RESOURCE LEGISLATION AMENDMENTS 2017 – FACT SHEET 2

Revised functions for Resource Management Act 1991 decision-makers

This is part of a series of 16 fact sheets that give an overview of recent resource legislation amendments.

This fact sheet outlines changes to general decision-making functions under the Resource Management Act 1991 (RMA).

These changes come into effect at various times, as detailed in this fact sheet.

New procedural principles must be applied

Timeframes for various processes are set out throughout the RMA. When no timeframe is specified for a particular process, decision-makers must avoid unnecessary delay under section 21 of the RMA.

Previously the RMA did not set out overall procedural principles to adopt in decision-making processes.

The RMA has been amended to insert new section 18A, which requires decision-makers to take all practicable steps to apply new procedural principles. This wording provides a strong mandate for decision-makers to implement practical measures adopting the principles when exercising powers and performing functions under the RMA.

The overall intent of these principles is to minimise the cost of implementing RMA processes.

These changes come into force on 19 April 2017. More information about these principles is set out below.

Decision-making is to be customer focused

Anyone who exercises a power or performs a function under the RMA must take all practicable steps to use processes that are:

- timely
- efficient
- consistent
- cost-effective
- proportionate to the power being exercised or function being performed.

These principles apply to all statutory decisions under the RMA, and supplement the more specific process changes detailed in other fact sheets.

The principles set expectations to focus on the needs of applicants, submitters and the wider community when making decisions under the RMA. They encourage decision-makers to review their processes and make changes where possible, for example, by:

- delegating authority to appropriate levels of council staff to make decisions on various matters under sections 34 and 34A of the RMA (to promote timeliness, efficiency and proportionality)
- minimising administration costs by using email and electronic filing of documents, rather than print (to promote efficiency)
- training staff and using checklists to support staff to make similar decisions on similar types of consent applications or enforcement actions across the council (to promote consistency).

Plans and policy statements are only to address matters relevant to the RMA

Decision-makers must take all practicable steps to ensure that RMA policy statements and plans only include provisions to achieve the purpose of the RMA, which is to promote the sustainable management of natural and physical resources.

When developing and considering new or revised objectives, policies and rules in RMA documents, policy and decision-makers should consider what controls already exist in other legislation (for example, the Building Act 2004, Hazardous Substances and New Organisms Act 1996, and Health and Safety at Work Act 2016). Regulatory duplication should be avoided. Any additional controls proposed under the RMA should be justified in relation to the purpose of the RMA, and considered through an assessment under section 32.

Plans and policy statements are to use clear and concise wording

Decision-makers must take all practicable steps to ensure their plans and policy statements are worded in a way that is clear and concise. This requirement applies to the preparation of national and regional policy statements, and regional and district plans (or plan changes).

While it is important to ensure RMA documents are legally robust, they should also be written in a way that is user-friendly, so they can be easily navigated and interpreted by different members of the community (such as landowners, community groups and businesses).

People tasked with drafting provisions for RMA plans and policy statements should keep in mind that many people who ultimately need to use these documents will have little to no expertise in law, planning, or resource management.

It could be useful to have someone who is unfamiliar with the RMA review the wording of a draft policy statement, plan or plan change before it is released for consultation. This could involve reviewing individual provisions in a document, as well as the document as a whole for overall cohesion, consistency and readability.

The need to make plans and policy statements clear and concise does not undermine the importance of ensuring these documents are legally robust and implement national direction, if required.

Collaborating on common resource management issues

Councils must take all practicable steps to collaborate with other councils on their common resource management issues.

This new mandate reinforces the principle set out in section 14(e) of the Local Government Act 2002. This section requires councils to “actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcomes”.

Different types of councils can collaborate on different subjects, for example:

- district and regional councils can work together to develop integrated objectives, policies and rules (if any) for matters that affect both jurisdictions (for example, natural hazards, biodiversity or earthworks)
- two or more neighbouring councils can work together to adopt the same district plan provisions for cross-boundary activities (for example, infrastructure)
- councils experienced in managing the effects of a particular activity can share their information to support other councils where that activity is new and emerging.

At a practical level, collaboration between councils can involve:

- joint research and policy development (for example, section 32 analysis)
- joint community consultation activities (for example, community meetings or web portals)
- combined planning documents
- bundling and joint processing of resource consent applications
- transferring powers under section 33 of the RMA, for example to enable:
    - joint monitoring of activities and enforcement for both ‘district’ and ‘regional’ purposes
    - processing of complex resource consent applications by other councils that hold particular specialist expertise (such as consents triggered by the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health).

Monitoring the efficiency and effectiveness of processes

Previously councils were not required to gather information, monitor or keep records about the efficiency and effectiveness of their processes under the RMA.

Section 35 of the RMA has been amended to require councils to monitor the efficiency and effectiveness of the processes they use to exercise their functions under the RMA. This includes any processes that the council has:

- transferred to another public authority under section 33
- delegated to a committee, community or local board, council employee or commissioner under section 34 or 34A.

In this context, ‘efficiency and effectiveness’ of processes includes, but are not limited to:

- timeliness
- cost
- customer satisfaction[1]
- other matters that the council considers appropriate.

[1] Depending on the power or function exercised, the ‘customer’ could be the general public, iwi authorities, resource consent applicants, private plan change requestors, submitters, affected parties, requiring authorities, heritage protection authorities, or even the council itself.

Monitoring must be undertaken in accordance with any procedures set in regulations under section 360(1)(hk)(i).

The intent of the change to section 35 is to ensure processes to deliver council functions under the RMA are understood. If monitoring determines that a council can make changes to improve the efficiency and effectiveness of their processes, that council should do so using the methods available under the RMA, or non-statutory measures if appropriate. This is aligned with the new requirement under section 18A of the RMA for decision-makers to take all practicable steps to apply the procedural principles outlined earlier in this fact sheet.

This duty comes into effect on 19 April 2017.

Managing significant risks from natural hazards

Section 6 of the RMA sets out matters of national importance that decision-makers must recognise and provide for in various circumstances.

Previously there was no reference to natural hazards in section 6 of the RMA. This meant that measures to manage risks of natural hazards were not always appropriately considered in planning and consenting decisions.

Section 6 of the RMA has been amended to add 'the management of significant risks from natural hazards' to this list.

The intent of this change is to provide an explicit mandate for decision-makers to manage significant risks from all natural hazards (as defined in section 2 of the RMA) as part of any Part 2 assessment.

The matter supports:

- sections 30 and 31 of the RMA, which prescribe natural hazard management as functions of both regional councils and territorial authorities
- an amendment to section 106 of the RMA, which requires consideration of *all* risks from natural hazards in subdivision consent applications (see Fact Sheet 10 for more information)
- an amendment to section 220 of the RMA, which replaces reference to specific natural hazards with the more general "natural hazards" in relation to conditions of subdivision consents .

The drafting of section 106 emphasises a risk-based approach to managing natural hazards planning and decision-making under the RMA, taking into account both the likelihood and consequences of natural hazards. The inclusion of this new matter supports councils to manage natural hazard risks that are significant at a national, regional or local level.

This change comes into force on 19 April 2017.

Subdivision of land is permitted unless restricted by a district plan rule or national environmental standard

Previously subdivision of land was restricted unless expressly permitted in a district plan or national environmental standard (or effected by a land transfer processes under one of a range of other Acts).

Section 11 of the RMA has been amended so that subdivision is now permitted unless expressly restricted by rules in a district plan or a national environmental standard. This aligns with the presumption that land use is permitted unless restricted under section 9 of the RMA.

This is part of a suite of changes to help increase and streamline the supply of land for housing and reduce the number of consents required for simple types of subdivision. Most district plans currently require consent for all but the simplest subdivisions, and this change sends a signal that subdivision is

potentially acceptable as a permitted activity in certain circumstances. As a result, a number of councils may need to examine their district plans to determine where subdivision can be permitted.

This change comes into effect on 1 October 2017.

Councils have functions to ensure sufficient development capacity for housing and business

Previously the RMA did not contain any explicit mandate for regional and district councils to ensure sufficient capacity for land to be developed to provide for future housing and business demand. District and regional objectives, policies, rules and resource consents can all influence development capacity, however.

Section 30 and 31 of the RMA have been amended to add the function for all councils to establish, implement and review objectives, policy and methods to ensure that there is 'sufficient housing and business development capacity' to meet expected short-, medium- and long-term demand. **The intent of this change** is to enable better provision of residential and business development capacity in decision-making by councils under the RMA, and to contribute to improved housing affordability.

These new functions come into effect on 19 April 2017.

The new functions are further supported by the National Policy Statement on Urban Development Capacity (NPS-UDC), which came into effect on 1 December 2016. The NPS-UDC directs councils on how to provide sufficient development capacity for current and future housing and business demand under the RMA.

Information about the NPS-UDC and its implementation is available on the Ministry for the Environment website at www.mfe.govt.nz/more/towns-and-cities/implementing-national-policy-statement-urban-development-capacity.

Control of hazardous substances under the RMA

Previously regional and district councils had an explicit function to control the adverse effects of the storage, use, disposal or transportation of hazardous substances under the RMA. As a result, many RMA plans, and regional policy statements include controls on hazardous substances.

Since this function was first included in the RMA in 1991, the following Acts have been passed:

- Hazardous Substances and New Organisms Act 1996 (HSNO), which regulates the management, disposal, classification, packaging and transport of hazardous substances
- Health and Safety at Work Act 2015 (HSW Act), under which Worksafe New Zealand is responsible for establishing workplace controls for hazardous substances, and is the principal enforcement and guidance agency in workplaces.

Some existing RMA controls on hazardous substances duplicate or increase those in place under HSNO, which can be confusing for users of hazardous substances. Sometimes it is unclear why additional controls are necessary to manage environmental effects under the RMA.

Sections 30 and 31 of the RMA have been amended to remove the control of hazardous substances as an explicit function of councils. This means councils no longer have an explicit obligation to regulate hazardous substances in RMA plans, or policy statements. Consequential changes have also been made to the HSNO Act and the HSW Act in light of this change.

The intent of this change is to remove the perception that councils must always place controls on hazardous substances under the RMA, and to ensure councils only place additional controls on

hazardous substances if they are necessary to control effects under the RMA that are not covered by the HSNO or HSW Acts.

In most cases HSNO and Worksafe controls will be adequate to avoid, remedy or mitigate adverse environmental effects (including potential effects) of hazardous substances.

Councils still have a broad function of achieving integrated management, and may use this function to place extra controls on hazardous substance use under the RMA, if existing HSNO or Worksafe controls are not adequate to address the environmental effects of hazardous substances in any particular case (including managing the risk of potential effects on the local environment). Until such time that hazardous substances provisions within current council plans are reviewed and/or changed, the status quo applies, and resource consent applications continue to be required and assessed in accordance with the operative plan provisions.

This change comes into effect on 19 April 2017.

Removal of abandoned coastal structures in certain circumstances

Structures are often located in New Zealand's common marine and coastal area, including river mouths, estuaries or open coast. Many of these are old and derelict, and can pose navigation or safety hazards for the public. Removal of abandoned or redundant structures that have no heritage, amenity or re-use value is promoted by Policy 6 of the New Zealand Coastal Policy Statement, which is available on the Department of Conservation (DOC) website at www.doc.govt.nz/about-us/science-publications/conservation-publications/marine-and-coastal/new-zealand-coastal-policy-statement/.

Section 19(3) of the Marine and Coastal Areas (Takutai Moana) Act 2011 (MACA Act) requires that, if a structure in the common marine and coastal area has no resource consent, and its ownership is uncertain, then the relevant regional council must search for an owner.

Previously regional councils had to undertake a formal inquiry under section 19(2) of the MACA Act to search for the owner of any structure in the common marine and coastal area. The formal inquiry process is set out in the Marine and Coastal Area (Takutai Moana) Ownership of Structures Regulations 2015 (the MACA regulations). If this inquiry fails to find an owner, ownership falls to the Crown and the structure is administered by DOC.

The RMA and MACA Act have been amended to introduce a simpler process to search for owners of low-value coastal structures.

The intent of this change is to introduce proportionality to the system of removing abandoned coastal structures, by providing a simpler inquiry process for low-value structures while retaining the more rigorous inquiry process for higher value structures.

This amendment comes into effect on 19 April 2017.

New process for low-value structures

The new process for removal of an abandoned coastal structure can only be used if the:

- structure has no current resource consent
- regional council considers the structure is likely to have no, or minimal, value to any owner or the community
- the ownership is uncertain in respect of a structure in a part of the common marine and coastal area for which a regional council has responsibility.

Factors that would influence the likely value of a particular structure will be specific to the local circumstances. These might include any recreational, commercial, cultural, aesthetic or historical values. The council might consider the structure's size, state of repair, whether the structure is used by the community, or has any specific local historic or cultural attributes.

To undertake the simpler process, the regional council:

- must search for the owner's contact details through its own records
- must make a reasonable effort to locate the owner using any contact details it finds
- may decide to search more broadly (for example, using any of the procedures in the MACA regulations).

If no owner is found after this search, the council may remove the structure at its own cost, or the council can undertake an inquiry under section 19 of the MACA Act

If the regional council considers any adverse effects of removing the structure are likely to be no more than minor, the council can remove the structure without needing to comply with the rules in its regional plan (including any requirements to obtain a resource consent).

If the regional council considers that removing the structure is likely to have adverse effects that are more than minor (for example disturbances or discharges in the coastal marine area), the council may choose to manage the removal in accordance with the regional coastal plan, or by obtaining a consent.

Councils should also be aware of any heritage restrictions that may apply to a particular structure. For example, any structure built before 1900 may also be an archaeological site, in which case approval from Heritage New Zealand Pouhere Taonga would be required before it could be removed. Information about the archaeological authority process is available at www.heritage.org.nz/protecting-heritage/archaeology/archaeological-authorities.

Individuals and corporates taking drinking water for stock are to be treated equally

Previously the RMA allowed an individual to take water for the reasonable needs of their animals, as long as there were no adverse effects on the environment.

The RMA does not define individual, and some regional councils have interpreted this to mean natural persons only, excluding companies and trusts. This has resulted in some councils requiring consents for stock drinking water based on who owned the stock, rather than based on any adverse effects on the environment.

Section 14(3)(b)(ii) of the RMA has been amended to replace the term 'individual' with 'person', to clarify that the allowance applies to both 'natural' and 'non-natural' persons (for example, including companies and trusts).

The intent of this change is to ensure that the right to take water for stock will be based on the reasonableness of the take and whether the take is likely to have an environmental effect, not on the basis of ownership.

This amendment comes into effect on 19 April 2017.

Water quality classes are removed from the RMA

Schedule 3 of the RMA contains water quality classes and standards that a council may use to set rules in a regional plan. The use of Schedule 3 is directed through section 69. This allows a council to

set rules based on the standards, unless the council considers those standards are inadequate (in which case they can set more stringent or specific standards).

Previously Schedule 3 applied to fresh water, as well as geothermal and coastal water.

In 2014, the 'national objectives framework' was introduced into freshwater management through the National Policy Statement for Freshwater Management (NPS-FM). This established a process to guide council decision-making on fresh water. It includes updated water quality standards that councils can use in planning decisions, which supersede those set in Schedule 3 of the RMA.

Section 69 of the RMA has been amended so that Schedule 3 no longer applies to *fresh water*.

Councils are still able to apply Schedule 3 to manage geothermal and coastal water (defined in section 2 of the RMA).

Any existing use of these standards in plans, consent conditions and in water conservation orders can continue. The standards will still be available for use as consent conditions if a council considers them to be appropriate.

This amendment does not have any additional impact on regional council processes to review freshwater plans using the national objectives framework as required by the NPS-FM.

The intent of this change is to clarify that the national objectives framework applies to the management of freshwater quality, not Schedule 3 of the RMA.

This amendment comes into effect on 19 April 2017.

Fact sheets in this series

This is one of a series of 16 fact sheets providing an overview of amendments to the:

- Resource Management Act 1991
- Conservation Act 1987
- Reserves Act 1977
- Public Works Act 1981
- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

The full set of fact sheets is available on our website:
www.mfe.govt.nz/publications/rma/resource-legislation-amendments-2017-fact-sheet-series

Find out more

Contact the Ministry for the Environment by emailing info@mfe.govt.nz, or visit www.mfe.govt.nz/rma.

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