



Ministry for the
Environment
Manatū Mō Te Taiao

Cost Recovery Policy for Proposals of National Significance

**Sections 140–150AA
of the Resource Management Act**

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Chapter 1: Introduction

The purpose of this report

1. Sections 140–150AA of the Resource Management Act 1991 (RMA), introduced as an amendment in 2005, provide for the Minister for the Environment to intervene in the processing of certain matters.¹ The purpose of this document is to state the policy for the Minister’s power to recover costs of such intervention. This is both to guide those involved in decisions on proposals of national significance about who and what is to be charged, and so that those who may be charged costs can view the policy that has led to the charges they may face.

Background

2. Before the 2005 amendments, the Minister for the Environment could ‘call in’ an application for a resource consent that the Minister considered to be a matter of national significance. When an application was called in, the Act required the Minister to appoint a board of inquiry to hold a hearing and make recommendations to the Minister. After receiving the board’s recommendation, the Minister, rather than the local authority, made a decision on the application.
3. The 2005 amendments provide a range of more flexible tools the Minister can use to intervene when resource consent applications or requests for changes to council plans present issues of national significance. Under new sections,² applicants and local authorities can now request the Minister to intervene in a matter of national significance. This now covers, for example, notices of requirement for designations, private plan changes, and requests for the preparation of a regional plan, in addition to resource consent applications.
4. The Minister can choose from a new menu of options for government involvement, in addition to ‘call in’. These options, and the cost recovery policy for each, are covered in Chapter 3.

¹ 'Matters' is the term used for resource consent applications, a request for a change to be made to a plan, or a notice of requirement. See p.3.

² Section 141A(1). See Appendix B.

5. In brief, the factors the Minister decides on when considering intervening are:
 - the extent a matter is, or is part of, a proposal of national significance
 - the extent to which the current system can cope.³
6. In deciding whether a matter is, or is part of, a proposal of national significance, the Minister may have regard to any relevant factor. The list in the Act shows, for example, that factors can include whether the matter has aroused widespread comment or involves, or is likely to involve, significant use of natural resources.⁴
7. Under this policy, where costs are to be recovered they must meet certain principles. These principles are described in Chapter 2.

Mostly business as usual

8. Making decisions under the RMA on these types of matters is generally the responsibility of local authorities – regional councils or territorial authorities or both.
9. While these intervention powers were only introduced in 2005, the downstream processing activities (hearings and so on) have existed since the Act first came into force. So, for some interventions, while the power to ‘direct’ something to happen is new, the result (eg holding a joint hearing) is not new and local authorities have been conducting them for a long time.
10. In a cost recovery sense, then, most of the processing and the resulting invoicing of costs to the applicant has long been operational inside local authorities. This policy does not cut across that.
11. On the other hand, other actions such as the board of inquiry and direct referral to the Environment Court (described in Chapter 3) are new and have new cost activities that this policy addresses. However, the types of activities covered are similar whether it is the Ministry for the Environment or a local authority seeking to recover costs. The majority of costs are likely to be recovered from the applicants, as is the case with applications where there is no intervention from the Minister.

³ Section 141A(3). The Minister must also consider whether the local authority that would ordinarily be responsible for processing and determining the matter:

- has the capacity to do so, and
- considers it appropriate for the Minister to intervene.

The capacity of a local authority may include the local authority’s financial, logistical and human resources, experience and policy framework, having regard to other commitments a local authority has.

⁴ The full list of examples is in section 141B(2) – and reproduced in Appendix B to this policy. By way of example, in an intervention in a 2006 wind farm proposal, the relevant factors were:

- the widespread public interest regarding the actual or likely effect of the proposal on the environment
- the significant use of natural and physical resources
- the effects on more than one district or region, given that the benefits of the proposal (such as the environmental benefits associated with increased use of renewable energy) are likely to be national in effect.

The parties

12. To help with understanding this policy it is useful to think of three types of parties being involved:
 - the Minister (and in effect the Ministry for the Environment)
 - the applicant
 - organisations that have a governance system that can progress and process an application:
 - local authorities individually or in groups
 - the Environment Court
 - a board of inquiry.
13. Under this policy, there are instances of:
 - the Ministry for the Environment (MfE) incurring non-recoverable costs
 - both local authorities and MfE recovering costs from applicants.
14. Other parties, such as submitters who interact with the process in certain procedures (for example, at hearings), are not affected by this policy. They are not being charged nor are their costs being met. These costs are expected to ‘lie where they fall’.
15. This policy applies to the exercise of the Minister’s powers under sections 140–150 of the RMA. It does not apply to other actions or processes. For example, it does not apply in the event that the Minister is a party to an appeal to the Environment Court outside of the scope of these sections, nor to any subsequent or other actions in other courts.

An applicant

16. In terms of this policy, an applicant can also include a private sector organisation or a local authority.⁵ The cost recovery treatment is the same for all types of applicant.

Matters

17. This is the term used for resource consent applications, a request for a change to be made to a plan or a notice of requirement.⁶ The overall cost recovery approach is the same for all types of matters; that is, the same principles apply whatever the matter applied for.

⁵ Section 140(a) also uses the term applicant in the sense of request type; eg, an applicant for a resource consent. See Appendix B.

⁶ Section 140(c) provides the full list of matters. See Appendix B.

The Minister and Ministry for the Environment

18. The Minister's decisions will generally be implemented by or through the Ministry for the Environment, and any board of inquiry will be administered by the Ministry for the Environment. The costs incurred by the Minister and by the board of inquiry in exercising their powers, and the recovery of those costs, will be administered by the Ministry for the Environment. This document refers to the Ministry for the Environment accordingly.

Time and disbursements

19. This document focuses on time and its cost in its examples. Total costs being charged will also often include disbursements, which should meet the same principles. In general, if the task is considered to be one that should be charged for, any disbursement incurred in association with that task would also be charged for. Therefore, unless qualified in a particular chapter or example, the cost recovery treatment of time is also applicable to disbursements.

Establishing an understanding

20. No policy can give the ideal cost recovery position in every situation. To provide enhanced predictability as to how costs will be recovered in particular instances, it may be good practice to establish an understanding with the applicant as to how this policy will be applied in a specific instance.

Appendices

21. There are two appendices to this document.
 - Appendix A provides the charge-out rates for Ministry for the Environment staff time, and a description of how they are derived.
 - Appendix B reproduces parts of the Act so that references in footnotes can be readily accessed.

Chapter 2: Principles

Introduction

22. The principles set out below provide a basis for the cost recovery policy and guide the application of these policies in specific instances. The use of principles can also be useful for informing applicants about likely costs, or in the event of a formal objection under section 357B.⁷

Charging must be lawful

23. This principle is met by virtue of the fact that actions being undertaken on proposals of national significance (sections 140–150AA) are linked back to the section in the Act on charging (section 36).
24. The key section providing this authority is section 149B which covers the cost of the process.⁸ Section 149B(5) states that sections 36(3A) and (4) apply to the recovery of costs under subsections (2) to (4), with the necessary adjustments.
25. In section 36(4), key subsections are 4(b)(i) and (ii)⁹ which relate to recovering costs where:
- the benefit is obtained by the applicant as distinct from the community as a whole
 - the need for the local authority's actions are the result of the actions of the applicant.
26. This is in effect providing that, by applying for a consent or other matter, the applicant is setting in train certain activities and processes and may be charged for them.
27. The cost recovery policy set out in this document takes the approach that a cost incurred in connection with certain interventions will be recovered from the applicant unless there is a clear decision to do otherwise. The policy does, however, recognise several instances where costs should not be charged or where costs may be amended or reduced.

⁷ A person can object to a requirement to pay costs under any of subsections (2)–(4) of 149B.

⁸ Section 149B includes:

- (2) A local authority may recover from the applicant the actual and reasonable costs incurred by the authority in complying with section 143 (a section where local authorities are directed to undertake certain actions).
- (3) The Minister may recover from the applicant the actual and reasonable costs incurred by the Minister in exercising the Minister's powers under sections 140 to 150 (the provisions relating to interventions).
- (4) The Minister may recover from an applicant the actual and reasonable costs incurred by a board of inquiry in exercising its powers under sections 147 to 149.

⁹ See Appendix B for the full description.

Costs must be actual and reasonable

Establishing actual costs

28. To meet the test of a cost being actual, the following needs to apply:
- It is established the costs have been incurred. For disbursements, the cost will be based on invoices paid. For the time incurred on a task, this will need to be documented and signed off by the relevant manager.
 - The cost of the time for the task must be established. Hourly rates have been calculated from audited financial information and put into salary bands, including an appropriate allocation of overheads. This is further detailed in Appendix A.

Establishing reasonable costs

29. The cost to be met by an applicant should be made up from the task, the time for the task and the charge applied to that time. It normally should be recovered (ie, invoiced) at 100 percent. It is the task and the time for the task that are the key to decisions on cost recovery.
30. The task must be suitably described so that a decision on who should carry the cost of the time involved can be made. If it is a task that relates to the exercise of the Minister's powers under section 140–150, or to the board of inquiry exercising its powers under sections 147–149 the costs may be recovered. If the tasks fall outside of this scope, it cannot be recovered under this policy.
31. Reasonable costs are appropriate costs incurred when dealing with the matter and that reflect accurately the work being undertaken. Tasks need be carried out efficiently. This includes using appropriate persons for any task. It would generally not include costs or time that might be incurred by, for example, on-the-job training where that training resulted in tasks being carried out inefficiently from a time perspective.
32. Charging costs that are actual does not by itself make them reasonable. For example, costs that are considered to be governance are generally not costs to be charged.¹⁰
33. Nor does having some arbitrary apportionment such as a set percentage reduction (eg, 30 percent of costs) make them inherently reasonable. Further, making a cost more palatable is not the same as making it reasonable.
34. Finally, a cost does not become reasonable just because:
- the applicant is a large entity and can afford to pay
 - the applicant's costs (eg, for processing the consent) are a relatively small proportion of the total project costs incurred in a large capital project.

¹⁰ See Chapter 3 for more information about governance components.

Costs should be transparent

35. This principle is easily met if:
- a cost recovery policy is publicly available
 - there are clear descriptions for each invoiced task.

Costs should be predictable

36. To meet the test of being predictable, the applicant needs to be able to obtain information on the charges that may be incurred. This can be achieved by:
- having the cost recovery policy publicly available
 - providing estimates of likely costs on request¹¹
 - providing revised estimates of costs before major previously unidentified costs are incurred or there are to be significant changes in the quantum of a major previously identified cost.
37. However it is recognised that all future cost levels may not always be able to be estimated in advance as the need for and the scope of tasks involved in processing a matter are likely to emerge or change during the process.

Actions of the Minister

38. The Minister can decide to intervene or can act upon requests from an applicant or a local authority.¹² It will generally make no difference, however, to the recovery of costs; that is, applicants should not face more or less costs solely because they have requested an intervention. This approach should ensure that considerations by the applicant, the Minister or the local authorities about whether or not the Minister should intervene (especially the use of the call-in powers) are not distorted by this cost recovery policy.
39. Chapter 3 details the types of interventions.

¹¹ To enable the receivers of the estimate to fully understand it and its implications for their budgets, the estimates should provide a total, information on the key large tasks, the rates for those tasks and the assumptions behind the estimate for each key cost/task.

¹² Section 141A(1).

Chapter 3: Cost Recovery Policies for Interventions

40. There is a menu of intervention options available to the Minister. Each is discussed below. However, before any intervention is undertaken, there will be Ministry for the Environment time involved; for example, advising the Minister in relation to the potential intervention.

Cost recovery policy

Lead in work by the Ministry for the Environment before the actual intervention will not be recovered from the applicant.

Take no action (ie, decide not to intervene)¹³

41. There is nothing arising from the (non) intervention to recover. The applicant will pay the local authority the normal processing costs that the local authority charges them.

Cost recovery policy

Not applicable.

Call in the matter¹⁴

42. The Minister may direct that the matter be decided by:
- a board of inquiry¹⁵
 - a direct referral to the Environment Court.¹⁶
43. Note that not all interventions are ‘call ins’ so this term should only be used for these two specific actions and is not to be used to mean all intervention options.

¹³ Section 141A(4)(a).

¹⁴ Section 141A(4)(b).

¹⁵ Section 141B(1)(a).

¹⁶ Section 141B(1)(b).

Notification of direction

44. The Minister must give public notice of a direction to call in the matter. The relevant information must be made available for inspection, and any person may make a submission to the Minister on the matter. These submissions are then referred to the board of inquiry or to the Environment Court.
45. The costs of public notification, and of receiving and handling the submissions are recoverable from the applicant. This may include the costs of associated means of communicating the matter and the processes to be followed.

Cost recovery policy

All costs of public notification and associated communications, and of receiving and processing submissions will be recovered from the applicant.

Board of inquiry

46. The Ministry for the Environment will undertake any cost recovery required for the costs associated with the board of inquiry matters. There are establishment costs to this option, including finding and appointing members. Appointing the board of inquiry can be regarded as a cost of governance and will not be recovered from the applicant.
47. The costs of a board of inquiry in exercising its powers are all recoverable from the applicant.
48. They may include, for example:
 - the board of inquiry asking for reports to be prepared
 - staff or consultants servicing the board or preparing reports for it
 - the standing costs (eg, members' time, service provision of the board of inquiry)
 - hearing costs, including venue, members' time, staff and consultants' time, transcription and related disbursements, and accommodation and catering
 - announcements, publication and distribution of both a draft and final report.

Cost recovery policy

All costs incurred by or for the board of inquiry will be recovered from the applicant except those of appointing the board.

Direct referral to the Environment Court

49. The Minister may wish the matter to be decided by a direct referral to the Environment Court.
50. The Court (which comes under the Justice portfolio) has its own charging and mechanisms for dealing with party-party costs – they fall outside of the scope of this policy.
51. Costs of referring the matter to the Court will be considered governance costs and will not be recovered from the applicant.

Cost recovery policy

There is no cost recovery from an applicant under this policy for a direct referral to the Environment Court. (The Court's own procedures and policies will still apply to the applicant.)

Make a submission on the matter for the Crown¹⁷

52. The costs of making a submission (essentially the time of various departmental officials and specialists) will generally be met by the normal appropriation process – it is part of the normal function of those particular agencies. The costs may, however, require a separate appropriation. This is not a cost to be borne by the applicant.
53. Note, however, that this policy applies only to the making of a submission to the relevant authority on the matter. It does not affect the ability of the Crown to seek to recover its costs in connection with any subsequent actions in the Environment Court or in other Courts.

Cost recovery policy

The cost of making a submission on the matter for the Crown will not be recovered from the applicant.

¹⁷ Section 141A(4)(c).

Appoint a project co-ordinator¹⁸

54. The role of a project co-ordinator is to advise and assist the consent authority. A project co-ordinator appointed by the Minister is an additional resource to assist the consent authority to process a matter.
55. In practice, a project co-ordinator could help organise hearings, co-ordinate any experts who may need to assess a matter, including sourcing external expertise, and work between consent agencies.
56. As with some other interventions, the costs associated with deciding to appoint a project co-ordinator and with making the appointment are regarded as costs of governance, and will not be recovered from the applicant. The actual cost of the co-ordinator's role in processing the matter will be recovered. For administrative convenience, the Ministry will generally seek to establish an arrangement where by the co-ordinator's costs are recovered directly by the local authority in parallel with the recovery by the local authority of other processing costs.

Cost recovery policy

The cost of appointing the project co-ordinator will not be recovered from the applicant. However, the work the co-ordinator undertakes will be recovered. The cost will be recovered by the Ministry for the Environment unless an alternative arrangement is established for the cost to be recovered by the local authority.

Direct the consent authorities to hold a joint hearing¹⁹

57. A joint hearing is a hearing that involves two or more consent authorities. It avoids the need for multiple hearings where several resource consents are required, thus making the process more efficient and integrated.
58. Joint hearings can be useful when a project crosses multiple territorial authorities or when a project requires consent from both a territorial authority and a regional council. Local authorities routinely hold joint hearings of their own accord. The Minister's power acts as a backstop to ensure joint hearings are held when it makes sense to do so.
59. Directing that a joint hearing be held would have only minor administrative costs and these would not be recovered from the applicant.

¹⁸ Section 141A(4)(d).

¹⁹ Section 141A(4)(e).

Cost recovery policy

The cost of directing the consent authorities to hold a joint hearing will not be recovered from the applicant.

Appoint one additional hearings commissioner²⁰

60. Local authorities often appoint commissioners to hear and decide on resource consent applications, and make recommendations on designations and plan changes, in place of or alongside elected representatives. Commissioners act under delegated authority and are often used when there are highly complex or technical issues under debate; when there may be a conflict of interest; or simply when the volume of hearings makes the hearing by councillors unfeasible.
61. The Minister may appoint an additional commissioner. As with some other interventions, the costs associated with making the appointment is regarded as a cost of governance and will not be recovered from the applicant. The actual cost of the commissioner's role in processing the matter will be recovered. For administrative convenience, the Ministry for the Environment will generally seek to establish an arrangement whereby the commissioner's costs are recovered directly by the local authority in parallel with the recovery by the local authority of other processing costs.

Cost recovery policy

The cost of appointing a commissioner will not be recovered from the applicant. However, the work the commissioner undertakes will be recovered. The cost will be recovered by the Ministry for the Environment unless an alternative arrangement is established for the cost to be recovered by the local authority.

²⁰ Section 141A(4)(f).

Chapter 4: Application of Policy

62. The Minister has discretion about cost recovery in that the Act provides that the Minister *may* cost recover.²¹ The Minister can use this discretion to apply the cost recovery policy in a way that allows for any specific circumstances of each case to be recognised.
63. The principles described in Chapter 2 can guide that discretion. The policy outlined in this report gives a framework that sees tasks and costs charged where they should be, and in a way that meet various principles.
64. Applicants can object to the costs they are being charged.²²

²¹ Section 149B(3) and (4) – see Appendix B.

²² Section 149B(6).

Appendices

Appendix A: Charge out rates for Ministry for the Environment staff time

Allocation basis

The rates below are based on the average salary for each category of employee, plus overhead costs (comprising personnel costs for Ministry support staff, plus corporate overhead costs apportioned across all non-support staff), divided by an average of 1365 working hours per staff member per annum.²³ The allocation basis and the way the calculation is undertaken meet Treasury requirements.

Current rates

The rates for relevant categories of staff are set out below. The rates will be adjusted periodically based on the published financial information prepared for annual financial reporting purposes.

Category of staff	Hourly rate
Project Administrator	\$77.25
Consenting Advisor	\$86.31
Senior Consenting Advisor	\$100.81
Project Leader	\$113.83
Manager	\$132.74

Disbursements will recovered at cost.

Rates exclude GST.

²³ Where working hours excludes leave, sick leave, training and time required for administrative and miscellaneous tasks.

Appendix B: Relevant sections of the Resource Management Act 1991

Section 36(4)

- (4) When fixing charges referred to in this section, a local authority shall have regard to the following criteria:
- (a) The sole purpose of a charge is to recover the reasonable costs incurred by the local authority in respect of the activity to which the charge relates.
 - (b) A particular person or persons should only be required to pay a charge:
 - (i) to the extent that the benefit of the local authority's actions to which the charge relates is obtained by those persons as distinct from the community of the local authority as a whole; or
 - (ii) where the need for the local authority's actions to which the charge relates is occasioned by the actions of those persons; or
 - (iii) in a case where the charge is in respect of the local authority's monitoring functions under section 35(2)(a) (which relates to monitoring the state of the whole or part of the environment), to the extent that the monitoring relates to the likely effects on the environment of those persons' activities, or to the extent that the likely benefit to those persons of the monitoring exceeds the likely benefit of the monitoring to the community of the local authority as a whole.

Section 36(5)

- (5) A local authority may, in any particular case and in its absolute discretion, remit the whole or any part of any charge of a kind referred to in this section which would otherwise be payable.

Section 140

s.140 Meaning of applicant, local authority, and matter in sections 141 to 150AA

In sections 141 to 150AA:

- (a) **applicant** means:
 - (i) an applicant for a resource consent; or
 - (ii) a person who has requested a local authority to make a change to a plan under Schedule 1; or Part 6 – 124 (20/08/2005) *Resource Management Act* 1991
 - (iii) a person who has requested a local authority to prepare a regional plan under Schedule 1; or
 - (iv) a requiring authority; or
 - (v) a heritage protection authority;
- (b) **local authority** means:
 - (i) a local authority, for an application for a resource consent; or
 - (ii) a local authority, for a request for a change to be made to a plan; or
 - (iii) a regional council, for a request for the preparation of a regional plan; or
 - (iv) a territorial authority, for a notice of requirement;
- (c) **matter** means:
 - (i) an application for a resource consent; or
 - (ii) a request for a change to be made to a plan under Schedule 1; or
 - (iii) a request for the preparation of a regional plan under Schedule 1; or
 - (iv) a notice of requirement under any of sections 168, 168A, 189, and 189A.

Section 141A

s.141A Minister's power to intervene

- (1) This section applies when the Minister:
 - (a) receives a request to intervene on a matter from:
 - (i) one or more applicants; or
 - (ii) a local authority required to process and decide a matter; or
 - (b) decides to apply the section. 1991 *Resource Management Act* Part 6 – 125 (20/08/2005).
- (2) The Minister:
 - (a) must have regard to the factors described in subsection (3); and
 - (b) may exercise one or more of the powers described in subsection (4).
- (3) The factors are:
 - (a) the extent to which a matter is or is part of a proposal of national significance under section 141B(2); and
 - (b) whether the local authorities that would process and decide the matter if the Minister did not call in:
 - (i) have the capacity to process and decide it; and
 - (ii) consider that the exercise of any of the powers in subsection (4) would be appropriate.
- (4) The powers are:
 - (a) to decide not to intervene;
 - (b) to call in the matter under section 141B;
 - (c) to make a submission on the matter for the Crown;
 - (d) to appoint a project co-ordinator for a matter to advise the consent authority on anything relating to the matter;
 - (e) if the matter involves more than one consent authority, to direct the consent authorities to hold a joint hearing on the matter;
 - (f) if a consent authority appoints one or more hearings commissioners for a matter, to appoint one additional hearings commissioner for the matter.

Section 141B(1)

- (1) When the Minister considers that a matter is or is part of a proposal of national significance, the Minister may call in the matter by making one of the following directions:
 - (a) a direction that the matter be referred for decision to a board of inquiry under sections 146 to 149; or
 - (b) a direction that the matter, after the receipt of any submissions, that the local authority or the Minister called for, be referred for decision to the Environment Court under section 150AA.

Section 141B(2)

- (2) In deciding whether a matter is or is part of a proposal of national significance, the Minister may have regard to any relevant factor, including whether the matter:
 - (a) has aroused widespread public concern or interest regarding its actual or likely effect on the environment, including the global environment; or
 - (b) involves or is likely to involve significant use of natural and physical resources; or
 - (c) affects or is likely to affect any structure, feature, place, or area of national significance; or
 - (d) affects or is likely to affect more than one region or district; or
 - (e) affects or is likely to affect or is relevant to New Zealand's international obligations to the global environment; or
 - (f) involves or is likely to involve technology, processes, or methods which are new to New Zealand and which may affect the environment; or
 - (g) results or is likely to result in or contribute to significant or irreversible changes to the environment, including the global environment; or
 - (h) is or is likely to be significant in terms of section 8 (Treaty of Waitangi).

Sections 149B(3) and (4)

- (3) The Minister may recover from an applicant the actual and reasonable costs incurred by the Minister in exercising the Minister's powers under sections 140 to 150.
- (4) The Minister may recover from an applicant the actual and reasonable costs incurred by a board of inquiry in exercising its powers under sections 147 to 149.

Section 149B(6)

- (6) A person may object under section 357B to a requirement to pay costs under any of subsections (2) to (4).