



RESOURCE MANAGEMENT AMENDMENT ACT 2009

Fact Sheet 7: Proposals of National Significance

This is one of a series of fact sheets giving an overview of the amendments to improve the Resource Management Act (RMA). This fact sheet provides an overview of the different routes for proposals of national significance including the role of the Environmental Protection Authority (EPA).

This fact sheet should be read with the Resource Consent Applications for Proposals of National Significance flow chart.

WHAT WERE THE ISSUES?

The amendments address concerns about the efficiency and robustness of the decision-making process for projects of national significance, including:

- streamlining decision-making for projects of national significance, including introducing a nine month timeframe for decisions of a board of inquiry
- improving the capacity for councils and communities to have confidence and involvement in the board of inquiry process
- giving more guidance about what is likely to be of national significance, in particular those projects involving key infrastructure.

HOW HAS THE RMA BEEN IMPROVED?

Overview of the referral process

New Part 6AA improves the provisions for dealing with proposals of national significance (previously sections 140 to 150AA). New section 140 sets out an overview of Part 6AA and the different routes by which the Minister may make a direction and refer a proposal of national significance to either a board of inquiry or the Environment Court for a decision.

There are now three ways in which a matter may come to the Minister for his or her decision on whether to refer the matter to a board of inquiry or the Environment Court. These are:

- the Minister may, at his or her own initiative, make a direction on a matter that has been lodged with the council, or
- the council or the applicant may request that the Minister make a direction on a matter after it has been lodged with the council, or
- the applicant may lodge the application directly with the Environmental Protection Authority (EPA), rather than the council. The EPA will recommend to the Minister whether the matter should be referred to a board of inquiry or the Environment Court.

List of matters for referral of proposals of national significance

The list of matters that the Minister can make a direction on has been expanded to include:

- an application for change or cancellation of resource consent conditions
- a council's change to its plan or a variation to its proposed plan
- a notice of requirement to alter a designation or heritage order.

This allows a wider range of matters to be considered as proposals of national significance and be referred to a board of inquiry or the Environment Court by the Minister for a decision. Although a council plan change or variation can not be lodged with the EPA, the council may request that the Minister make a direction and refer the matter to a board of inquiry or the Environment Court.



Plan changes and variations

Changes to plans and variations to proposed plans can now be considered by the Minister and referred to a board or inquiry or the Environment Court for a decision. Councils can not notify a further change or variation relating to a plan change or variation that has been referred until either the board of inquiry or Environment Court has made a decision on the matter. However, councils may withdraw plan changes or variations referred to the Minister up to five days after further submissions close.

Additions to nationally significant matters

Two new factors have been added to the list that the Minister may consider when deciding whether a proposal is of national significance:

- network utility operations that cross regional or district council boundaries
- whether the matter would assist the Crown fulfil its obligations or functions regarding public health, welfare, security or safety.

This signals that the Government considers that local infrastructure projects that are important for the operation of national networks, and projects that contribute to the wider public good, may be proposals of national significance.

The role of the Environmental Protection Authority

A person will now be able to lodge an application for a resource consent, a request for preparation of a regional plan, a request for a change to a plan, and notices of requirement directly with the EPA, instead of lodging an application with the council and then requesting that the Minister make a direction to refer the matter to either a board of inquiry or the Environment Court for a decision.

The EPA will function like a consent authority in considering whether or not the application is complete. The EPA can request information from the applicant.

The EPA must commission a report from the relevant local authority on the relevant planning framework and may commission reports from other persons on the matter.

The EPA will assess whether the matter is of national significance and must make a recommendation to the Minister no later than 20 working days after receiving the matter. The Minister then decides whether the proposal is of national significance and whether it should be heard and decided by a board of inquiry or the Environment Court. The Minister can decide a matter is not of national significance and refer it to the council for processing.

Environmental Protection Authority cost recovery

The EPA may recover its costs in providing assistance to a person before a matter is lodged with the EPA.

The EPA may also recover from an applicant the actual and reasonable costs incurred in exercising its functions and powers under the RMA. This would include costs of assessing a matter when it is first lodged, costs of commissioning reports, and the costs of secretarial and support services to a board of inquiry by the EPA.

See Fact Sheet 8: *Environmental Protection Authority – Role, Functions and Powers* for more detailed information on the role of the EPA in the referral of proposals of national significance process.

Timeframes for making a direction when a matter has been lodged with a council

Where a matter has already been lodged with a council, the Minister may make a direction no later than five working days after the date that submissions close if the council has notified the matter. However, if the council has not notified the matter the Minister may make a direction any time before the council notifies its decision. If a direction is made to refer the matter, any submissions already lodged with the council will be considered by a board of inquiry or the Environment Court.

Applicant's views

The Minister must have regard to the applicant's and the local authority's views in deciding whether to make a direction, as this decision will be significant for the applicant, especially if the council makes the request.

Matters that are not referred to a board of inquiry or Environment Court

If the matter is lodged with the EPA and the Minister decides not to refer the matter to a board of inquiry or the Environment Court for a decision, it must be dealt with by the council in the normal way. However, to ensure matters are not sent back to the start again, the council can not determine that the application is incomplete and return it to the applicant under section 88(3) of the RMA.

Related applications

If the Minister has made a direction and referred a matter to either a board of inquiry or the Environment Court and subsequently, a further application for resource consent or change of resource consent conditions, or a notice of requirement to alter a designation or heritage order is lodged with the EPA in respect of the same proposal, the Minister will decide whether to make a direction to refer these related matters and whether they should be notified or considered on a limited or non-notified basis.

Appointment of boards of inquiry

A number of changes have been made to the process for appointing boards of inquiry and the timeframes in which they must make decisions.

In addition to a current, former or retired Environment Court Judge, the Minister can now appoint a retired High Court Judge as the chairperson of a board of inquiry. This widens the pool from which a chair can be chosen for a board of inquiry, as there may be increased demand for boards of inquiry in the future.

In appointing board members the Minister must seek (but is not bound by) suggestions from the relevant council. The Minister's appointments must now be guided by the board's need for knowledge, skill and experience related to the local community, as well as, the RMA, the matter or type of matter that the board will be considering, and tikanga Māori.

Powers of boards of inquiry

The amendments clarify the powers of a board of inquiry when conducting a hearing and its decision-making powers and responsibilities. Boards have a range of powers including:

- the ability to request further information from the applicant
- the ability to commission reports
- power to hold pre-hearing meetings and refer the applicant and other persons to mediation and to control the conduct of hearings.

The Board must consider the same decision-making criteria that a council would have to follow if it were dealing with the matter. The Board must also have regard to the Minister's reasons for making the direction and consider any information provided to it by the EPA.

Where a request for the preparation of a regional plan, or a private plan change has been referred to a board of inquiry, the board of inquiry must consider whether the request should be accepted or rejected. The board must seek and consider the council's views.

If the request for the plan or plan change is accepted by the board, then the council must prepare a proposed regional plan or plan change in consultation with the applicant. The proposed plan or change must be prepared within four months of the council receiving notice of the board's decision to accept the request.



Board of inquiry reports and decisions

The reporting process has been simplified and draft reports need only report on the principal issues in contention, rather than all issues. The EPA must invite comments only on minor and technical aspects of draft reports.

The board must make its final decision within nine months of public notification of the Minister's direction, unless the Minister decides that special circumstances exist and the timeframe should be extended. If the timeframe is to be more than doubled, the applicant must agree.

Environment Court consideration and decision on proposals of national significance

The Act sets out in more detail what the Environment Court is to consider when various matters are referred by the Minister to the Environment Court for a decision. The EPA must provide the Court with all the relevant material on the matter, including copies of all submissions received by the EPA. The same decision-making criteria which apply to the board of inquiry will apply to the Environment Court, but the nine month decision-making timeframe does not apply.

Appeals

Appeals from High Court decisions can only be made to the Supreme Court if leave to bring an appeal is granted by that Court. If the Supreme Court refuses to grant leave to appeal, the Court may remit the appeal to the Court of Appeal.

Role of the Minister of Conservation

Where a proposal occurs wholly in the coastal marine area, the Minister of Conservation is the Minister that will decide whether the matter is of national significance and should be referred to either a board of inquiry or the Environment Court. If the proposal straddles the boundary of the coastal marine area, both Ministers will decide.

FACT SHEETS IN THIS SERIES

1. Overview
2. Trade competition, representation at proceedings and Environment Court costs
3. Improving resource consent processes
4. Direct referral, independent commissioners and restricted coastal activities
5. Improving plan development and plan change processes
6. Changes to national instruments
7. **Proposals of national significance**
8. Environmental Protection Authority – role, functions and powers
9. Changes to enforcement.