

Technical Advisory Group Meeting Minutes

8 January 2009

Topic areas (TAG report)

1. Trade competition
2. Plans
3. Application processes
4. EPA/National consenting agency
5. Nationally important projects
6. designations
7. Low level applications
8. Ombudsman
9. other/miscellaneous
10. things that discussed but did not recommend
11. Things to do for Phase 2.

Trade Competition

TAG agreed with the approach taken in the Trade Competition paper dated 7 January 2009 (see attached below).



Doc3 (2) (2).pdf



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Action: Author Trade Competition paper to draft section for final TAG report

Plans

Discussion centred on material provided in 'RMA Schedule One Processes: Preliminary Analysis of Options for Future Amendments (7 January 2009)

Action: Verify figures page 12 of paper (figures of overall average time it takes to produce plans under the RMA). Do these figures include council plans that are not operative? Has it encompassed those councils whose plans have recently become operative?

Topic 1: Extending the ability to combine the consultation on LGA Long Term Council Community Plans and RMA plans

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> Improving the efficiency and effectiveness of plan processes while retaining appropriate balance in regard to public participation and legal right to redress 	<ul style="list-style-type: none"> Do nothing Extend timeframe to 3 years 	<ul style="list-style-type: none"> Extend timeframe for use of consultation processes under other legislation to 3 years. 	APPROVE	

Topic 2: Limiting the circumstances when further submissions need to be sought

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> Ensuring plans and plan changes are produced in a timely manner Improving the efficiency and effectiveness of plan processes while retaining appropriate balance in regard to public participation and legal right to redress. 	<ul style="list-style-type: none"> Do nothing Removing further submissions from some types of plans changes only Removing further submissions from all plan changes Removing further submissions from first schedule entirely. 	<ul style="list-style-type: none"> Remove further submissions from plan change; or Further work on removing further submissions from Schedule 1 entirely. 	Attracted by concept but see potential downside particularly where people may be affected by submissions made. Concerned about the potential loss of property rights due to removal	<p>To come back to on Tuesday with consideration of s274 matters.</p> <p>Agreed to remove requirement for further submissions subject to insertion of some mechanism to protect private property rights.</p>

Topic 3: Enabling / Clarify NPSs and NES can be incorporated directly into plans in circumstances where councils have no discretion to change the NPS and NES provisions

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> Ensuring faster, more effective of national policy and standard into RMA plans Improving the ability of plans to be reviewed and amended in a way that allows them to more quickly 	<ul style="list-style-type: none"> Do nothing Enable NPSs and NESs to be incorporated directly into plans 	<ul style="list-style-type: none"> Amendments to s.55(2A) or clause 16 of Schedule 1 to allow councils to remove provisions that conflict with, or can be directly replaced by, provisions of and NPS or NES. 	APPROVE (recommendation point 1)	<p>Subject to further documents including suggestions made by Chapman Tripp (more sections suggested)</p> <p>Further there should be an obligation for central government to deal with any conflicts between NPS's in order to reduce inconsistency.</p>

respond to changing conditions or emerging environmental issues		<ul style="list-style-type: none"> Clarifying sections 45 and 55 to remove uncertainty as to whether and when an NPS can contain rules that can be placed in plans without using the Schedule 1 process 		Therefore section 75(3) needs to tie in with recommendation point 1.
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Topic 4: Removing the need for local authorities to provide decisions and reasons on every submission point from every submitter

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> Ensuring plans and plan changes are produced in a timely manner Improving the efficiency and effectiveness of plan processes while retaining appropriate balance in regard to public participation and legal right to redress 	<ul style="list-style-type: none"> Do nothing Clarify or amend cl.10 to specify decisions can be made by subject matter only 	<ul style="list-style-type: none"> Amend cl.10 to clarify decisions are to be made in terms of submission topic and not by individual submissions. Amend clause 11 to state decisions shall be provided by way of a decision report. 	APPROVE	<ul style="list-style-type: none">

Topic 5: A moratorium on plan changes in the lead up to a proposed plan or reviewed plan being notified

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> Ensuring plans and plan changes are produced in a timely manner 	<ul style="list-style-type: none"> Do nothing Minister imposed moratorium Local authority impose moratorium 	<ul style="list-style-type: none"> Do nothing. 	APPROVE – do nothing	<ul style="list-style-type: none"> No change

Topic 6: Amend clause 16(2) of the Schedule 1 so that councils can amend errors in private plan change applications without further formality

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> Improving the efficiency and effectiveness of plan processes while retaining appropriate balance in regard to public participation and legal right to redress. 	<ul style="list-style-type: none"> Do nothing Amend clause 16 to include changes to policy statements and plans 	<ul style="list-style-type: none"> Amend clause 16 to include changes to policy statements, plans and plan changes 	APPROVE	<ul style="list-style-type: none"> Agreed there should be more flexibility generally

Topic 7: Standardisation of plan formats and common content.

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> Producing high quality plans Ensuring faster, more effective incorporation of national policy and standards into RMA plans. Improving the efficiency and effectiveness of plan processes while retaining appropriate balance in regard to public participation and legal right to redress. 	<ul style="list-style-type: none"> Do nothing Regulations in regard to structure only Legislative requirements in regard to structure, format and expression Full template backed by regulation. 	<ul style="list-style-type: none"> Legislative requirements in regard to structure, format and expression 	PHASE 2	

Topic 8: Moratoriums on resource consents and plan change applications in the lead up to plan preparation and review

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> Ensuring plans and plan changes are produced in a timely manner 	<ul style="list-style-type: none"> Do nothing Remove local authority consultation 	<ul style="list-style-type: none"> Amend s.24 and insert a new clause 2A to allow local authority to 	REJECT	ACTION: <i>[Withheld under section 9(a) of the Official Information Act]</i>

	<ul style="list-style-type: none"> obligations • Moratoriums of private plan change applications • Moratorium on consent applications. 	<p>apply to the Minister for a moratorium on resource consents in the lead up to a plan review or plan change, and a set of criteria by which the Minister will judge such applications.</p>		
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Topic 9: Standing in relation to submissions and appeals on plans and plan changes

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> • Ensuring plans and plan changes are produced in a timely manner 	<ul style="list-style-type: none"> • Do nothing • Introduce standing for plan changes and variations • Restrictions on s.274 parties 	<ul style="list-style-type: none"> • Do nothing 	APPROVE – do nothing	Rejected first meeting 18 Dec

Topic 10: Removing the ability to appeal or seek the withdrawal of entire plans

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> • Ensuring plans and plan changes are produced in a timely manner • Improving the ability of plans to be reviewed and amended in a way that allows them to more quickly respond to changing conditions or emerging environmental issues 	<ul style="list-style-type: none"> • Do nothing • Remove the ability to appeal entire plans 	<ul style="list-style-type: none"> • Amend to cl.14 to remove the ability of submitters to appeal whole plans (or seek their withdrawal in the Environment Court). 	APPROVE (was agreed on 18 Dec meeting)	•

Topic 11: A standard set of national definitions for use in plans

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> • Producing high quality plans • Ensuring 	<ul style="list-style-type: none"> • Do nothing • Common set of 	<ul style="list-style-type: none"> • Further investigation to test feasibility, 	PHASE 2	Subject to MfE material on standard

<p>faster, more effective incorporation of national policy and standards into RMA plans.</p> <ul style="list-style-type: none"> Ensuring plans and plan changes are produced in a timely manner 	<p>definitions</p>	<p>cost implications and acceptability of a standardised definition set</p>		<p>definitions</p> <p>ACTION: [Withheld under section 9(a) of the Official Information Act]</p>
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Topic 12: Streamlining and clarify s.32 requirements

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> Ensuring faster, more effective incorporation of national policy and standards into RMA plans. Ensuring plans and plan changes are produced in a timely manner 	<ul style="list-style-type: none"> Do nothing Modified RIS approach Rewrite section 32 to make what is required clearer, less onerous and less repetitive. 	<ul style="list-style-type: none"> Re-write section 32 to clarify the level of analysis required and reduce the number of times the evaluation need to be undertaken in respect of the same plan or plan change. 	DEFERRED	<p>ACTION: MfE to provide any reports/research done on the effectiveness of s32</p> <p>Keen to retain original intent of s32 and the rigour it provides. Consider repealing the requirement to prepare reports</p>

Topic 13: Combined Plans

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> Ensuring plans and plan changes are produced in a timely manner Producing high quality plans 	<ul style="list-style-type: none"> Do nothing Enable and encourage greater use of combined planning documents. . 	<ul style="list-style-type: none"> Clarify that all local authorities in a region may combine to produce a combined regional and district plans if they consider it to be desirable. 	APPROVE recommendation p70 of report	Amendment s.80 to clarify that regional councils and territorial authorities may also combine to produce a combined regional policy statement, regional plan and district plan.

Topic 14: Developing a new comprehensive consent process that eliminates the need for separate pan change and consent processes

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> Improving the efficiency and effectiveness of plan processes while retaining appropriate balance in regard to public participation and legal right to redress. 	<ul style="list-style-type: none"> Do nothing Comprehensive development consent 	<ul style="list-style-type: none"> Introduce an ability for plan changes and resource consents to be processed and heard together. 	REJECT	Do not perceive this as a significant problem

Topic 15: Replacing the schedule 1 process with the LGA LTCCP process

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> Ensuring plans and plan changes are produced in a timely manner Improving the ability of plans to be reviewed and amended in a way that allows them to more quickly respond to changing conditions or emerging environmental issues Improving the efficiency and effectiveness of plan processes while retaining appropriate balance in regard to public participation and legal right to redress. 	<ul style="list-style-type: none"> Do nothing Use of LGA (or modified LGA) process 	<ul style="list-style-type: none"> Do nothing if other options around further submissions taken up. 	REJECT – therefore do nothing	<ul style="list-style-type: none">

Topic 16: Limiting appeal rights to points of law and process

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> Ensuring plans and plan changes are produced in a timely manner Improving the ability of plans to be reviewed and amended in a way that allows them to more quickly respond to changing conditions or emerging environmental issues 	<ul style="list-style-type: none"> Do nothing Limit appeal rights to points of law or process. 	<ul style="list-style-type: none"> This option should only be taken up if other the robustness of the first level (council) hearing it further improved. 	Interim measure APPROVED – have to seek leave to appeal to the Environment Court	

Topic 17: Reducing the number of consent classes

<i>Meets objectives of:</i>	<i>Options considered</i>	<i>Recommendation</i>	TAG Recommendation	Commentary
<ul style="list-style-type: none"> Improving the efficiency and effectiveness of plan processes while retaining appropriate balance in regard to public participation and legal right to redress. 	<ul style="list-style-type: none"> Do nothing Removal of RCAs Removal of Non-complying activity class Removal of Controlled activity class. Removal of Restricted Discretionary class. 	<ul style="list-style-type: none"> Removal of RCAs Removal of Controlled activity class; or Removal of Non-complying if further analysis shows adverse effects of this action can be addressed. 	<ul style="list-style-type: none"> PHASE 2 - Deferred further discussion until Tuesday REJECT APPROVE 	<ul style="list-style-type: none"> attracted by idea as see some benefit/advantage however do see some a potential downside (any changes should be made in conjunction with any changes to the Conservation Act) Will be counterproductive to reducing the consenting burden Subject to it being introduced transitionally (may affect content of plans). ACTION: [Withheld under section 9(a) of the official Information Act]

Further matters considered:

[Withheld under section 9(a) of the Official Information Act]

Matters for TAG report/further things to consider

Uncertainty

1. Mention variable nature of council/court practices i.e. hearings
 - a. Suggestion – reform environment court practices
 2. Elevate status of Environment Court to High Court status
- Look at amending s6 – add qualification that must be specified in plans
 - Further definition of SNA's (Not recommended) need further investigation on whether these are still an issue **ACTION:** *[Withheld under section 9(a) of the Official Information Act]*

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Friday 9 January 2009

Action: Draft suggested changes to s6 (for Tuesday)

RCA consent category – despite reservations some members believe that could be abolished now.

Action: *[Withheld under section 9(a) of the Official Information Act]*

Reverse sensitivity – to discuss further on Tuesday

Action: (MfE) reverse sensitivity paper for next meeting including a description of how it is covered in other jurisdictions including internationally.

Major projects

Note in report – adding another option other than call-in or direct referral could clutter up the Act and may require further consideration.

Action: MfE to produce paper on possible major project track.

Need to establish who the gate keeper for such a regime will be – Minister/EPA?

Criteria for fast track consent option – idea of CAPEX and some description/definition of significant for which to assess against ie is the project of significance to warrant fast track. For any fast track option assessment criteria will need to be quite specific to provide certainty (not broad options as present for call-in).

If retain the call-in option can act as a safety mechanism if the project is not accepted for fast track status – therefore Minister to decide.

Members liked idea of an independent gate keeper for such a regime. Will require a threshold test.

Action: MfE to think about and refine possible criteria

Things requiring consideration for establishment of a fast track consenting process:

- name of the process
 - AGREED – significant project path
- Name of decision maker
 - Gate keeper – significant project assessment unit
 - Will leave to define who this will be at a later stage but assume in the medium to long term it will be the EPA. In the interim will need to provide for units eventual transfer.
 - Will need to assess against statutory criteria
 - Gatekeeper to appoint board of inquiry (BOI)
 - BOI makes decision – delegated powers from EPA
- How to retain community participation
 - Hearings to be held locally
 - Retain right to make a submission
 - Say in the composition of the panel (gatekeeper to appoint at least 1-2 locals to the panel)
 - Will allow for cross-examination (conduct provisions s147)
- Role of local authority
 - Council have right to make a submission
 - Discussed whether council should have a say on who to appoint. Was decided that this would be an improper conflict.
- Who does the report
 - Gatekeeper to decide who will write report/commission report
- Concept approval (attracted by the idea)
 - If some amendment/minor changes required to the consent
 - Incidentals should go back to the primary decision maker
 - EPA has discretion to deal with it itself or push it back to the council

- Any ancillary consents that are required for a project should go back to the SPAU who decides whether a new consent is required or whether to refer back to the council with instructions ie notification.

Action: *[Withheld under section 9(a) of the Official Information Act]*. **These should be framed so as to require particular regard to the national significance of the project as compared with the degree of local interference.**

Agenda – need to discuss fixing NPS and changes to call-in

Further matters for establishment of significant project path:

- AGREED – appeal right to the High Court on points of law only
- AGREED – enforcement to be responsibility of regional and territorial authorities
- AGREED – any other associated consents/plan changes/designations (as part of development package) will also get referred

Whether to take significant project path to be made at the choice of the applicant. Choice can be made at any stage.

Definition of environment – members were attracted by the force of submissions therefore recommend no change to the definition – further discussion required (Tuesday)

RMA Ombudsman – deferred for further consideration

Non-legislative changes:

- clearer central government direction in preparation of NPS
- performance monitoring – how well meeting objectives
- research into central government, councils, public and international commitments as well.

Notification



DBK material.doc

AGREED – remove the presumption of notification (retain the power of the council to notify)

Members were attracted to idea of reinserting suggested amendment from 2005 amendments

Further work required on the way notification decisions are made and the obligation and functions of councils (s30-31)

Action: *[Withheld under section 9(a) of the Official Information Act]*

- AGREED – repeal provisions that would provide ability to challenge notification decisions to the environment court
- AGREED – Government being able to define those activities which should not require consent ie permitted activities.. Will need to create a power for MfE/Minister to be able to create these (refer page 1 attached report)
- AGREED – lapsing of an application (see page 5 attached report). “If any request for further information remains outstanding for more than 12 months, that application should lapse unless an objection or appeal is extant or unless the council approves otherwise”.

Action: *[Withheld under section 9(a) of the Official Information Act]*

Recommend – integrate minor consents with Building Act matters – this requires more research – there is potential for MfE guidance on what can be done here.

S92 – (this must be on the agenda!!)

Action: *[Withheld under section 9(a) of the Official Information Act]*

For Tuesday: Position is that s92 needs to be changed. The extent to which can go with changing the provisions of s92 is dependant on some kind of precautionary note.

Members were attracted by idea of councils having one opportunity to ask for further information.

Precautionary note – in the case where there is insufficient information, there is a presumption that the decision maker will take a precautionary approach.

Action: *[Withheld under section 9(a) of the Official Information Act]*

- REJECT – limiting de novo appeals with respect to notification matters (therefore retain de novo appeals)
- REJECT – allow cross-examination at the first level
- ACCEPT – extending limited notification provisions to designations
- ACCEPT – remove ability to appeal on entire plans
- ACCEPT – 104(1)(b) with respect to NPS regard to objectives and policies and for plans regard to policies, issues and rules

Hearing presumption

Council should hold discretion on whether to hold hearings. Discussed whether there should be no obligation to hold a hearing unless 1) there are submitters in opposition who wish to be heard. Therefore no need to hold a hearing if 1) there are no submissions in opposition 2) affected parties have approved the application 3) submitters have not indicated an intention to appear.

- These matters discussed however recommend no change

Further matters for future discussion/consideration:

- Working day definition
- Before can appeal to environment court on plan matters must seek leave of the court