

RESOURCE LEGISLATION AMENDMENTS 2017 – FACT SHEET 3

Changes to Māori participation in 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 to Māori participation under the Resource Management Act 1991 (RMA), which come into effect on 19 April 2017.

Previously engagement between councils and Māori in RMA planning and consenting hasn't been consistent across the country, and the effectiveness of existing relationships between iwi and councils has varied.

In some regions, councils and iwi have informal arrangements, memoranda of understanding, statutory joint management arrangements, Treaty of Waitangi settlement arrangements, or advisory boards to council. In other regions, Māori have had limited opportunity to engage in resource management effectively. The lack of any statutory requirement for councils to establish working relationships with iwi can lead to disagreements, and delays later in the planning process.

The RMA has been amended to:

- enhance opportunities for iwi input to the RMA plan-making processes
- introduce a new process for establishing agreements between tangata whenua (through iwi authorities) and councils, called Mana Whakahono a Rohe: Iwi participation arrangements (Mana Whakahono a Rohe).

The intent of these changes is to facilitate improved working relationships between iwi and councils, and enhance Māori participation in resource management processes.

More information about these changes is provided below.

Councils must engage with iwi authorities on draft plans and policy statements prior to notification

When preparing proposed policy statements and plans, councils are required to consult with potentially affected tangata whenua through iwi authorities, under clause 3 of Schedule 1 of the RMA.

Schedule 1 of the RMA has been amended to insert clause 4A, which requires councils to:

- provide a copy of any draft policy statement or plan, once prepared but before it is notified, to any iwi authorities that were previously consulted under clause 3 of Schedule 1
- allow adequate time and opportunity for those iwi authorities to consider the draft and provide advice back to the council
- have particular regard to any advice received from those iwi authorities before notifying the plan.

It may be useful for councils and iwi authorities to discuss and agree beforehand (for example, during the previous consultation under clause 3) what amount of time should be provided for the clause 4A stage of the process.

The amount of time that iwi authorities need to consider and prepare advice on draft policy statements or plans could be influenced by other consultation planned at the same time (for example, Treaty settlement processes, or the establishment of a Mana Whakahono a Rohe), or the size or scope of the proposed plan or policy statement.

Clause 4A does not apply to the new collaborative or streamlined planning processes under Parts 4 or 5 of Schedule 1, however:

- a corresponding requirement applies for the collaborative planning process under clause 48 of Schedule 1 (see Fact Sheet 6 for more information)
- a Minister's direction for a streamlined planning process must provide for consultation with affected iwi authorities (if not already undertaken) under clause 77 of Schedule 1 (see Fact Sheet 5 for more information).

Councils must consider iwi authority advice in section 32 evaluation reports

Section 32 of the RMA sets out requirements for councils to prepare and publish evaluation reports about proposed plans, plan changes and policy statements.

Section 32 of the RMA has been amended to require any evaluation reports about proposed policy statements, plans or plan changes (prepared under Schedule 1 through the standard, streamlined or collaborative planning processes) to include summaries of:

- all advice received from iwi authorities on the proposal
- how the proposal responds to that advice, including reference to any proposed provisions that are intended to give effect to the advice.

Consultation on whether it is appropriate to appoint a commissioner with an understanding of tikanga Māori

Section 34A enables councils to appoint commissioners for hearings on proposed plans and policy statements under Schedule 1 of the RMA (among other things).

The RMA has been amended to insert section 34A(1A), which requires councils, when appointing commissioners for plan or policy statement hearings to:

- consult iwi authorities about whether it is appropriate to appoint a commissioner who understands tikanga Māori and the perspectives of local iwi and hapū.
- if the council considers it appropriate, appoint at least one commissioner who understands these matters, in consultation with the relevant iwi authority.

Section 34A(1A) does not apply to hearings in collaborative or streamlined planning processes (under Parts 4 or 5 of Schedule 1). However:

- for a collaborative planning process:
 - at least one member of a collaborative group must be appointed by iwi authorities to represent the views of tangata whenua (under clause 40(1)(a))
 - at least one member of a review panel must have understanding of tikanga Māori and the perspectives of tangata whenua, and be appointed after consultation with iwi authorities (under clause 64(5))
- for a streamlined planning process (SPP), if the Minister directs a hearing, he or she may apply any relevant planning process requirements under clause 77(5)(c), which may include requirements for hearing panels that mirror those set out in section 34A(1A). If the applicant council already has a treaty settlement obligation to appointment certain members to a panel, the SPP process cannot be inconsistent with this.

Fact Sheets 5 and 6 provide more information about the streamlined and collaborative planning processes.

Inviting councils to form a Mana Whakahono a Rohe

Purpose of a Mana Whakahono a Rohe

The purpose of a Mana Whakahono a Rohe is to provide a mechanism for councils and iwi to come to agreement on ways tangata whenua may participate in RMA decision-making, and to assist councils with their statutory obligations to tangata whenua under the RMA.

Iwi authorities can invite councils to form a Mana Whakahono a Rohe

Iwi authorities have an option to invite the regional or district council to form a Mana Whakahono a Rohe. On receiving this invitation the council must convene a hui or meeting with the requesting iwi, and may invite any other iwi or councils in the region to discuss the parties, process and timing of the negotiations.

Following this hui or meeting, any parties who want to form a joint arrangement or arrangements will begin negotiations. The negotiations must be concluded within 18 months unless all parties agree otherwise.

When an iwi authority initiates this process with a council, the option of joining an existing arrangement must be considered by the iwi authority.

A council may initiate a Mana Whakahono a Rohe with either a hapū or an iwi authority.

The process does not stop any other RMA process from starting or continuing.

Contents of a Mana Whakahono a Rohe

An arrangement *must* include discussion on:

- how iwi will participate in plan making processes
- how consultation with iwi that is required under the RMA will be undertaken
- how iwi may participate in the development of monitoring methodologies
- how any relevant Treaty settlements will be given effect to
- a process for managing conflicts of interest

- a process for resolving disputes.

An arrangement *may* identify:

- how iwi authorities will work collectively to engage with council
- any delegation from iwi to a person or group of persons (including hapū) how a council consults iwi on resource consents
- any other arrangements relating to RMA processes.

Councils must update their systems to implement Mana Whakahono a Rohe

Once a Mana Whakahono a Rohe has been finalised, councils must review their internal policies and processes to ensure they are consistent with the Mana Whakahono a Rohe. This requirement ensures any Mana Whakahono a Rohe arrangements are properly implemented in council practice.

Mana Whakahono a Rohe and existing arrangements or Treaty settlements

In developing their arrangement, parties must minimise duplication with existing arrangements including Treaty settlement arrangements. If the iwi and council wish to maintain any existing arrangements they have, or use existing arrangements or part of that arrangement as the basis of a Mana Whakahono a Rohe, they can do this if they both agree. No arrangement limits any Treaty settlement legislation or agreements under that legislation.

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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Published in April 2017 by the
Ministry for the Environment
Publication number: INFO 784d



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