



Improving the RMA and Environmental Standards

The Government has announced a package of proposals to improve the Resource Management Act 1991 and how it operates in practice.

The proposals will be implemented through greater national direction and involvement in local decision making, improvements in practice and an amendment bill, to be tabled in Parliament later this year. There will be opportunities for public feedback on the amendment bill through formal submissions called for by the select committee.

Stronger national direction will be provided through national policy statements and national environmental standards. Discussions with interested parties on the priorities for policy statements and standards, including through the Talk Environment roadshow, will help in developing advice to the Government on the proposed programme.

KEY INITIATIVES

The initiatives resulting from the review of the RMA are closely related in their operation. They build on the key principles of the review:

- achieving good environmental outcomes
- certainty of process but not outcome
- certainty of cost
- local decision-making
- public participation
- central government leadership.

As a result the Government has not pursued a number of options including amendments to Part II of the RMA, requiring independent commissioners to be used for consent hearings at the applicant's request, and direct referral of consent applications to the Environment Court.

The main proposals are:

Expression of the national interest

- Greater use of national policy statements and national environmental standards to give national direction and consistency across local government.

- More flexible ways for central government to be involved in local decision making when resource consent applications and council plans present issues of national interest. In the small number of cases where local decision making may not be optimal, providing the ability for applicants or local government to request an assessment of the Government's involvement in the process. Options for involvement include providing information about the national interest, making a government submission on a proposal, funding an independent co-ordinator to ensure processes are run effectively, directing that an application be heard jointly by the councils if more than one must give consent, appointing a person to the hearing panel and using call-in.
- Changes to the call-in process, which will allow the Minister for the Environment (possibly at the request of an applicant or council) to call in applications for private plan changes, designations and heritage orders, as well as resource consent applications. The board of inquiry hearing a consent application will be required to have certain skills (including judicial) and will be selected from a standing body of commissioners.

Consent decision making

- Moving from voluntary training and accreditation of decision makers to requiring that the chair of a hearing panel be accredited within 12 months and then that the majority of the panel be accredited within 24 months.
- Giving resource consent authorities the power to take a more direct role in conducting the hearing, including taking an inquisitorial approach and sufficiently testing evidence to avoid duplication of processes in any appeal.
- Giving councils the ability to require participants such as the applicant and submitters to attend pre-hearing meetings. These meetings would establish lists of issues that are agreed to and issues that remain outstanding.



- Where appropriate, requiring applicants and submitters to give the council written briefs of evidence of experts and any additional material or attachments to their evidence.
- Minimising duplication of local processes in the Environment Court by requiring the Court to have regard to the local consent authority's decision and to conduct a re-hearing rather than starting again.

Certainty for iwi and resource consent applicants

- Providing greater certainty about when iwi should be consulted, which iwi should be consulted and how, and what the process and scope of the consultation should be. The primary obligation to consult with iwi should be up front in relation to local plans, while for resource consents, iwi would be treated like any other potentially affected party.
- Requiring councils to keep a register of iwi authorities and their stated tribal areas/rohe. Te Puni Kokiri will provide councils with information. Councils will also need to establish a consultative procedure with iwi authorities that is similar to the requirements under the Local Government Act. Including in the RMA an explicit reference to co-management of natural resources with iwi and defining how such arrangement should occur where there is agreement to co-manage.

Local policy and plan making

- Strengthening the role of regional policy statements so district and regional plans have to 'give effect' to them. Regional councils will have a greater role in strategic planning, with an explicit ability to develop and implement policies on urban form, provision of infrastructure and allocation of natural resources.
- Requiring district and regional plans to state policies and rules, but leaving councils to choose whether to include other content. The requirement for local authorities to consult when developing plans and policy statements will be clarified.

Natural resource allocation

- Giving explicit recognition in the RMA to natural resource allocation being a role and responsibility of regional councils. The Minister for the Environment would have powers to direct a regional council to prepare a plan to deal with specific resource management issues.

- Establishing a default rule for where there are no allocation rules in plans. This would mean that an application to renew an existing consent could be considered before a competing application for the same resource, provided that previous consent conditions had been complied with and the applicant used good practice in the industry.

Best practice and capacity

- Directing the Ministry for the Environment to take a stronger leadership role in working to improve performance, proactively address concerns, provide greater national guidance and promote user education.
- Providing targeted assistance for specific councils in need of support, building on a pilot programme developed by the Ministry for the Environment.
- Co-ordinating the resource management complaints and review functions of the Office of the Ombudsman, Office of the Auditor General, and Parliamentary Commissioner for the Environment.

Background to the review

The Resource Management Act 1991 (RMA) guides the use and development of our land, air and water, concentrating on managing the environmental effects of human activities. It relies heavily on local authorities and the Courts to implement it.

Although some problems with how the Act operates in practice have been dealt with through amendments, improvements in the Environment Court and sharing of best practice among councils, other concerns have been identified.

On 12 May 2004 the Environment Ministers, Marian Hobbs and David Benson-Pope, announced a review intended to improve both the Act and the way it operates in practice.

A range of government agencies and local government contributed to the review programme, which was co-ordinated by the Ministry for the Environment. Throughout the review, local government involvement was facilitated by Local Government New Zealand. In many cases this resulted in the Government adopting solutions developed by local government, reflecting the partnership central and local government have in implementing the RMA.

The Associate Minister for the Environment, David Benson-Pope, also established a five-member reference group to provide independent advice to him on ideas and proposals.

There were opportunities for public input through meetings of local government, business, environmental groups, and Māori resource management practitioners. More than 200 written comments were received. This input built on earlier work undertaken by the Ministry for the Environment, including meetings with many organisations and discussions during the last Talk Environment roadshow.

NATIONAL POLICY STATEMENTS

The purpose of national policy statements is to state objectives and policies for matters of national significance that are relevant to achieving the purposes of the RMA. Such statements guide subsequent decision making under the RMA at the national, regional and district levels.

Some of the reasons the Government might decide to prepare a national policy statement include:

- an issue affects more than one region
- New Zealand's interests and obligations in maintaining or enhancing the national or global environment are affected
- the scale or the nature of change to a community is of significance
- the potential risk or magnitude or irreversibility of potential effects is of significance
- structures, features, places or areas of national significance are affected
- a new technology or process that might affect the environment is involved.

What changes are proposed?

It is proposed to amend the RMA so that the time consuming board of inquiry process is not always required. The Minister for the Environment will be given the discretion to undertake consultation, as used for the development of national environmental standards.

At present a national policy statement affects resource consents immediately, but it can take anywhere from three to 10 years for its provisions to be reflected in plans. Each local authority currently has discretion about how to give effect to a national policy statement once it is gazetted.

To improve consistency and timeliness, it is proposed to allow the policy statement to specify the provisions that a local authority must include in its planning documents (ie, a standard set of policy wording) without the need for normal notification and hearing processes. This would apply only where local discretion is not required or is very limited.

Providing for the national policy statement to directly affect plans will ensure consistency across all plans and could reduce the cost for local authorities.

These amendments would also apply to the New Zealand Coastal Policy Statement.

What national policy statements are proposed?

The Government has indicated that its first priorities for national policy statements and national environmental standards will relate to various types of network infrastructure activity (eg, electricity transmission, storm water run off, telecommunications, energy generation and noise from roads).

A paper will be available on the Ministry's website soon containing more detail on proposed policy statements and standards for network infrastructure.

There will be close liaison and partnership with key stakeholders, particularly local government, in developing priorities, and scoping issues and possible responses.

Other priorities are still to be established, but could include:

- water management issues (eg, allocation or use, quality, waters of national importance subject to the outcome of the Water Programme of Action)
- other allocation or nationally important resource issues (eg, renewable energy, geothermal resources)
- matters that require clearer national direction (eg, urban design)
- matters of national importance described in the RMA, including outstanding landscapes and the natural character of the coastal environments, wetlands, lakes and rivers.

Stronger linkages between policy statements and environmental standards are likely – while a policy statement is being developed, related national standards could be developed in parallel. (For example, there could be a policy statement for transmission lines linked with standards relating to set back distances.)



NATIONAL ENVIRONMENTAL STANDARDS

What are national environmental standards?

National environmental standards are regulations under the RMA that prescribe technical standards, methods or requirements for environmental matters. They apply nationally, meaning that each local council must enforce the same standard (although at present councils may impose stricter standards).

Changes proposed to the RMA would allow the Government to set absolute environmental standards or allow the environmental standard to specify whether a council could have a stricter standard.

Greater use of environmental standards is proposed, particularly to create more consistent land use rules around the country. This should help reduce some of the 50,000 resource consents required by plans each year.

What are their benefits?

National environmental standards:

- create a level playing field
- provide consistency and certainty in decision-making
- guarantee a level of protection for the health of all New Zealanders.

They express the national interest by providing clear direction to all local councils about the required environmental standards. They are an effective tool to achieve consistency.

Environmental standards could include the best elements of current industrial codes of practice and other forms of agreed standards (provided they meet the requirements of the Act) eg, the agrichemical users' code of practice.

What environmental standards do we have now?

The Ministry for the Environment has recently developed 14 environmental standards addressing:

- dioxins and other toxics, through banning activities that discharge unacceptable quantities of dioxins and other toxics into the air
- ambient (outdoor) air standards for fine particles, carbon monoxide, nitrogen dioxide, sulphur dioxide and ozone
- an emission standard for the design of domestic wood burning appliances
- a requirement for landfills with a total capacity of over 1 million tonnes to collect and destroy landfill gas.

The Ministry will soon be releasing a user guide for these standards. The user guide will reference the relevant regulation and provide a plain English description of how best to implement it. If you would like a copy please email standards@mfe.govt.nz

What environmental standards are proposed?

National environmental standards could be appropriate for:

- water issues (arising out of the Sustainable Development Water Programme of Action)
- network utilities (ie, radio frequency fields, substations, underground and over ground lines, utility structures within the road)
- noise (ie, from roads, airports, ports, construction noise)
- stormwater from roads
- parking, loading and site access provisions
- agrichemical use
- septic tanks
- further air quality standards
- biosolids
- contaminated sites.

During the review of the RMA, industry indicated that it has the capacity to develop national environmental standards. Where industry considers that environmental standards would be useful but these are not priorities for the Government, the Ministry for the Environment is open to working with industry. The formal processes under the RMA would then be followed to create the environmental standard.

The Minister for the Environment will report to Cabinet soon on the priorities for national policy statements and environmental standards and a process by which they should be developed. We welcome input on the topics and priorities for national policy statements and environmental standards.

WANT TO KNOW MORE?

Contact the Ministry for the Environment by phoning (04) 917 7400, emailing information@mfe.govt.nz, writing to PO Box 10362, Wellington, or see our websites: www.mfe.govt.nz or www.rma.govt.nz