



Resource Legislation Amendments 2017

RESOURCE LEGISLATION AMENDMENTS 2017 – FACT SHEET 7

Changes to heritage protection under the Resource Management Act 1991

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

This fact sheet outlines changes affecting heritage protection authorities and heritage orders, which come into effect on 19 April 2017.

Heritage protection authorities (HPAs) are Ministers of the Crown, councils, Heritage New Zealand Pouhere Taonga, and bodies corporate that have been approved by the Minister for the Environment under section 188 of the Resource Management Act 1991 (RMA).

HPAs can give notice to their local council of a requirement for a heritage order to protect the special heritage qualities of a place or structure. If a heritage order is included in a district plan, the prior written consent of the HPA is required before certain acts can be undertaken, if they would wholly or partially nullify the effect of the heritage order.

Heritage orders afford a high level of regulatory protection to affected places and structures. Intrusive regulatory impacts on private property rights can arise when heritage orders are placed over private land, which creates uncertainty for the management of significant heritage.

The RMA has been amended to make two changes to heritage protection authority and heritage order processes.

The intent of both of these changes is to reduce undue interference on private property rights by bodies corporate that are not councils.

Notice of requirement must not be given over private land by a heritage protection authority that is an approved body corporate

Previously bodies corporate that were approved as HPAs under section 188 of the RMA could place notices of requirement over land owned by a different private owner, restricting the use and development of that land.

Section 189 of the RMA has been amended to remove the ability for bodies corporate that have been approved as HPAs under section 188 to give notice of requirement over private land. This means that these types of HPAs can only place heritage orders over land owned by the Crown, which

in this context includes the Sovereign in right of New Zealand, departments of State, Crown entities, mixed ownership model companies, State enterprises and councils.

The change does not:

- remove the ability of councils or Ministers to place heritage orders over private land
- prevent body corporate HPAs from advocating for the protection of private places via other means (for example, submissions on resource consents and plan changes affecting the site where these are publicly notified)
- have a retrospective effect (that is, it does not nullify any existing heritage orders made by bodies corporate over private land).

Transferring responsibility for a heritage order between authorities

Previously the only way the Minister for the Environment revoked responsibility of a particular heritage order from a HPA was to revoke the status of that HPA, remove the heritage order, or via a legislative amendment..

The RMA has been amended to insert new section 195B, which enables the Minister for the Environment to transfer responsibility for an existing heritage order to another HPA. However, this power cannot be exercised to transfer an existing heritage order to a HPA that is a body corporate. Further, section 188 has been amended to prevent a HPA that is a body corporate from issuing a notice of requirement over an area that is private land..

This change does not affect:

- the level of protection over a site subject to a heritage order
- the heritage status of a site within a district plan, or any listing by Heritage New Zealand Pouhere Taonga.

Process for transferring a heritage order

In determining whether to transfer a heritage order to another HPA (that is not a body corporate), the Minister for the Environment must take into account (among other things):

- the heritage values of the place
- the reasonable use of the place or area despite it being subject to a heritage order
- any other matters considered relevant, such as the property rights of the owner and occupier (if any) of the place or area, and the ability of the HPA to whom the Minister proposes to transfer the heritage order to protect the place or area.

Before making a decision whether to transfer responsibility for a heritage order, the Minister must serve written notice of intent to transfer, to:

- the HPA currently responsible for the heritage order
- the HPA who the Minister intends to transfer the heritage order to
- both the owner and occupier (if applicable) of the place or area subject to the heritage order
- any other person with a registered interest in that place or area
- the district or city council where the heritage order is located.

Any person or organisation served with a notice can make a written objection or submission to the Minister on the proposal, within 20 working days of being served. The Minister must take into account submissions and objections before making a final decision. The Minister does not need the permission of the recipient heritage protection authority to transfer the heritage order.

If the Minister decides to transfer responsibility for a heritage order, the:

- transfer occurs without revoking the status of the HPA that previously held responsibility for that heritage order
- HPA that is the recipient of the transfer will have full responsibility for the heritage order.

If responsibility for a heritage order is transferred to Heritage New Zealand Pouhere Taonga or a council, the HPA that had previous responsibility can continue to advocate for the protection of a heritage place as a 'guardian'. A guardian can act in a voluntary capacity, and does not have any statutory functions or duties under the RMA.

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

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