



## Resource Management Amendment Act 2005 – Improving national leadership

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?

Local authorities are increasingly being asked to consider projects that raise issues of national significance in a policy environment that provides little guidance on how competing national benefits and local costs should be weighed.

The amendments to the RMA have sought to address this issue by:

- enabling central government to take a greater leadership role through national policy statements and national environmental standards
- increasing the range of powers for government engagement and involvement in resource management decision making
- expanding the powers of the Minister for the Environment in relation to monitoring the effect and implementation of the RMA.

### HOW HAS THE RMA BEEN IMPROVED?

#### National Policy Statements

There is currently only one national policy statement, the New Zealand Coastal Policy Statement. The Government intends to prepare more national policy statements to guide decision making at the national, regional and district levels.

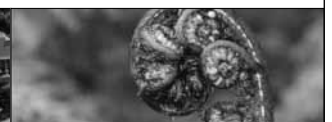
Topics currently being scoped include the protection of rare and depleted indigenous vegetation, electricity transmission and electricity generation. The Department of Conservation is leading a review of the NZ Coastal Policy Statement. Public input into each draft national policy statement will be staggered over the coming years once the initial scoping stage is undertaken.

With regard to the statutory public consultation process, the Resource Management Amendment Act 2005 provides for a new section 46A which allows more flexibility in the way a national policy statement is made. There are now two options: the board of inquiry process and an alternative process which is similar to that for national environmental standards. This new process allows for statutory consultation through submissions on a draft national policy statement, but it does not require a board of inquiry to consider the draft statement. This is potentially quicker and less costly than the existing process, but it will be appropriate only in certain circumstances.

Guidance is provided in section 46A(1A) to help the Minister for the Environment decide the most appropriate process to follow. This includes the advantages and disadvantages of having the national policy statement made more quickly; the extent to which the national policy statement differs from existing policies; and whether there has been any recent and relevant public consultation and debate on the subject matter of the national policy statement.

These amendments are designed to enable national policy statements to be prepared and implemented in the most efficient and cost effective manner.

Councils will need to ensure that their policy statements and/or plans give effect to a national policy statement. Amendments have also been made to section 55 to enable a national policy statement to direct specific provisions to be included in regional and district plans. However, this only applies where a national policy statement is developed through a board of inquiry process. If the national policy statement is developed through the alternative process, it can only require a council to initiate a plan change and the change would have to go through the First Schedule



RMA process. A national policy statement may also incorporate material by reference, such as a New Zealand Standard or similar technical documents.

National policy statements generally take immediate effect and therefore, irrespective of whether the council's plan or policy statement has been changed, the council must have regard to a national policy statement when determining an application for resource consent under the RMA. Councils should ensure that they keep a record of all national policy statements, to ensure that users of regional policy statements or plans are aware of them.

### **National Environmental Standards**

National environmental standards can be used for a range of environmental issues, now including subdivision. There was a concern that the usefulness of national environmental standards was somewhat restricted in terms of providing national consistency, as local authorities were able to adopt their own stricter standards. This has resulted in inconsistencies in the way that similar activities are controlled in different areas.

New section 43B sets out the relationship between national environmental standards and rules in council plans. The changes enable national environmental standards to be absolute. This means that councils cannot be more lenient or impose stricter controls through resource consents, rules in plans or bylaws made under other Acts. However, there may be circumstances where national consistency is not necessary and a national environmental standard may specifically allow local authorities to develop more strict local standards (through rules, resource consents or by-laws).

National environmental standards can also allow activities, or describe them as permitted activities provided that the conditions specified in the standard are met. A national environmental standard can also require compliance with rules in a regional or district plan but only where these relate to the effects of an activity that are not regulated by a national environmental standard. Section 43A states that national environmental standards cannot allow activities without requiring a resource consent, where the activity has a significant adverse effect on the environment.

These amendments will assist the development and use of more national environmental standards, and will increase consistency and efficiency in decision making on common issues. Councils will not need to spend so much time and resource developing their own approaches to common and significant environmental issues, and landowners and developers will be more certain about requirements in different districts.

A local authority does not necessarily need to amend its plan if a new, more stringent, national environmental standard is released (as the plan will simply be overruled to the extent it is inconsistent with the standard), but it should use a subsequent plan change as a vehicle to ensure consistency.

New sections 43B(5) and (5A) clarify that a new national environmental standard does not affect existing resource consents. However, the conditions of existing water, coastal and discharge permits can be reviewed by a consent authority section 128(1)(ba) when a national environmental standard has been made.

If a national environmental standard is made part way through the hearing of an application for a resource consent, then the national environmental standard will prevail. If the resource consent that is subsequently granted conflicts with the national environmental standard, then the national environmental standard prevails. National environmental standard may prescribe transitional provisions for resource consent applications notified before the standard commences and these will govern the relationship between the standard and the resource consent.

Given that a national environmental standard takes immediate effect, councils should ensure that they keep a clear record of all national environmental standards, to ensure that users of the plan are aware of them, and they are not overlooked in relation to any applications received.

New section 43D clarifies that new national environmental standards will not apply to existing designations unless these lapse or conditions relating to the standard are altered.

There is currently one set of national environmental standards, those recently adopted for air quality and toxics. The Ministry for the Environment is now looking into preparing other standards in collaboration with local government and with other relevant departments and technical advisers. Topics currently being looked at include raw drinking water sources, bio-solids, contaminated land, electricity transmission, telecommunication facilities and land transport noise. In some cases industry may lead the initial development, but in all cases full consultation will occur with the community before standards are promulgated.

### **Decisions on matters of national significance**

Before the 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 was to decide the application, rather than the local authority.

The amendments provide a range of more flexible tools to enable central government to have input and meet the needs of decisions makers, applicants and communities when resource consent applications or council plans present issues of national significance. Under new section 141(1) anyone can now request the Minister to intervene in a matter of national significance. This now covers notices of requirement for designations, private plan changes and requests for the preparation of a regional plan, in addition to resource consent applications.

The Minister can choose from a new 'menu' of flexible options for government involvement, in addition to 'call in' (new section 141). Options include:

- providing information about the national interest through a whole of government/crown submission
- funding an independent co-ordinator to ensure processes are run effectively
- directing an application be heard jointly if more than one council must give consent
- appointing a person to the hearing panel.

Section 141(3) sets out the following criteria that the Minister must consider when deciding what (if any) form of intervention is appropriate: the extent to which the matter is a proposal of national significance, whether the local authority that would normally determine the matter has the capacity to do so and what that local authority's views are.

New sections 140 and 141A retain the option for the Minister for the Environment to call in a matter. If the Minister decides to call in the application, she can either refer the matter to a board of inquiry or to the Environment Court. In most cases, the decision on the relevant matter is made by the board of inquiry or the Environment Court and that decision can only be appealed to the High Court on points of law.

The exception to this is when the matter relates solely to the coastal marine area. Section 140A states that where a matter relates only to the coastal marine area, it is the Minister of Conservation who can exercise any of the new powers in section 141. If the Minister of Conservation calls in a matter, then the Minister must refer the matter to a board of inquiry or to the Environment Court. However, the board or the Court only makes a recommendation back to the Minister of Conservation. The Minister of Conservation makes the final decision on matters that relate only to the coastal marine area and that are called-in under section 141. The Minister's decision can only be appealed to the High Court on points of law.

Section 146 states that a board of inquiry must be selected from a standing body of skilled people and chaired by a current or retired Environment Court judge.

### **Ministerial powers**

New section 24A enables the Minister for the Environment to investigate a local authority's performance and provide recommendations to the local authority for action. The changes mean that the Minister has a clear hierarchy of powers ranging from requests for information (section 27), investigations under section 24A, a formal warning to the local authority to take action and finally appointing a person or persons to carry out the functions of a local authority where these are not being fulfilled (section 25). Section 27



is amended to introduce a timeframe for the provision of information that the Minister has requested from a local authority. The Minister can only request information that is held by the local authority and the local authority must provide the information to the Minister free of charge and within 20 working days. The Minister has discretion to extend this timeframe.

New section 25A gives the Minister a new power to direct local authorities to prepare plans or parts of plans to address resource management issues. This does not allow the Minister to direct the outcome of the planning process. The local authority remains responsible for preparing the plan and taking it through a First Schedule process. Decisions on the content of plans will continue to be made at the local level.

These amendments enable the Minister for the Environment to be more effective and have a more active role in monitoring the effect and implementation of the RMA, in particular, addressing council performance. The Minister intends to provide additional support and capacity building to local authorities through the Ministry for the Environment. The Ministry is working out with local government how best to implement these proposals.

### **OTHER RMA INFORMATION SHEETS**

Other information sheets in this series include:

- Overview
- Summary
- Improving decision making
- Improving local policy and plan making
- Improving certainty for consultation and iwi resource planning
- Improving natural resource allocation.