



Environmental
Protection Authority
Te Mana Rauhi Taiao

Cost Recovery Policy for Proposals of National Significance

**Part 6AA (Sections 140–149ZE)
of the Resource Management Act**

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Chapter 1: Introduction

The purpose of this report

1. Part 6AA of the Resource Management Act (the Act) provides the Minister for the Environment (the Minister) with powers to direct that proposals of national significance be referred to a board of inquiry or the Environment Court for a decision.
2. The purpose of this document is to outline the policy for recovering costs where matters are lodged with:
 - the Environmental Protection Authority (EPA)
 - a local authority and called in by the Minister under section 142 of the Act.
3. This document will guide those involved in decisions on proposals of national significance about who and what is to be charged, and enable those who may be charged costs to understand the basis on which the charges will be made.

Matter

4. ‘Matter’ is the term used for resource consent applications, or a request for a change to be made to a plan or a notice of requirement application.¹

Background

5. The Act allows for the costs of processes under Part 6AA of the Act to be recovered from the applicant. Section 149ZD of the Act allows for the relevant parties to recover their costs in processing applications of national significance.
6. Section 149ZD also provides criteria that should be taken into account when recovering costs under Part 6AA of the Act.
7. Under this policy, where costs are to be recovered they must also meet certain principles. These principles are described in Chapter 2.

The parties

8. Parties involved include:
 - the Minister (and in effect the Ministry for the Environment)
 - the EPA (an office within the Ministry for the Environment)
 - the applicant
 - local authorities, the Environment Court, a board of inquiry.

¹ The full definition of matter is provided in section 141 of the Act – see Appendix B.

9. This policy addresses the recovery of costs for both the Minister and EPA. These costs will be administered together.

Time and disbursements

10. Costs incurred consist of time and disbursements. 'Time' is the time taken to carry out the particular tasks that arise. More detail is provided on the time-related costs and means of calculating them in paragraph 19 below. 'Disbursements' are external costs and range from expert reports to printing and postal charges.

Establishing an understanding

11. Further explanation of this policy can be provided at early meetings with a potential applicant. An estimated budget can also be provided to help predict likely costs. The first few meetings will not be charged to the applicant.

Chapter 2: Criteria and principles

Statutory criteria

12. When recovering costs under Section 149ZD of the Act, the EPA and Minister must take into account the following criteria:
 - (a) the sole purpose is to recover the reasonable costs incurred in respect of the matter to which the costs relate
 - (b) the applicant should only be required to pay for costs to the extent that the benefit of the actions of the local authority, EPA, or Minister (as the case may be) to which the costs relate is obtained by the applicant as distinct from the community as a whole
 - (c) the extent to which any activity by the applicant reduces the cost to the local authority, EPA, or Minister (as the case may be) of carrying out any of its functions, powers, and duties.
13. Establishing reasonable costs is addressed in the principles below.
14. All the costs for processing resource consents and designations are considered to benefit the applicant. However, further consideration needs to be given to whether some costs relating to requests for plans, changing plans and heritage orders may benefit the community as a whole.
15. The EPA will consult with the applicant regularly about likely costs and discuss applying these statutory criteria in the specific circumstances of the matter. The applicant is welcome to discuss any cost-saving ideas with the EPA.
16. The Minister and EPA will take the above criteria into account before sending an invoice to an applicant.

Principles

17. In addition to the criteria, the principles set out below underpin this policy and guide applying these policies in specific instances. The principles can also be useful for informing applicants about likely costs or if they formally object under section 357B.²

Charging must be lawful

18. The Minister and EPA can only recover costs from an applicant that are allowed for under the Resource Management Act. Section 149ZD of the Act states the boundaries around these charges as follows:
 - The actual and reasonable costs incurred by the EPA in helping the applicant before a matter is lodged.

² A person can object to a requirement to pay costs incurred under any of subsections (2)–(4) of 149ZD.

- The actual and reasonable costs incurred by the EPA in exercising its functions and powers under Part 6AA of the Act, including the costs of secretarial and support services provided to a board of inquiry.
- The actual and reasonable costs of a board of inquiry appointed under Part 6AA of the Act.

Costs must be actual and reasonable

Establishing actual costs

19. Costs that have been incurred by the Minister and EPA in relation to a matter will be recovered from the applicant. Evidence of actual costs will be recorded in the following ways:
- EPA staff, and where appropriate other Ministry staff, will fill in weekly timesheets recording their time spent on a proposal of national significance. The timesheets will be signed off by the relevant manager and tracked against the proposal.
 - Staff hourly rates (provided in Appendix A) include general overhead costs. However, there are times when significant resourcing is required from Ministry support staff over and above what can be considered general support (eg, web team staff support during a hearing). In these instances the support staff will also record the additional hours spent on the proposal that are considered above general support.
 - The EPA or board may commission various reports and services to help them process a proposal. Contracts will be established for providing these reports and invoices will be paid on receipt of the deliverables.
 - Board of inquiry members will log their time spent on a proposal and provide evidence of any expenses incurred (eg, taxis or meals) to the EPA.
 - Hearing and pre-hearing costs, such as venues and transcription services, will be paid on receipt of invoices.
 - Other relevant disbursements will be based on invoices paid.

Establishing reasonable costs

20. All costs should be reasonable and relate to the processing of a particular proposal of national significance under Part 6AA of the Act.
21. The actual time taken for each task will be recorded and annotated to identify the nature of the activities undertaken. Additional time taken due to training new staff members or internal system faults that result in delays or duplication of effort will not be recorded.
22. To the extent that activities are not fully related to processing a matter, the EPA will discuss such activities, and cost recovery relating to them, with the applicant before undertaking them.

Costs should be transparent

23. It is important that costs are transparent. This is best achieved by:

- having the cost recovery policy publicly available
- providing an estimate of costs at an initial meeting, where the cost recovery policy can also be discussed with potential applicants
- describing clearly the basis on which costs are calculated, including clear descriptions for each invoiced task
- tracking accurately time spent and costs incurred throughout the process and providing invoices of costs regularly.

Costs should be predictable

24. It is also important that costs are predictable so that an applicant can obtain information on what they might be charged for. This can be achieved by:

- having the cost recovery policy publicly available
- providing estimates of likely costs on request, which should include a total, costs for major tasks and any assumptions behind the cost estimates
- providing revised estimates of costs before significant additional costs are incurred or where there are significant changes to previous estimates.

25. However, it is not always possible to estimate all costs in advance as the need for and the scope of tasks involved in processing a matter are likely to develop or change during the process.

No differentiation between processes

26. There will be no differentiation between the different ways a matter may come before the Minister. For example, an applicant will not face more or less costs because they have requested a ministerial intervention.

27. Likewise, there will be no differentiation in the types of matters (ie, the same principles apply whatever the matter applied for).

Chapter 3: Cost recovery policies

Pre-lodgment consultation

28. Consultation with the EPA should begin well before an application is lodged. Rigorous processing requirements and timelines require the EPA to ensure applications are complete, fully supported and ready to be processed before they are lodged. To achieve this early and substantial pre-lodgment engagement is required.
29. Pre-lodgment meetings will ensure the applicant is aware of the EPA processes and EPA staff are familiar with the matter and relevant issues.
30. The Act allows for the EPA to recover costs incurred from helping an applicant before a matter is lodged.³
31. The first initial meeting(s) before an applicant lodges an application should focus on advising the applicant about EPA processes and possible timeframes. The EPA will not recover the costs of these preliminary meetings where the EPA is providing initial process information and guidance.
32. Following the first few meetings, ongoing meetings with the applicant and relevant local authorities will focus on the specific details of the application. These meetings will allow EPA staff to assess the application and to guide efficient preparation and processing. The EPA may also begin to review or draft some documents prior to lodgment. Costs incurred at this stage will be recovered from the applicant as they are directly related to the efficient processing of the application.

Cost recovery policy

Initial meetings with an applicant, where the EPA is providing advice, will not be cost recovered from the applicant.

Following initial process meetings all actual and reasonable costs will be recovered from the applicant for the work undertaken by the EPA to prepare for an application before a matter is lodged.

Minister's consideration

33. A matter may come before the Minister for a decision in one of two ways. These are detailed below.

³ Section 149ZD(2) – see Appendix B.

Matter lodged with the EPA⁴

34. If a matter is lodged directly with the EPA, the EPA must recommend a course of action to the Minister within 20 working days, unless further information is requested.
35. Likely costs during this stage include staff time in assessing whether the application is complete, consulting with relevant council staff on the application, and possibly contracting council staff or consultants to help assess the application.
36. The costs incurred in providing a recommendation to the Minister will be recovered from the applicant.

Cost recovery policy

All costs incurred by the EPA in processing an application and in providing a recommendation to the Minister will be recovered from the applicant.

Minister considers a matter lodged with a local authority⁵

37. The Minister at his/her own initiative may make a direction about a matter that has been lodged with a local authority. The Minister may also receive a request from the applicant or local authority to make a direction about a matter that has been lodged with the local authority.
38. The local authority application and processing fees will apply and the local authority will recover costs directly from the applicant as per its charging policies.
39. The EPA is not required to undertake any assessments at this point and therefore there is no cost recovery at this stage. The Ministry also may provide advice to the Minister at this stage. However, these costs will not be charged to the applicant.

Cost recovery policy

Not applicable. The Ministry may provide advice to the Minister at this stage. These costs will not be charged to the applicant.

Matter is referred to a board of inquiry or the Environment Court

40. The following policies apply if the Minister directs that a matter be referred to a board of inquiry or the Environment Court for a decision.

⁴ Section 145 – see Appendix B.

⁵ Section 142 (1)(a)&(b) – see Appendix B.

Notification, local authority report and information requests

41. The EPA must serve the Minister's direction on the local authority and applicant. The EPA must also give public notice of the Minister's direction and seek submissions.⁶ The submissions are then referred to a board of inquiry or to the Environment Court.
42. The costs of serving the direction, public notification, providing information about the proposal and of receiving and handling the submissions will be recovered from the applicant.
43. The EPA is also required to commission a report from the local authority on the major planning issues relating to the matter.⁷ The EPA's costs in commissioning and distributing the report will be recovered from the applicant.
44. The local authority's costs in producing the report will be recovered from the applicant if the EPA is charged these costs. Alternatively, the local authority may recover the costs from the applicant directly.⁸
45. Any costs incurred by the EPA in requesting further information will also be recovered.⁹

Cost recovery policy

All costs of serving the direction, public notification, providing information about the proposal and of receiving and processing submissions will be recovered from the applicant.

All EPA costs incurred in commissioning and distributing the local authority report and requests for further information will be recovered from the applicant. This will include the local authority costs if they are charged to the EPA.

Board of inquiry

46. If the Minister refers an application to a board of inquiry to decide the matter, a board will be appointed. The Minister is entitled to recover the costs incurred in appointing the board.
47. The EPA will provide administrative support to the board of inquiry. The costs of a board of inquiry and the EPA in exercising its powers under Part 6AA of the Act will be recovered from the applicant.
48. They may include, for example:
 - board of inquiry members' time and expenses in assessing the matter, attending board meetings to discuss processes and procedures, assessing information requirements, reading evidence and reports, and writing draft and final reports
 - staff or consultants servicing the board or preparing reports for it

⁶ Section 149C.

⁷ Section 149G(3).

⁸ As allowed for under section 149ZD(1) – see Appendix B.

⁹ Section 149.

- hearing costs, including venue, members' time, staff and consultants' time, transcription and related disbursements, and accommodation and catering
- public notice of and publication and distribution of draft and final reports.

Cost recovery policy

All costs incurred by the Minister in appointing the board will be recovered.

All costs incurred by the EPA or board of inquiry in exercising their powers will be recovered from the applicant.

Referral to the Environment Court

49. The Minister may direct the matter to be decided by the Environment Court. In this case, the EPA still gives public notice and calls for submissions and paragraphs 41 to 45 above will be relevant.
50. However, once the Court process begins, the Court will decide on who should bear the costs of the process. Section 285 of the Act requires the Court to apply a presumption that the applicant will bear the costs of this process. However, the Court has discretion about costs and these matters fall outside the scope of this policy.

Cost recovery policy

There is no subsequent cost recovery from an applicant under this policy where a matter is referred by the Minister to the Environment Court. (The Court has the discretion to award costs against the applicant or other parties.)

Matter is referred to a local authority

51. If the Minister directs that a matter lodged with the EPA be referred to a local authority, the local authority will then process the matter. The local authority will be entitled to impose charges and recover additional costs and this falls outside the scope of this policy.
52. The EPA would have incurred costs in pre-lodgment and in providing a recommendation to the Minister; these costs will be recovered according to the relevant policies in paragraphs 28 to 39 above.

Cost recovery policy

There is no subsequent cost recovery from an applicant under this policy where a matter is referred to the local authority. (The local authority's own procedures and policies will still apply to the applicant.)

Other options for ministerial intervention

53. The Minister may intervene in a matter at any time by exercising one or more of the following powers:

- making a submission on the matter for the Crown
- appointing a project coordinator
- directing the relevant local authorities to hold a joint hearing
- appointing an additional hearings commissioner.

54. The Act does not allow for cost recovery for these intervention powers.

Cost recovery policy

There will be no cost recovery for the Minister's exercise of these intervention powers.

Chapter 4: Application of policy

55. The Minister and EPA have discretion about cost recovery. This allows the specific circumstances of each case to be recognised.
56. The criteria and principles described in Chapter 2 can guide that discretion. The policy outlined in this report gives a framework that sees tasks and costs charged where they should be, and in a way that meets various principles.
57. Applicants can object to the costs they are being charged for under this policy. Section 149ZD of the Act allows for objections under section 357B.
58. Further explanatory information on the reasons for the costs will also be provided on request from the EPA. Formal objections against costs charged by the EPA or the Minister should be made in writing to the EPA.
59. Further information on the process for objections will be made available. The EPA will liaise with the objector directly on a case-by-case basis.

Appendices

Appendix A: Charge-out rates for EPA staff time

Allocation basis

The rates below are based on the average salary for each category of employee, plus overhead costs (comprising personnel costs for Ministry support staff, plus corporate overhead costs apportioned across all non-support staff), divided by an average of 1365 working hours per staff member per annum.¹⁰ The allocation basis and the way the calculation is undertaken meet Treasury requirements.

Current rates

The rates for relevant categories of staff are set out below. The rates will be adjusted periodically.

Category of staff	Hourly rate
Business Administrator	\$ 79.11
Analyst	\$ 88.36
Senior Analyst	\$ 112.40
Manager	\$ 135.33
Director	\$155.67

Disbursements will be recovered at cost.
Rates exclude GST.

¹⁰ Where working hours excludes leave, sick leave, training and time required for administrative and miscellaneous tasks.

Appendix B: Relevant sections of the Resource Management Act 1991

Section 141 Interpretation

141 Interpretation

In this Part, unless the context requires another meaning,—

applicant means—

- (a) the person who lodged the application, for a matter that is an application for—
 - (i) a resource consent; or
 - (ii) a change to or cancellation of the conditions of a resource consent:
- (b) the person making the request, for a matter that is a request for a change to a plan—
 - (i) including a request that has been accepted by a board of inquiry under section 149M or the local authority under clause 25(2)(b) of Schedule 1; but
 - (ii) excluding a request that has been adopted by the local authority:
- (c) the person making the request, for a matter that is a request for the preparation of a regional plan—
 - (i) including a request that has been accepted by a board of inquiry under section 149M or the local authority under clause 25(2)(b) of Schedule 1; but
 - (ii) excluding a request that has been adopted by the local authority:
- (d) the requiring authority that lodged the notice of requirement, for a matter that is a notice of requirement for a designation or to alter a designation:
- (e) the heritage protection authority that lodged the notice of requirement, for a matter that is a notice of requirement for a heritage order or to alter a heritage order:
- (f) the local authority for a matter that is—
 - (i) a change to its plan (including a request for a change that has been adopted by the local authority); or
 - (ii) a request for the preparation of a regional plan that has been adopted by a local authority; or
 - (iii) a variation to its proposed plan

local authority means,—

- (a) the consent authority that would process an application lodged under section 88 or 127 or, if an application is lodged with the EPA, the consent authority that would have been responsible for processing the application if it had been lodged under section 88 or 127, for a matter that is an application for a resource consent or for a change to or cancellation of the conditions of a resource consent:
- (b) the territorial authority responsible for the district plan or proposed district plan, for a matter that is a request for a change to a district plan, a change to a district plan, or a variation to a proposed district plan:
- (c) the regional council responsible for the regional plan or proposed regional plan, for a matter that is a request for the preparation of a regional plan, a request for a change to a regional plan, a change to a regional plan, or a variation to a proposed regional plan:
- (d) the territorial authority responsible for dealing with a notice of requirement given under Part 8 or, if a notice of requirement is lodged with the EPA, the territorial authority that would have been responsible for dealing with the notice if it had been given under Part 8, for a matter that is a notice of requirement

matter means—

- (a) an application for a resource consent; or
- (b) an application for a change to or cancellation of the conditions of a resource consent; or
- (c) a request for the preparation of a regional plan (including a request that has been accepted or adopted in whole or in part by a local authority); or
- (d) a request for a change to a plan (including a request that has been accepted or adopted in whole or in part by a local authority); or
- (e) a change to a plan; or
- (f) a variation to a proposed plan; or
- (g) a notice of requirement for a designation; or
- (h) a notice of requirement for a heritage order; or
- (i) a notice of requirement to alter a designation or a heritage order.

Section 142 – Minister may call in matter

142 Minister may call in matter that is or is part of proposal of national significance

- (1) This section applies if a matter has been lodged with a local authority and—
 - (a) the Minister, at his or her own initiative, decides to apply this section; or
 - (b) the Minister receives a request from an applicant or a local authority to make a direction for the matter under subsection (2).
- (2) If 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 a direction to—
 - (a) refer the matter to a board of inquiry for decision; or
 - (b) refer the matter to the Environment Court for decision.
- (3) 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 a structure, feature, place, or area of national significance; or
 - (d) affects or is likely to affect or is relevant to New Zealand's international obligations to the global environment; or
 - (e) results or is likely to result in or contribute to significant or irreversible changes to the environment (including the global environment); or
 - (f) involves or is likely to involve technology, processes, or methods that are new to New Zealand and that may affect its environment; or
 - (g) is or is likely to be significant in terms of section 8; or
 - (h) will assist the Crown in fulfilling its public health, welfare, security, or safety obligations or functions; or
 - (i) affects or is likely to affect more than 1 region or district; or
 - (j) relates to a network utility operation that extends or is proposed to extend to more than 1 district or region.
- (4) In deciding whether to make a direction under subsection (2), the Minister must have regard to—
 - (a) the views of the applicant and the local authority; and
 - (b) the capacity of the local authority to process the matter.
- (5) A direction made under subsection (2) must—
 - (a) be in writing and be signed by the Minister; and
 - (b) state the Minister's reasons for making the direction.
- (6) If a local authority or an applicant requests the Minister to call in a matter (by making a direction under subsection (2)) and the Minister decides not to do so, the EPA must give notice of the Minister's decision to the local authority and the applicant.

Section 145 – Matter lodged with EPA

145 Matter lodged with EPA

- (1) A person may lodge 1 or more of the following matters with the EPA:
 - (a) an application for a resource consent;
 - (b) a request for the preparation of a regional plan (other than a regional coastal plan);
 - (c) a request for a change to a plan.
- (2) The holder of a resource consent may lodge an application for a change to or cancellation of the conditions of the resource consent with the EPA.
- (3) A requiring authority may lodge a notice of requirement for a designation or to alter a designation with the EPA.
- (4) A heritage protection authority may lodge a notice of requirement for a heritage order or to alter a heritage order with the EPA.
- (5) If the matter is an application for a resource consent, section 88 applies, except that—
 - (a) every reference in that section to a consent authority must be read as a reference to the EPA; and
 - (b) the applicant has no right of objection under section 88(5) if the EPA determines that the application is incomplete under section 88(3).
- (6) If the matter is an application for a change to or cancellation of the conditions of a resource consent,—
 - (a) section 127(1) applies, except that every reference in that section to a consent authority must be read as a reference to the EPA; and
 - (b) section 88 applies, except that—
 - (i) the application must be treated as if it were an application for a resource consent for a discretionary activity; and
 - (ii) every reference in that section to a consent authority, a resource consent, and the effects of the activity must be read as a reference to the EPA, the change or cancellation of the conditions, and the effects of the change or cancellation, respectively; and
 - (iii) the applicant has no right of objection under section 88(5) if the EPA determines that the application is incomplete under section 88(3).
- (7) If the matter is a notice of requirement for a designation or to alter a designation, section 168 applies, except that every reference in that section to a territorial authority must be read as a reference to the EPA.
- (8) If the matter is a notice of requirement for a heritage order or to alter a heritage order, section 189 applies, except that every reference in that section to a territorial authority must be read as a reference to the EPA.
- (9) If the matter is a request for a change to a plan or the preparation of a regional plan, clause 22 of Schedule 1 applies, except that every reference in that clause to a local authority must be read as a reference to the EPA.
- (10) A person who lodges a matter with the EPA under **subsections (1) to (4)** must serve the local authority with notice of the matter and of its lodging with the EPA under this section.
- (11) A matter may not be lodged with the EPA under this section if—
 - (a) the same matter has been lodged with a local authority; and
 - (b) the applicant or the local authority has requested that the Minister call in the matter.

Section 149ZD – Costs of process

149ZD Costs of processes under this Part recoverable from applicant

- (1) A local authority may recover from an applicant the actual and reasonable costs incurred by the local authority in complying with this Part.
- (2) The EPA may recover from a person the actual and reasonable costs incurred by the EPA in providing assistance to the person prior to a matter being lodged with the EPA (whether or not the matter is subsequently lodged).
- (3) The EPA may recover from an applicant the actual and reasonable costs incurred by the EPA in exercising its functions and powers under this Part (including the costs in respect of secretarial and support services provided to a board of inquiry by the EPA).
- (4) The Minister may recover from an applicant the actual and reasonable costs incurred in relation to a board of inquiry appointed under this Part.
- (5) The local authority, EPA, or Minister must, upon request by an applicant, provide an estimate of the costs likely to be recovered under this section.
- (6) When recovering costs under this section, the local authority, EPA, or Minister must have regard to the following criteria:
 - (a) the sole purpose is to recover the reasonable costs incurred in respect of the matter to which the costs relate:
 - (b) the applicant should only be required to pay for costs to the extent that the benefit of the actions of the local authority, EPA, or Minister (as the case may be) to which the costs relate is obtained by the applicant as distinct from the community as a whole:
 - (c) the extent to which any activity by the applicant reduces the cost to the local authority, EPA, or Minister (as the case may be) of carrying out any of its functions, powers, and duties.
- (7) A person may object under section 357B to a requirement to pay costs under any of **subsections (1) to (4)**.

Section 149ZE – Allowances and expenses

149ZE Remuneration, allowances, and expenses of boards of inquiry

The Fees and Travelling Allowances Act 1951 applies to a board of inquiry appointed under section 149J as follows:

- (a) the board is a statutory board within the meaning of the Act; and
- (b) a member of the board may be paid the following, out of money appropriated by Parliament for the purpose, if the Minister so directs:
 - (i) remuneration by way of fees, salary, or allowances under the Act; and
 - (ii) travelling allowances and travelling expenses under the Act for time spent travelling in the service of the board; and
- (c) the Act applies to payments under paragraph (b).