



Cabinet Office Circular

CO (06) 7

14 December 2006

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Ministerial Interventions under the Resource Management Act 1991

Introduction and key points

- 1 The Resource Management Act 1991 (RMA) provides for the Minister for the Environment (and, in some instances, the Minister of Conservation) to intervene in matters of national significance under the RMA. Cabinet has agreed the process that should be followed in such cases [POL Min (06) 5/11 and CAB Min (06) 10/3].
- 2 This circular sets out guidance on:
 - the procedures that should be followed when a Minister decides to intervene under the RMA;
 - the points at which the Minister should involve Cabinet;
 - how to ensure proper interdepartmental consultation and co-ordination.
- 3 In this circular, references to the Minister and the Ministry should be read as references to the Minister for the Environment and the Ministry for the Environment, except where the matter relates exclusively to the coastal marine area when the references apply to the Minister of Conservation and Department of Conservation respectively.
- 4 The key points in this circular are:
 - When considering whether or not to intervene under section 141A of the RMA, the Minister should consider seeking the views of other Ministers at Cabinet, depending on factors such as the national significance of the proposal, the level of public interest and whether other portfolios might be affected.

- If the Minister is proposing to call in a proposal under section 141A(4)(b) or to make a Crown submission under section 141A(4)(c), the Minister must refer the issue to Cabinet for discussion, before making the decision.
- If the Minister decides to intervene by way of Crown submission, a lead department (usually the Ministry for the Environment or the Department of Conservation) will coordinate consultation with other relevant departments when preparing the submission. To the extent possible, the Crown submission should represent a whole of government view.
- All Crown submissions must be approved by Cabinet before being lodged.
- Before deciding to appeal a decision of a local or consent authority, the Minister must refer the issue to Cabinet for discussion.

Background

- 5 Section 141A of the RMA gives the Minister the statutory power to intervene in decisions on proposals of national significance. The Minister has the power to intervene in several ways, which are listed in section 141A(4).
- 6 This circular focuses on the procedures for consultation and decision-making to be followed for interventions under section 141A(4)(b) (calling in the matter) and 141A(4)(c) (making a Crown submission). It is unlikely that intervention under sections 141A(4)(d), (e) and (f) would need Cabinet consultation, unless there are special considerations.
- 7 The relevant provisions of the RMA are set out in the annex to this circular.
- 8 These procedures relate to applications for resource consents, notices of requirement, requests to prepare regional plans and requests for private plan changes only. Interventions on plans and council-initiated plan changes do not have a formal statutory process associated with them. To promote consistent practice, the procedures outlined in this circular may be used.

Procedure when considering whether to intervene under section 141A, and what kind of intervention

- 9 The Minister should adopt the procedures set out below when considering whether to intervene under section 141A.
- 10 The Minister may seek the views of other Ministers (in particular, the Minister of Local Government) about whether to intervene and the form of the intervention before deciding which of the options under section 141A to adopt. The Minister should consider seeking the views of other Ministers at Cabinet, depending on such factors as:
- whether more than one portfolio will be involved in the final intervention;
 - the level of public interest, importance or concern;
 - the degree of national significance and controversy of the issue under consideration.

The Cabinet Office is available to provide advice on whether the matter should be discussed at Cabinet, in cases of doubt.

- 11 Before deciding to call in a proposal under section 141A(4)(b), and/or to prepare a Crown submission under section 141A(4)(c), the Minister must refer the issue to Cabinet for discussion. Ultimately, the decision to intervene under section 141A is a decision for the Minister (not Cabinet) to make. The purpose of bringing the matter to Cabinet is:
 - 11.1 to ensure that the Minister has access to and can take into account any relevant matters that his or her colleagues may contribute before making the decision;
 - 11.2 to ensure that Cabinet colleagues are aware of the proposed intervention, before the matter becomes public;
 - 11.3 when the making of a Crown submission is proposed, to determine which department should co-ordinate the development of the Crown submission, and the proposed scope of the Crown submission.
- 12 Further guidance on the procedure for making a Crown submission is set out in paragraphs 15 to 27 below.
- 13 Where a project spans the coastal marine area and dry land, the process will involve joint decision-making by the Minister for the Environment and the Minister of Conservation, supported by both the Ministry for the Environment and the Department of Conservation. Any issues that the departments cannot resolve should be identified in the relevant papers and briefings for Ministers and Cabinet.
- 14 When another Minister is approached by another party suggesting that ministerial intervention of some sort would be appropriate, or if that Minister considers that intervention is appropriate, he or she must bring this to the attention of the Minister promptly. The Minister will consider the issue in consultation with the referring Minister and follow the procedures set out in paragraphs 10 to 12 above.

Procedure if Minister intends to make a Crown submission

Lead department

- 15 The Ministry for the Environment or the Department of Conservation will usually co-ordinate the whole of government process for a Crown submission. Cabinet may decide to appoint another department to coordinate the Crown submission (for example, if there is a conflict of interest).

Scope of Crown submission

- 16 Cabinet will decide whether the Crown submission should cover all matters of relevance to departments, or focus on matters that are nationally of the most importance. Where the choice is made that the Crown submission should focus on matters that are nationally of most importance, departments, through their chief executives, may make separate submissions on other matters, provided that the positions taken in the separate submissions do not conflict with the positions taken in the Crown submission.

- 17 Any department that prepares a separate submission on specific matters not covered by the Crown submission must consult with the lead department during the preparation of the separate submission. If the lead department does not agree that the separate submission is not in conflict with the positions taken in the Crown submission, the issue must be referred to Cabinet for discussion.

Development of Crown submission

- 18 The lead department will consult relevant government departments during both the scoping and the development of the Crown submission. ‘Relevance’ will be based upon the guidelines contained in the [Step by Step Guide to Cabinet and Cabinet Committee Processes](#), which states that a decision on which agencies to consult should be made early in the process¹. The *Step by Step Guide* includes a [schedule of departments and their areas of interest](#). Individual departments should indicate their level of interest in the proposed Crown submission, and their desired degree of involvement in the development of the submission for Cabinet approval.
- 19 The lead department is responsible for drafting the Crown submission. As the submission is a legal document and forms the basis of any case, legal input should be sought from the outset. The draft submission should be circulated to relevant government departments to obtain their agreement.
- 20 Crown research institutes, state owned enterprises, and other entities outside central government will not be part of the consultation process, and will be able to make submissions separately to local or consent authorities. Government departments should consult such agencies with an interest in the proposal only in cases where an organisation is contracted to provide the department with advice.

Representing departmental views in Crown submission

- 21 As far as possible, the Crown submission should seek to accommodate the views of all departments. For example, the statutory functions of the Department of Conservation might be able to be accommodated by providing a statement on the conservation impacts of a proposal in a separate section in the submission.
- 22 All relevant departments should enter into the discussions in good faith. Situations may arise, however, where the broader content or the position taken in a submission is such that an individual department considers that it cannot participate in a way that is consistent with its statutory functions. In such situations, the Minister of the department concerned should consult the Minister before a decision is made on whether it is appropriate in the circumstances for a separate submission to be prepared. Cabinet should be notified of any decision to make a separate submission. This could occur at the time that the Crown submission is submitted to Cabinet for approval.

Approval and lodging of Crown submission

- 23 Crown submissions must be approved by Cabinet. The Minister is responsible for submitting the draft Crown submission to Cabinet for approval. When Cabinet approval has been given, the Minister should sign the submission and lodge it with the relevant local or consent authority.

¹ [Chapter 11, Step by Step Guide to Cabinet and Cabinet Committee Processes](#)

Supporting the submission

- 24 The lead department and the Minister are responsible for ensuring that a Crown submission is supported through the process under the RMA. The lead department, and departments that are promoting particular positions that form part of the Crown submission, must be mindful of the need for policy to be supported by evidence.
- 25 The lead department will need to comply with the consent authority's directions regarding the circulation of the submission and the provision of any supporting evidence.
- 26 The lead department may need to arrange for the appearance of representatives at pre-hearing meetings and the hearing itself. The lead department may also need to co-ordinate the appearance of other departments' representatives, legal representatives and other specialists (eg technical experts), where this is necessary to present evidence related to particular interests and areas of expertise.
- 27 Government representatives involved in hearings or other aspects of the process will need to have the appropriate delegated authority to make decisions or to reach agreements on behalf of the participating Ministers.

Timing

- 28 The Minister will need to consider any statutory time constraints that may be applicable in deciding the most appropriate intervention; in particular, when considering whether to make a Crown submission.
- 29 The government is likely to become aware of a proposal of national significance before a formal application is made to a local or consent authority. The Minister should give initial consideration to whether to intervene at an appropriate time before an application is lodged or plan notified, and allow sufficient time to seek the views of Cabinet.
- 30 In rare situations, the government may not have been made previously aware of an application or plan that raises matters of national significance. If this occurs, time constraints may mean that a Crown submission is not possible. Other forms of intervention may be more appropriate in those circumstances.
- 31 The RMA allows local or consent authorities to extend the period for making submissions. Extending the period of time for making submissions following a request from the government could be seen as creating delays for the parties, and could be perceived as special treatment for government submissions. On the other hand, extending the time period for submissions may assist the decision-makers, and potentially save time and costs in the long run.
- 32 The option of seeking an extension to the submission period should be discussed with the relevant local or consent authority before the Minister seeks Cabinet's views on developing a Crown submission.

Appeals

- 33 If the Minister proposes to appeal a decision of a local or consent authority within the bounds of the RMA, the Minister must refer the issue to Cabinet for discussion.

- 34 A process similar to that for preparing a Crown submission should be used when preparing appeal documents (see paragraphs 18-27 above). The Minister must submit the appeal to Cabinet for approval and, following approval, sign the appeal and lodge it with the relevant local or consent authority, in accordance with statutory requirements.

Further Information

- 35 Departments should contact the Ministry for the Environment or the Cabinet Office if they require further information about the procedures in this circular.

Secretary of the Cabinet

Resource Management Act 1991
Part 6 – Resource Consents

141A. Minister’s power to intervene-

- (1) This section applies when the Minister-
 - (a) receives a request to intervene on a matter from-
 - (i) 1 or more applicants; or
 - (ii) a local authority required to process and decide a matter; or
 - (b) decides to apply the section.
- (2) The Minister-
 - (a) must have regard to the factors described in subsection (3); and
 - (b) may exercise 1 or more of the powers described in subsection (4).
- (3) The factors are-
 - (a) the extent to which a matter is or is part of a proposal of national significance under section 141B(2); and
 - (b) whether the local authorities that would process and decide the matter if the Minister did not call it in-
 - (i) have the capacity to process and decide it; and
 - (ii) consider that the exercise of any of the powers in subsection (4) would be appropriate.
- (4) The powers are-
 - (a) to decide not to intervene;
 - (b) to call in the matter under section 141B;
 - (c) to make a submission on the matter for the Crown;
 - (d) to appoint a project co-ordinator for a matter to advise the consent authority on anything relating to the matter;
 - (e) if the matter involves more than 1 consent authority, to direct the consent authorities to hold a joint hearing on the matter;
 - (f) if a consent authority appoints 1 or more hearings commissioners for a matter, to appoint 1 additional hearings commissioner for the matter.
- (5) If the Minister gives a direction under subsection (4)(e),-
 - (a) the consent authorities to which it is given must hold the joint hearing; and
 - (b) section 102 applies, with the necessary modifications, to the hearing.
- (6) If the Minister appoints a hearings commissioner under subsection (4)(f), the commissioner has the same powers, functions, and duties as a commissioner appointed by the consent authority.

141B. Minister’s power to call in matters that are or are part of proposals of national significance-

- (1) When the Minister considers that a matter is or is part of a proposal of national significance, the Minister may call in the matter by making 1 of the following directions:
 - (a) a direction that the matter be referred for decision to a board of inquiry under sections 146 to 149; or
 - (b) a direction that the matter, after the receipt of any submissions that the local authority or the Minister called for, be referred for decision to the Environment Court under section 150AA.
- (2) In deciding whether a matter is or is part of a proposal of national significance, the Minister may have regard to any relevant factor, including whether the matter-
 - (a) has aroused widespread public concern or interest regarding its actual or likely effect on the environment, including the global environment; or
 - (b) involves or is likely to involve significant use of natural and physical resources; or
 - (c) affects or is likely to affect any structure, feature, place, or area of national significance; or
 - (d) affects or is likely to affect more than one region or district; or
 - (e) affects or is likely to affect or is relevant to New Zealand’s international obligations to the global environment; or
 - (f) involves or is likely to involve technology, processes, or methods which are new to New Zealand and which may affect the environment; or
 - (g) results or is likely to result in or contribute to significant or irreversible changes to the environment, including the global environment; or
 - (h) is or is likely to be significant in terms of section 8 (Treaty of Waitangi).