulatory requirements, including any Treaty legislation, or
- the collaborative group is given the chance to comment on the changes, if they differ to the consensus recommendations of the collaborative group, and this is included in the review panel report.

Considering the review panel's recommendations

The council must decide whether to accept or reject the recommendations of the review panel, using the process set out in clause 54. If the proposal is for a regional coastal plan, this must be approved by the Minister of Conservation under clause 55.

In any case, the council must then publicly notify the amended proposed policy statement or plan under clause 56.

Circumstances for appeals

Clause 59 enables appeals to the Environment Court by way of rehearing on parts of the proposed policy statement or plan that:

- are not based on a consensus recommendation from the collaborative group
- are changes recommended by the review panel that were opposed by the collaborative group
- relate to a notice of requirement, designation or heritage order that the relevant requiring authority or heritage protection authority did not support, or supported with changes.

Clause 60 enables appeals on points of law to the Environment Court.

What about the existing collaborative processes?

Some regional councils have already implemented a collaborative approach to complex issues such as freshwater planning as part of the standard planning process. Councils can continue to establish their own collaborative processes if they prefer under a Part 1/Schedule 1 process. The reduced appeal provisions detailed above, however, only apply if the statutory collaborative planning process is followed.

The RMA also outlines the arrangements where current processes can transition to the prescribed collaborative planning processes.

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

Councils that are considering initiating a collaborative planning process, or transitioning an existing process into the statutory collaborative planning process, and would like advice should contact the Ministry for the Environment. The Ministry can provide tailored advice on these processes for a council's specific situation.

Contact the Ministry for the Environment by emailing info@mfe.govt.nz, or visit www.mfe.govt.nz/rma.

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