



# Direct referral

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This is one of a series of fact sheets developed to provide an overview of the Resource Management Amendment Act 2013, the Local Government (Auckland Transitional Provisions) Amendment Act 2013, and the Local Government Official Information and Meetings Amendment Act 2013.

This fact sheet provides information on the direct referral process under the Resource Management Act 1991 (RMA). Direct referral allows applicants to make a request to a council that their notified resource consent, notice of requirement, or heritage order application be decided by the Environment Court rather than the relevant council, bypassing the council hearing stage.

All section references are to the RMA unless stated otherwise.

## When these provisions take effect

The changes to direct referral come into effect at different times. An overview of the timing of the amendments is:

- » subject to regulations – investment threshold and exceptional circumstances (sections 87E and 198C)
- » subject to an Order in Council – time for lodging a notice of motion with the Environment Court (sections 87G, 198E, 198K and 165ZFE)
- » the day after Royal Assent – remaining provisions.

## Why were changes needed?

The amendments address concerns about:

- » uncertainty for applicants about whether councils will agree to a request for direct referral, by removing a council's discretion to decline direct referral requests for projects that meet a certain investment threshold
- » a lack of clarity about the content of a council's planning report and the role of a council at the Environment Court hearing, including cost recovery
- » the tight timeframe for applicants to lodge their application with the Environment Court
- » uncertainty about how submitters who want to be heard notify the Environment Court
- » how the anti-trade competition provisions apply to direct referral.

## How has the RMA been amended?

### Restricting councils' discretion over requests for direct referral

Section 87E requires a council to grant a request for direct referral for a resource consent application if the value of the investment in the proposal is likely to meet or exceed a threshold amount, unless exceptional circumstances exist. Section 198C includes corresponding provisions for designation and heritage order applications. This change removes a council's discretion to decline a request for direct referral in certain circumstances.

The threshold amount and the matters a council will have regard to when determining if there are exceptional circumstances will be prescribed by regulations. The regulations can also address how the investment threshold applies to different types of proposals and to different parts of the country. These provisions will only have effect once the regulations are made.

Since the introduction of direct referral in 2009 there has been growing interest from applicants in using this consent path. These changes are intended to provide more certainty for applicants by removing a council's discretion to grant or decline a direct referral request for proposals of a significant economic scale. A council will retain full discretion to agree or decline a request for direct referral for all applications that do not meet the investment threshold.

### **Content of a council planning report**

The content of a council planning report under section 87F is now mandatory and has been broadened to include a summary of submissions. Sections 198D and 198J include corresponding provisions for designation and heritage order applications. The report must:

- » provide a summary of submissions received
- » address all the issues in sections 104 to 112 to the extent they are relevant to the application
- » suggest conditions that should be imposed if the Environment Court grants the application.

### **Role of the council**

Section 87F requires councils to provide assistance to the Environment Court in relation to the council planning report and clarifies the consent authority is a party to the Court proceedings. Sections 198D and 198J include corresponding provisions for designation and heritage order applications.

This assistance includes clarifying or discussing matters in its report, giving evidence, discussing submissions or addressing issues raised by them, or providing any other relevant information the Court might require.

A council can also continue to make a submission and take a position on the application, separate from its regulatory role.

### **A council's costs may be recovered**

The changes to section 285 clarify the Environment Court can order an applicant to pay a council's costs for its involvement in assisting the Court. This includes the costs of preparing a council planning report and appearing at the Court hearing. The change is consistent with requiring councils to take a role in the Court proceedings. When the Court is exercising its discretion to award costs, the presumption is that these costs are to be awarded against the applicant.

Up to the point when an application is directly referred, a council can recover its costs from the applicant under section 36 in the usual manner.

### **Time limit for lodging application with the Environment Court**

Section 87G increases the time for lodging an applicant's notice of motion with the Environment Court to 15 working days (from 10 working days) after the receipt of a council's planning report. Sections 165ZFE, 198E, and 198K include corresponding provisions for coastal permit, designation and heritage order applications.

The notice of motion is the application to the Environment Court for granting the resource consent application or confirmation of its notice of requirement. It includes details of the application and a supporting affidavit.

This change provides more time for an applicant to lodge their application with the Environment Court (having received a council's decision on its request for direct referral and its planning report). This change will be brought into force at a later date by Order in Council.

### **How submitters notify the Environment Court of their desire to be involved**

Section 87G clarifies that persons who make submissions on a resource consent application that is directly referred must give notice to the Environment Court if they wish to be heard. Sections 198E and 198K include corresponding provisions for submitters on designation and heritage order applications.

Submitters who wish to be heard must become a party by lodging a section 274 notice with the Court.

### **Trade competition provisions apply**

Sections 87G, 198E and 198K clarify that the anti-trade competition provisions (Part 11A of the RMA) also apply in the case of direct referral. Changes to support this clarification have also been made to sections 308A and 308CA to 308G. Part 11A prevents certain persons from becoming parties to proceedings before the Environment Court. Trade competitors may not fund persons to become a party to any direct referral proceedings.

## Fact sheets in this series

- 1 Overview
- 2 Changes to the resource consent process
- 3 Six-month processing of notified consent applications
- 4 Auckland Unitary Plan
- 5 Direct referral
- 6 Section 32 of the RMA
- 7 Minor and technical amendments

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