

**70 First step: plan initiated by proposal**

- (1) The first step in the making of a plan is a proposal made by—
  - (a) the council; or
  - (b) a person who submits the proposal to the council.
- (2) The proposal must set out the following matters:
  - (a) the name of the person making the proposal:
  - (b) the subject of the proposal, which means—
    - (i) the organism proposed to be specified as a pest under the plan or the organisms proposed to be specified as pests under the plan; or
    - (ii) the class or description of organism proposed to be specified as a pest under the plan or the classes or descriptions of organisms proposed to be specified as pests under the plan:
  - (c) for each subject,—
    - (i) a description of its adverse effects:
    - (ii) the reasons for proposing a plan:
    - (iii) the objectives that the plan would have:
    - (iv) the principal measures that would be in the plan to achieve the objectives:
    - (v) other measures that it would be reasonable to take to achieve the objectives, if there are any such measures, and the reasons why the proposed measures are preferable as a means of achieving the objectives:
    - (vi) the reasons why the plan is more appropriate than relying on voluntary actions:
    - (vii) an analysis of the benefits and costs of the plan:
    - (viii) the extent to which any persons, or persons of a class or description, are likely to benefit from the plan:
    - (ix) the extent to which any persons, or persons of a class or description, contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan:
    - (x) the rationale for the proposed allocation of costs:
    - (xi) if it is proposed that the plan be funded by a levy under section 100L, how the proposed levy satisfies section 100L(5)(d) and what matters will be specified under section 100N(1):
    - (xii) whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons whom the plan would require to pay the costs:
  - (d) any other organism intended to be controlled:

- (e) the effects that, in the opinion of the person making the proposal, implementation of the plan would have on—
  - (i) economic wellbeing, the environment, human health, enjoyment of the natural environment, and the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga:
  - (ii) the marketing overseas of New Zealand products:
- (f) if the plan would affect another pest management plan or a pathway management plan, how it is proposed to co-ordinate the implementation of the plans:
- (g) the powers in Part 6 that it is proposed to use to implement the plan:
- (h) each proposed rule and an explanation of its purpose:
- (i) the rules, if any, that are intended to be good neighbour rules:
- (j) the rules whose contravention is proposed to be an offence under this Act:
- (k) the management agency:
- (l) the means by which it is proposed to monitor or measure the achievement of the plan's objectives:
- (m) the actions that it is proposed local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:
- (n) the basis, if any, on which the management agency is to pay compensation for losses incurred as a direct result of the implementation of the plan:
- (o) information on the disposal of the proceeds of any receipts arising in the course of implementing the plan:
- (p) whether the plan includes portions of road adjoining land it covers, as authorised by section 6, and, if so, the portions of road proposed to be included:
- (q) the anticipated costs of implementing the plan:
- (r) how it is proposed that the costs be funded:
- (s) the period for which it is proposed the plan be in force:
- (t) the consultation, if any, that has occurred on the proposal and the outcome of it:
- (u) any matter that the national policy direction requires be specified in a plan:
- (v) the steps that have been taken to comply with the process requirements in the national policy direction, if there were any.

Section 70: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

## **71 Second step: satisfaction on requirements**

If the council is satisfied that section 70 has been complied with, the council may take the second step in the making of a plan, which is to consider whether the council is satisfied—

- (a) that the proposal is not inconsistent with—
  - (i) the national policy direction; or
  - (ii) any other pest management plan on the same organism; or
  - (iii) any pathway management plan; or
  - (iv) a regional policy statement or regional plan prepared under the Resource Management Act 1991; or
  - (v) any regulations; and
- (b) that, during the development of the proposal, the process requirements for a plan in the national policy direction, if there were any, were complied with; and
- (c) that the proposal has merit as a means of eradicating or effectively managing the subject of the proposal, which means—
  - (i) the organism proposed to be specified as a pest under the plan or the organisms proposed to be specified as pests under the plan; or
  - (ii) the class or description of organism proposed to be specified as a pest under the plan or the classes or descriptions of organisms proposed to be specified as pests under the plan; and
- (d) that each subject is capable of causing at some time an adverse effect on 1 or more of the following in the region:
  - (i) economic wellbeing;
  - (ii) the viability of threatened species of organisms;
  - (iii) the survival and distribution of indigenous plants or animals;
  - (iv) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity;
  - (v) soil resources;
  - (vi) water quality;
  - (vii) human health;
  - (viii) social and cultural wellbeing;
  - (ix) the enjoyment of the recreational value of the natural environment;
  - (x) the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga;

- (xi) animal welfare; and
- (e) that, for each subject, the benefits of the plan would outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
- (f) that, for each subject, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan—
  - (i) would accrue, as a group, benefits outweighing the costs; or
  - (ii) contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan; and
- (g) that, for each subject, there is likely to be adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years; and
- (h) that each proposed rule—
  - (i) would assist in achieving the plan's objectives; and
  - (ii) would not trespass unduly on the rights of individuals; and
- (i) that the proposal is not frivolous or vexatious; and
- (j) that the proposal is clear enough to be readily understood; and
- (k) that, if the council rejected a similar proposal within the last 3 years, new and material information answers the council's objection to the previous proposal.

Section 71: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

## **72 Third step: satisfaction with consultation or requirement of more consultation**

- (1) If the council is satisfied of the matters in section 71, the council may take the third step in the making of a plan, which is for the council to consider whether the council is satisfied—
  - (a) that, if Ministers' responsibilities may be affected by the plan, the Ministers have been consulted; and
  - (b) that, if local authorities' responsibilities may be affected by the plan, the authorities have been consulted; and
  - (c) that the tangata whenua of the area who may be affected by the plan were consulted through iwi authorities and tribal runanga; and
  - (d) that, if consultation with other persons is appropriate, sufficient consultation has occurred.
- (2) In considering whether the council is satisfied as required by subsection (1)(d), the council must have regard to the following:
  - (a) the scale of the impacts on persons who are likely to be affected by the plan; and

- (b) whether the persons likely to be affected by the plan or their representatives have already been consulted and, if so, the nature of the consultation; and
  - (c) the level of support for, or opposition to, the proposal from persons who are likely to be affected by it.
- (3) If the council is satisfied as required by subsection (1), the council must apply section 73.
- (4) If the council is not satisfied as required by subsection (1), the council may require consultation to be undertaken on the proposal.
- (5) If the council requires consultation to be undertaken, the council must determine the way or ways in which the consultation must be undertaken, including, but not limited to, ways such as—
  - (a) consultation with persons likely to be affected by the plan or with their representatives:
  - (b) the appointment by the council of 1 or more persons to carry out an independent inquiry into the proposal on terms of reference set by the council:
  - (c) public notification of the proposal and the receipt of submissions.
- (6) After the consultation required by the council has been undertaken, the council must apply subsection (1) again.

Section 72: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

### **73 Fourth step: approval of preparation of plan and decision on management agency**

- (1) If the council is satisfied as required by section 72(1) and is satisfied that the issues raised in all the consultation undertaken on the proposal have been considered, the council may take the fourth step in the making of a plan, which is to approve the preparation of a plan.
- (2) If the council approves the preparation of a plan, the council must apply section 100 to decide which body is to be the management agency.

#### *Matters to be specified*

- (3) A plan must specify the following matters:
  - (a) the pest or pests to be eradicated or managed:
  - (b) the plan's objectives:
  - (c) the principal measures to be taken to achieve the objectives:
  - (d) the means by which the achievement of the plan's objectives will be monitored or measured:
  - (e) the sources of funding for the implementation of the plan:

- (f) the limitations, if any, on how the funds collected from those sources may be used to implement the plan:
- (g) the powers in Part 6 to be used to implement the plan:
- (h) the rules, if any:
- (i) the rules, if any, that are good neighbour rules:
- (j) the management agency:
- (k) the actions that local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:
- (l) the portions of road, if any, adjoining land covered by the plan and, as authorised by section 6, also covered by the plan:
- (m) the plan's commencement date and termination date:
- (n) any matters required by the national policy direction.

*Compensation*

- (4) A plan—
  - (a) may provide for the payment of compensation for losses incurred as a direct result of the implementation of the plan:
  - (b) must not provide for the payment of compensation for the following losses:
    - (i) loss suffered because a person's income derived from feral or wild organisms is adversely affected by the implementation of the plan:
    - (ii) loss suffered before an inspector or authorised person establishes the presence of the pest on the place of the person suffering the loss:
    - (iii) loss suffered by a person who fails to comply with the plan.

*Rules*

- (5) A plan may include rules for all or any of the following purposes:
  - (a) requiring a person to take specified actions to enable the management agency to determine or monitor the presence or distribution of the pest or a pest agent:
  - (b) requiring a person to keep records of actions taken under the rules and to send to the management agency specified information based on the records:
  - (c) requiring the identification of specified goods:
  - (d) prohibiting or regulating specified methods that may be used in managing the pest:
  - (e) prohibiting or regulating activities that may affect measures taken to implement the plan:

- (f) requiring audits or inspections of specified actions:
  - (g) specifying, for the purposes of section 52(a), the circumstances in which the pest may be communicated, released, or otherwise spread:
  - (h) requiring the occupier of a place to take specified actions to eradicate or manage the pest or a specified pest agent on the place:
  - (i) requiring the occupier of a place to take specified actions to eradicate or manage the habitat of the pest or the habitat of a specified pest agent on the place:
  - (j) prohibiting or regulating specified activities by the occupier of a place if the activities are of the kind that would promote the habitat of the pest on the place:
  - (k) requiring the occupier of a place to carry out specified activities to promote the presence of organisms that assist in the control of the pest on the place:
  - (l) prohibiting or regulating specified activities by the occupier of a place, which deter the presence on that place of organisms that assist in the control of the pest:
  - (m) requiring the occupier of a place to carry out specified treatments or procedures to assist in preventing the spread of the pest:
  - (n) requiring the owner or person in charge of goods to carry out specified treatments or procedures to assist in preventing the spread of the pest:
  - (o) requiring the destruction of goods if the goods may contain or harbour the pest or otherwise pose a risk of spreading the pest:
  - (p) prohibiting or regulating specified uses of goods that may promote the spread or survival of the pest:
  - (q) prohibiting or regulating the use or disposal of organic material:
  - (r) prohibiting or regulating the use of specified practices in the management of organisms that may promote the spread or survival of the pest:
  - (s) prohibiting or regulating the movement of goods that may contain or harbour the pest or otherwise pose a risk of spreading the pest.
- (6) A rule may—
- (a) apply generally or to different classes or descriptions of persons, places, goods, or other things:
  - (b) apply all the time or at 1 or more specified times of the year:
  - (c) apply throughout the region or in a specified part or parts of the region with, if necessary, another rule on the same subject matter applying to another specified part of the region:
  - (d) specify that a contravention of the rule creates an offence under section 154N(19).

Section 73: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

#### **74 Fifth step: satisfaction on contents of plan and requirements**

If the council is satisfied that section 73 has been complied with, the council may take the fifth step in the making of a plan, which is for the council to consider whether the council is satisfied, in relation to the plan prepared under section 73,—

- (a) that the plan is not inconsistent with—
  - (i) the national policy direction; or
  - (ii) any other pest management plan on the same organism; or
  - (iii) any pathway management plan; or
  - (iv) a regional policy statement or regional plan prepared under the Resource Management Act 1991; or
  - (v) any regulations; and
- (b) that, for each subject of the plan, the benefits of the plan outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
- (c) that, for each subject of the plan, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan—
  - (i) will accrue, as a group, benefits outweighing the costs; or
  - (ii) contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan; and
- (d) that, for each subject of the plan, there is likely to be adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years; and
- (e) that each rule—
  - (i) will assist in achieving the plan's objectives; and
  - (ii) will not trespass unduly on the rights of individuals.

Section 74: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

#### **75 Sixth step: decision on plan**

- (1) When the council is satisfied of the matters in section 74, the council must prepare a written report on the plan.
- (2) If the council has received submissions on the proposal, the council must—
  - (a) set out in the report the council's reasons for accepting or rejecting the submissions; and
  - (b) give a copy of the report to every person who made a submission.
- (3) The report must give the council's decision on the plan.

- (4) The council must give public notice—
- (a) stating the council’s decision on the plan; and
  - (b) stating where the plan resulting from the council’s decision can be read.

Section 75: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

**76 Application to Environment Court about plan**

- (1) This section applies to the plan resulting from the council’s decision under section 75(3).
- (2) The following matters may be the subject of an application to the Environment Court:
- (a) any aspect of the plan:
  - (b) whether the plan is inconsistent with the national policy direction:
  - (c) whether the process requirements for a plan in the national policy direction, if there were any, were complied with.
- (3) If consultation on the proposal for the plan was undertaken by way of public notification of the proposal and the receipt of submissions, a person who made a submission on the proposal may make an application to the Environment Court.
- (4) If consultation on the proposal was undertaken other than by way of public notification of the proposal and the receipt of submissions, the following persons may make an application to the Environment Court:
- (a) a person who participated in consultation during the preparation of the proposal and whose views were provided or recorded in writing:
  - (b) a person who participated in consultation on the proposal and whose views were provided or recorded in writing:
  - (c) a person who is likely to be affected by the plan and did not participate in consultation only because the person was not given an opportunity to participate.
- (5) The application must be made within 15 working days after the date of the public notice.
- (6) The application is made under section 291 of the Resource Management Act 1991 and regulations made under the Resource Management Act 1991.
- (7) The court must hold a public hearing on the application.
- (8) The court must—
- (a) dismiss the application; or
  - (b) direct the council to modify the plan, delete a provision from the plan, or insert a provision in the plan.

Section 76: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).