



Resource Management Amendment Act 2005 – Improving local policy and plan making

This is one of a series of information sheets giving an overview of the amendments to improve the Resource Management Act (RMA).

WHAT WERE THE ISSUES?

In the past there has been uncertainty about the functions of councils in regard to the management of contaminated land, the allocation of natural resources and the role of regional councils in infrastructure and land use planning.

There was criticism that district and regional plans are bulky, difficult to understand, and take too long to become operative.

Requiring regional and district plans to 'not be inconsistent with' regional policy statements allowed them to be neutral about achieving the goals of the regional policy statements. It also did not help achieve integrated management of the natural and physical resources of the whole region.

HOW HAS THE RMA BEEN IMPROVED?

New functions for councils

There are three new functions for regional councils and one new function for territorial authorities in the amendments to the RMA. These new functions relate to contaminated land, allocation of natural resources, and the integration of infrastructure and land use.

Contaminated land

The changes to the RMA seek to clarify the roles of local authorities, and build on existing practice and case law. Regional councils now have an explicit function to identify and monitor contaminated land (new section 30(1)(ca)).

Regional councils will be expected to compile and maintain records on contaminated land in their region. The process of compilation is likely to include identification of potentially contaminated sites, and investigation and monitoring of

this land. Investigation and subsequent monitoring may be carried out by either the regional council or a landowner or occupier.

Territorial authorities are now responsible for preventing or mitigating any adverse effects of the use, development or subdivision of contaminated land (new section 31(1)(b)(ia)).

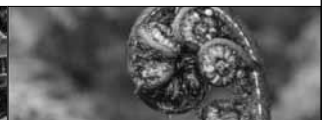
Contaminated land is defined (in section 2(1)) as land which exceeds a national environmental standard for contaminants in the soil. In the absence of a national environmental standard, there is a hazardous substance in or on the land, which has, or is reasonably likely to have, significant adverse effects on the environment.

Until such time as a national environmental standard is in effect, local authorities may need to rely on their own investigations or external professional advice to determine whether the level of contamination in the soil is such that it renders the land 'contaminated'. Local authorities should refer to the *Contaminated Land Management Guidelines* prepared by the Ministry for the Environment.

Based on these investigations, territorial authorities will need to review their current plan provisions and determine whether there is a need to introduce further provisions that will prevent or mitigate the adverse effects of the use of contaminated land.

Allocation of natural resources

Section 30(1)(fa) makes it clear that it is a regional council function to establish methods to allocate natural resources, including water. A number of further changes to the allocation of natural resources and processing of resource consents for using natural resources are discussed in the *Improving natural resource allocation* information sheet.



Infrastructure and land use

New section 30(1)(gb) gives regional councils responsibility for “the strategic integration of infrastructure with land use through objectives, policies and methods”. There is also a definition of ‘infrastructure’ in relation to this function in section 2. This function may be implemented by providing objectives, policies and methods in the regional policy statement.

Streamlining plans and plan making

The following amendments to the RMA make the plan making process more streamlined and reduce delays, costs and inconsistencies.

Sections 67 and 75 reduce the matters which must be included in plans to objectives, policies and rules (if any). Other matters (such as other methods, monitoring procedures) are not required to be in the plan.

Local authorities can reduce the contents of their regional and district plans to objectives, policies and rules if they wish but it is not mandatory to do so. Regional and district plans can remain unchanged. Councils must in all cases meet the tests in section 32 of the RMA, which requires that councils show (in a public document) that objectives in a plan be the most appropriate for meeting the purpose of the RMA, and that any other provisions in the plan are necessary to meet those objectives.

Where local authorities choose to reduce plan content, they may need to develop documents outside their regional and district plans to co-ordinate methods (other than rules) and assist in plan monitoring under section 35(2)(b). Many councils are already doing this.

Part 3 of the First Schedule clarifies that plans can incorporate material (such as standards or design guides) into a plan by reference to the material. The material must be made available before and during notification of the proposed plan, and kept available when the plan is operative. Any changes made to the external document can be incorporated into a plan or proposed plan only by way of a change or variation under the First Schedule.

Clause 3B of the First Schedule means people who must be consulted under clause 3 need not be re-consulted if they have been consulted on the same issue under another enactment within 12 months. However, this applies only if they were advised that the initial consultation would apply to RMA matters.

Councils will need to anticipate whether the information that may be obtained during the consultation could be used for RMA purposes and to ensure that those being consulted are notified of this fact at the time consultation takes place.

Changes to the requirement for consultation with iwi authorities are discussed in the *Improving certainty for consultation and iwi resource planning* information sheet.

New clause 8AA of the First Schedule provides for pre-hearing meetings to be held for plans. Parties may also be referred for independent mediation with their agreement. There is no power to require attendance at pre-hearing meetings for plans (as there now is for resource consent pre-hearings, outlined in the *Improving decision making* information sheet) but a report must be prepared on the meeting or mediation before the hearing. The local authority or decision maker must have regard to this report in making decisions on the plan or policy statement.

Clause 10 introduces a timeframe for making decisions on plans or plan changes. Local authorities must conduct hearings, make and notify decisions on submissions, and complete their section 32 duties in relation to these decisions within two years of the proposed plan being notified.

Clause 17 allows a council to approve part of a plan or policy statement that is beyond challenge (by submission or appeal) without the need that previously existed to get permission from the Environment Court. Local authorities also no longer need to wait until a variation has been merged with, or withdrawn from, a proposed plan in order to make it operative. Variations automatically become a plan change if they have not already been merged with the plan. There is no need to withdraw the variation and re-notify it as a plan change.

Clause 20A allows an operative plan to be amended to correct minor errors without the need to prepare a plan change. Amendments are limited to correcting errors in the plan and cannot change the effect of the provision being amended.

Clause 23 requires a local authority to specify reasons for requesting further information on a private plan change. The applicant has the right to refuse to provide the further information requested and to require the authority to consider the request without that information. The local authority has the ability to reject or decline the plan change request on the grounds of insufficient information. This decision can be appealed to the Environment Court.

This is similar to the new provisions for further information for resource consent applications outlined in the *Improving decision making* information sheet.

If a provision in a plan is appealed to the Environment Court, and the Court considers that a provision requires changing, section 293 now provides that the Court can give direction for the local authority to redraft the provision in consultation with other parties. The redrafted provision is then submitted to the Court for confirmation.

Making regional policy statements more effective

Section 67(3)(c) (regional plans) and section 75(3)(c) (district plans) state that plans must now 'give effect to' regional policy statements.

Regional policy statements will need to provide clearer and stronger directions on how the environmental issues of the region are to be managed by local authorities.

Section 65(6) (regional plans) and section 73(4) (district plans) require that plans must 'give effect to' regional policy statements when a regional policy statement is reviewed and changed (or not changed), varied or replaced, and made operative. The changes must be made either as soon as practicable or within a timeframe specified within the regional policy statement. This means that plans do not have to be altered to give effect to the current regional policy statement, but only when that policy statement is changed or reviewed (and made operative).

Until such time as regional policy statements are reviewed, local authorities need only ensure that their plans are 'not inconsistent with' these statements. All local authorities in a region will need to pay close attention to what is in the new or reviewed regional policy statement, and where necessary, prepare or change their plans to incorporate provisions which give effect to the objectives, policies or methods contained in the regional policy statement.

Regional councils will need to work with their associated territorial authorities to ensure the review of their regional policy statement takes place before any plans are reviewed. Doing this should help with the sequencing of plans and avoid any unnecessary amendments to plans notified before a reviewed regional policy statement becomes operative.

Clause 3AA First Schedule specifies that all councils within a region must agree to a consultation process to be used between them when a regional policy statement is reviewed, or when a change or variation is being prepared. This agreement must form part of the triennial agreement under section 15 of the Local Government Act 2002. These agreements must be in place before 1 March following a local authority election and remain in force until they are replaced by another agreement. Amendments can be made to an agreement provided that these are completed before the next local authority election.

If after 1 March the local authorities cannot agree on the consultation process, they are required to notify the Minister for the Environment. If the matter is not submitted to mediation by the local authorities concerned, or mediation has been unsuccessful, the decision on the consultation process will be made by the Minister for the Environment, or persons appointed by the Minister.

Quality planning

The Quality Planning website, www.qualityplanning.org.nz, continues to provide guidance on best practice in developing regional and district plans under the RMA and resource consent processing. The website has recently been upgraded.



The Ministry for the Environment also recently ran an RMA practitioner training programme on second generation plan development. This programme is intended to improve the quality and consistency of decisions, advice and actions of RMA practitioners, build capacity in RMA-orientated professions, and improve public confidence in RMA implementation by practitioners. Further programmes are planned.

OTHER RMA INFORMATION SHEETS

Other information sheets in this series include:

- Overview
- Summary
- Improving national leadership
- Improving decision making
- Improving certainty for consultation and iwi resource planning
- Improving natural resource allocation.