

ERMA NEW ZEALAND

POLICY ON CONSULTATION & INTERACTION

Under Part V of the
Hazardous Substances and New Organisms Act 1996

April 1999

PREFACE

This document outlines the Authority's policy and procedures for consultation and interaction with stakeholders for the purpose of decision-making under Part V of the Hazardous Substances and New Organisms Act 1996.

The HSNO Act requires the Authority to consult with specified parties in the process of evaluating applications for hazardous substances and new organisms and there is a general requirement to make informed decisions. The Act also provides significant opportunities for public involvement. The Authority expects there will be considerable interest in many of the applications it receives. We look forward to working with a range of external agencies and interested people to identify and assess the issues involved.

This policy document has been produced to explain the approach the Authority takes when seeking information and interacting with external organisations and individuals during the statutory process of considering applications.

It is aimed at clarifying the opportunities and limits for input under the Act. Our hope is that by explaining the 'ground rules', everyone will have a clear idea of what the process entails, when they will be notified and how they can have a say.

W J Falconer



Chairman
Environmental Risk Management Authority

April 1999

CONTENTS

	Page
Preface	
1. Introduction	1
2. General Objectives and Standards for Consultation and Interaction with Stakeholders	3
3. Overall Structure for Consultation and Interactions by ERMA New Zealand	4
4. Interactions under Part V of the HSNO Act	5
5. Consultation by applicants	11
6. Consultation with Māori.	12

I. INTRODUCTION

BACKGROUND AND PURPOSE

The enactment of the Hazardous Substances and New Organisms Act 1996 and the establishment of the Environmental Risk Management Authority arose from a level of public and political concern about the management of hazardous substances and new organisms in New Zealand.

The Minister for the Environment has stated* that the Government's intentions in passing the Act were:

- to take account of the environment in managing hazardous substances;
- to update the process for introducing new organisms; and
- to provide the tools for the community to control genetic manipulation.

* [Hon. Simon Upton, address to the ERMA New Zealand/IIR Conference on Environmental Risk Management, Auckland June 1998.]

These new institutional arrangements allow for a significant level of public involvement in a formal decision-making process.

The new statutory framework also provides for a more professional approach to environmental risk management.

The practice of environmental risk management has been developed internationally. It is not simply a set of rules, but rather a process - with a series of steps including consultation and interaction with stakeholder groups. ERMA New Zealand will be following professionally recognised practice in its decision-making and will be encouraging applicants to do the same in preparing their applications.

Environmental risk management involves identifying how risks to the environment and third parties can be managed. This process requires new information - often not previously obtained by organisations.

This document has been developed to describe the approach and procedures that ERMA New Zealand will follow when it consults and when it interacts with external organisations and individuals through the statutory processes under Part V of the HSNO Act.

A separate document has been produced which describes ERMA New Zealand's approach to consultation on matters outside the statutory Part V process.

THE SCOPE OF CONSULTATION

To consult means: "to have deliberations with someone, to seek information or advice from a person or to take their feelings and interests into consideration." [Concise Oxford Dictionary]

Consultation is a two way process which provides access to information and an opportunity to comment. Consultation provides for external contributions to decision-making, from a range of sources.

In the context of Part V decision-making, the basic reason for consulting and interacting with stakeholders is to contribute to high quality and informed decision-making.

By gathering information, expertise and comment from a range of stakeholders, a decision-maker will have a better picture of the issues. Consultation can improve the quality of information on which a decision is based.

Consultation involves seeking information from external sources and is not to be confused with “public awareness” or “communications” programmes.

Public awareness is aimed at educating the public or specified groups about certain issues or practices, increasing understanding and, potentially, changing behaviour.

Communications, or public relations, involves giving people targeted information and highlighting key messages from an organisation, to position it effectively with external audiences.

The experience of decision-making and consultation by public agencies indicates that it is important to define, at the beginning, who is making the decision and to what extent external comments will influence the final outcome. Broadly, the approaches are:

i. No influence

The public authority makes the decision without external comments. The authority says it is making the decision and announces the final result.

ii. Limited influence

The public authority makes the final decision. But in the process, other information or expertise is sought or received. While external views are taken into account, the final decision is still made by the public authority. It is communicated to all parties, showing how their comments were considered and how the outcome was reached.

iii. Shared decision-making

The public authority may not have all the answers to make the decision itself. The decision-making role is shared with other parties. The final decision is one the parties reach together. This may include a ‘consensus’ - in which people accept a final position even if they do not agree with it or it is not their ideal.

iv. Delegation

The public authority decides it does not need to take the decision at all. The power to decide is given to another group.

In its role under Part V of the Act, the Authority will be operating broadly using the approach in II above but with some modifications as set out in following sections. Under Section 19 of the Act, the Authority also has the power to delegate its decision-making role for some functions.

An important point to note is that wide external input will only be sought for notified applications. For non-notified applications, external input will only be sought where the staff of ERMA New Zealand or the Authority consider that to be necessary to enable an informed decision to be made.

2. GENERAL OBJECTIVES AND STANDARDS FOR CONSULTATION AND INTERACTION WITH STAKEHOLDERS FOR PART V DECISION-MAKING

OBJECTIVES

ERMA New Zealand aims to interact with stakeholders and conduct consultation in a way that is in accordance with the requirements of the Act and enhances its operation and its reputation.

Specific objectives are to:

1. enable accurate, quality information to be provided to the Authority to achieve the informed consideration of applications under Part V of the HSNO Act; and
2. ensure that all organisations and individuals with an interest in particular applications have an appropriate opportunity to interact and present information relevant to the application.

STANDARDS

In obtaining input to Part V decision-making ERMA New Zealand will aim to achieve the following standards of performance:

1. undertake consultation that is relevant and appropriate to the statutory processes under Part V of the HSNO Act;
2. indicate to stakeholders at the outset the nature of interaction and consultation processes, the opportunities for contributing and the way in which the final decision will be made;
3. provide adequate information for people to understand the proposal and take part in the Part V decision-making process, while at the same time protecting confidential information;
4. ensure that there are effective opportunities for involvement by Māori;
5. fairly consider all submissions received and show respect for submitters and their genuinely held views and beliefs;
6. effectively communicate the decision, including the reasons for the decision; and
7. monitor the overall effectiveness of ERMA New Zealand's processes for providing input to Part V decision-making.

3. OVERALL STRUCTURE FOR CONSULTATION AND INTERACTION BY ERMA NEW ZEALAND

The primary role of the Environmental Risk Management Authority is to consider and make decisions on applications for hazardous substances and new organisms under Part V of the Hazardous Substances and New Organisms Act 1996.

The consideration of applications is a formal, statutory function. In this role, the Authority acts as a quasi-judicial body, with powers similar to those of court judges. The opportunities for external comment are formally set down in the Act, including procedures for notified and non-notified applications. The Authority follows a prescribed statutory process to acquire information and makes its decisions. This includes the statutory process of publicly notifying relevant applications, receiving submissions and holding hearings. Decisions are made on the basis of the Act and the Methodology (required under Section 9 of the Act and published in August 1998).

To effectively evaluate applications, the Authority relies primarily on the staff of ERMA New Zealand to provide expert review of both the information provided and the need for any additional information. Staff prepare an evaluation and review report for the Authority. This audits the information supplied by applicants and summarises any submissions received on notified applications. In preparing that report, staff may also seek information and advice from other external sources. ERMA New Zealand staff may also arrange for the parties to an application to meet at an early stage to resolve technical issues. This may reduce the time and cost of discussing these issues in a formal hearing. In order to preserve the formal role of the Authority, no Authority members are involved in pre hearing meetings.

The table below summarises the respective roles of the Authority, ERMA New Zealand staff and applicants in providing input to and carrying out the Part V decision-making process.

ROLES: THE PRIMARY ROLE IS IDENTIFIED WITH AN "X"

PROCESS	AUTHORITY	STAFF	APPLICANTS	OTHER AGENCIES
Identify/assess risks			x	
Public notification		x		
Statutory notification		x		
General public information		x		
Statutory consultation		x		
Pre application meetings		x	x	
Submissions received/analysed		x		
Prepare evaluation report		x		
Hearings	x			
Consider and decide	x			
Notify decision		x		
Monitoring of enforcement	x			
Enforcement				x

4. INTERACTIONS UNDER PART V OF THE HSNO ACT

OUTLINE OF THE PART V APPLICATION PROCESS

The application process includes notified and non-notified applications. It includes the following steps:

1. Early contact and discussion with potential applicants and key respondents, by staff.
2. If appropriate, convening by staff of pre application discussions between the prospective applicant and other interested parties.
3. Statutory public notification of those applications which must be notified under the Act.
4. Statutory notification to specified agencies, as required under S.53.
5. Non-statutory notice to stakeholders with an interest in the application.
6. Calling for submissions for notified applications.
7. Consultation with government agencies, as required under S.58, by the staff.
8. Evaluation and review of the information provided by the applicant in their application and by submitters in submissions, by staff and/or external experts
9. Preparation of an evaluation and review report by the staff, which includes an audit of the application and a summary of submissions.
10. If appropriate, convening by the staff of pre-hearing discussions with the applicant and submitters to clarify issues and help resolve differences of interpretation in the information.
11. Holding of any public hearings by The Authority.
12. Consideration of the application by the Authority or a standing/special committee [or delegated as provided for under the Act].
13. Decision made by the Authority, or by delegated authority as provided under the Act.
14. Notification of the decision to the parties and the public.
15. Liaison by staff with those agencies responsible for monitoring and enforcing decisions of The Authority.

An overview of the process for each type of application, including interaction with external parties, is set out in detail below.

WHO, WHEN AND HOW - THE PART V PROCESS

There is interaction between ERMA New Zealand and external stakeholders at a number of points throughout the statutory application process, under Part V of the HSNO Act. These stakeholders especially include:

- Applicants;
- Prospective submitters; and
- The Minister for the Environment, Government departments, Crown entities, Regional Councils and other stakeholders specifically identified in the Act.

Most of the interaction follows statutory processes set down under Part V of the Act. In addition, there are other non-statutory interactions e.g. making information available on the website or keeping enforcement agencies up to date with decisions.

The sections below indicate who is involved and how.

STATUTORY NOTIFICATION TO GOVERNMENT AGENCIES

Under S.53, the Authority must notify the following agencies when certain types of applications are received:

1. The Minister for the Environment.
2. Any Government Departments or Crown entities that the Authority believes are likely to have an interest in the application. This will, for example, always include Te Puni Kōkiri when an application has particular significance for Māori.
3. For new organisms, the Department of Conservation and any Regional Council that the Authority believes is likely to have an interest in the application, (for example, if the application is for field trials in a particular area).

The ERMA New Zealand database includes a list of those agencies to be notified under Section 53. This is done formally with the agencies concerned when an application is received, by providing the Executive Summary of the application and notice of deadlines for comment.

ERMA New Zealand also liaises with agencies responsible for any parallel approvals that may be needed to harmonise the approval processes under related legislation, e.g. Biosecurity Act, ACVM Act.

STATUTORY PUBLIC NOTIFICATION

The Authority is required to publicly notify the following types of applications:

- a. to import for release or manufacture for release any hazardous substance (S.28);**
- b. to import for release any new organism, if the application was not approved under the rapid assessment provisions (S.34);**
- c. to release any new organism from containment (S.34);**
- d. to field test a genetically modified organism (S.40); and**
- e. to import, release or use a hazardous substance/new organism in an emergency (S.47).**

In addition, the Authority may also publicly notify an application to develop a GMO in containment if it considers there is likely to be significant public interest.

Statutory public notification occurs by placing a public notice in the 4 major daily newspapers. The public notice briefly outlines the application, provides general guidance on making submissions and indicates that people can see the full application text at the ERMA New Zealand offices and a summary of the application on the register/website.

NON-STATUTORY NOTIFICATION

Interested Parties and Enforcement Agencies

ERMA New Zealand has a national database of some 6,000 organisations and individuals with an interest in the work of the Authority. This general group receives the quarterly newsletter Perspective. Of this list, some 900 are also marked as Key Stakeholders who are sent more detailed information, such as The Bulletin which is produced ten times a year, gazetting all applications and decisions of the Authority. In addition, some stakeholders have registered an interest in particular types of application and are sent information about those.

Those agencies with enforcement roles under HSNO need to be kept informed of decisions made, for which they may have to take responsibility. This is done by adding them to the Application Interest list and the Key Stakeholders mailing list. They will therefore be informed for key applications and through The Bulletin. In addition, for any applications with special local implications, the Authority will advise the relevant territorial local Authority that an application for a hazardous substance or a new organism has been received.

Overseas Agencies

ERMA New Zealand staff maintains working relationships with a number of relevant overseas agencies, particularly those in Australia. In addition, where an application has international significance, the Authority will advise the Ministry of Foreign Affairs and Trade.

GENERAL PUBLIC INFORMATION ABOUT NOTIFIED APPLICATIONS

The general public is kept informed through the following communication channels:

- recording of all applications on the ERMA New Zealand public register;
- providing access to the register at the ERMA New Zealand offices and via the website at www.ermanz.govt.nz;
- recording all applications and decisions in The Bulletin, an official record of applications. The Bulletin is distributed to key stakeholders;
- for applications of major public interest, publishing information in Perspective, the quarterly newsletter; and
- making available on request, the Executive Summary of the application, which outlines the proposal for a general readership.

The Executive Summary is available on request at no charge and on the website. The full application material is available for inspection at the ERMA New Zealand office and can be made available on request, on a cost recovery basis.

Public information provided through any of the above channels will not include any part of an application which has been classed as commercially sensitive under Section 57(2) (b) (ii) of the Act.

PREPARATION OF ERMA NEW ZEALAND EVALUATION AND REVIEW (E&R) REPORT

The Methodology places considerable emphasis on the need for applicants to identify and assess risks, costs and benefits. It is in the interest of applicants to assemble the necessary information and to consult with the appropriate parties to achieve this.

When the application is forwarded to the Authority for consideration, it will be accompanied by an E and R report prepared by ERMA New Zealand staff. In the process of preparing this report, staff may need to gather additional information. In the first instance, this is sought from the applicant but it may be necessary to contract in advice from external experts. The purpose is to acquire the specialised information necessary to enable the Authority to effectively consider the application - including the scientific, ecological, economic, cultural and social information required.

The primary purpose of the E and R report is to audit and review the information gathered together by applicants and submitters. In addition, the report summarises the submissions received from all external parties. The full text of submissions is available for Authority members to read.

The E and R report for a notified application is distributed to the parties. The 'parties' include: the applicant, submitters, government and other agencies with a statutory role in the process or a role in parallel approvals or some other particular interest in the matter.

It is available to other interested people on request on a cost recovery basis.

PRE HEARING MEETINGS

If the parties agree, ERMA New Zealand may convene a pre-hearing meeting of the parties to an application.

Pre hearing meetings are conducted prior to the formal hearing to identify and clarify technical issues and information. They can be initiated if the Authority considers there may be some advantage in sorting issues out in an informal setting e.g. getting agreement on technical data, rather than using time in the formal hearing process to determine this.

NOTIFICATION OF HEARINGS

Any person who makes a submission may request a hearing and if so a hearing must be held. The Authority may also decide to hold a hearing if it believes it would be appropriate for the application concerned. The applicant and all submitters will be notified of the hearing.

General information about hearings is available on the public register, on the website and in The Bulletin.

HEARINGS

Hearings are conducted in public and are generally held in Wellington. Parties to the application make presentations to the decision-making committee. Other people are able to attend as observers. Detailed procedures for hearings are outlined in a separate publication, ERMA New Zealand Quick Guide Number 8.

NOTIFICATION OF DECISIONS

Under the Act, all decisions made by the Authority are released in writing, including the reasons for the decision and any classifications or controls.

The applicant and every person who made a submission is given the full Decision. The full text is available for inspection at the ERMA New Zealand offices and is available on request, on a cost recovery basis.

A public notice to announce the Decision and say briefly what was decided, is placed in the major daily newspapers, which will indicate where any person can see the full text.

The notice of the Decision is also posted on the public registers and is available through the ERMA New Zealand website. It is also recorded in the Bulletin.

NOTIFICATION OF DECISIONS TO ENFORCEMENT AGENCIES

After an application has been approved, a number of agencies may have responsibility for monitoring compliance with the decision and any conditions, including:

MAF	OSH
Commerce	Land Transport Safety
Maritime Safety	Police
Civil Aviation	Health
Territorial local authorities	

Enforcement agencies are kept informed of decisions through the distribution of the Bulletin. In addition, where appropriate, ERMA New Zealand will contact the enforcement agency concerned.

APPLICATIONS MADE UNDER DELEGATED AUTHORITY

Under Section 19 of the Act, the Authority may delegate some of its decision - making functions. Decisions on low risk genetically modified organisms in containment can be rapidly assessed and do not have to be publicly notified. The Authority has delegated these decisions to institutions with Institutional BioSafety Committees [IBSCs], such as universities and research organisations.

There is no specific requirement for IBSCs to consult, but under the Act, they are required to make informed decisions. The IBSC's receive, consider and make decisions on those categories of applications for which they have delegated authority. These categories are specified in the regulations. Within two weeks of making the decision, the IBSC sends a list to the Authority of applications received and decisions made.

The Authority generally monitors the operation of this delegated function, including conducting an audit of IBSC's. All decisions under delegated authority are also publicly notified.

It is possible for decisions on the importation of new organisms to be made by rapid assessment (Section 35 of the Act). The Authority has delegated this decision-making power to the Chief Executive of ERMA New Zealand. Applications being considered under Section 35 are also not notified.

The Authority does place the application and decision on the Public Register. The Authority will also publicly notify the decision and it is carried in the next issue of The Bulletin.

For further detail on Delegations for Rapid Assessment see Quick Guide Number 10.

5. CONSULTATION BY APPLICANTS

Depending on the nature and scale of the application, applicants may need to consult with relevant stakeholders - but only as necessary to produce adequate information with their application.

Applicants are asked to identify the potential public health and safety, ecological, economic, social and cultural effects of their proposal. They are required to assess significant risks flowing from these effects. In order to identify and assess the risks, it will be important that applicants talk with the right people

Many applications will require minimal consultation with stakeholder groups, if the significance of the potential risks is low. However, for applications with high potential risks, it will be in the interest of the applicant to do a more thorough consultation.

The purpose of the consultation should be made clear. Applicants should be consulting to obtain information on the potential effects of the application and in order to identify any steps they can take to avoid or manage the risks.

Applicants, especially those with complex or controversial proposals, will need to make a clear distinction between:

- a. consultation undertaken for the purpose of risk assessment and preparation of the application to ERMA New Zealand
- b. public information and relationships developed as part of participating in Part V processes e.g. contact with respondents in the pre hearing phase and
- c. general public relations strategies, to meet any corporate objectives of the organisation.

6. CONSULTATION WITH MĀORI

HSNO ACT REQUIREMENTS

All persons exercising functions, powers and duties under the HSNO Act have to take into account “the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, valued flora and fauna and other taonga”.

All persons must further, take into account the “principles of the Treaty of Waitangi”.

The principles of the Treaty relevant to the work of the Authority include:

- The duty to act reasonably and in good faith.
- The requirement to make informed decisions.
- The duty to actively protect Māori interests.

CONSULTATION WITH MĀORI ON PART V APPLICATIONS

The Authority has established a Māori advisory Committee, Ngā Kaihautu Tikanga Taiao. The Authority seeks advice from Ngā Kaihautu Tikanga Taiao on Part V applications and on general policy or other proposals.

While Ngā Kaihautu Tikanga Taiao provides expert advice, it has not been established to represent the views of Māori. Māori can make their views known directly to the Authority using the general avenues for stakeholder comment, as outlined in section 4 above.

The Authority advises Ngā Kaihautu Tikanga Taiao of all applications received which may involve significant risks to Māori interests. At present, all notified applications are going to Ngā Kaihautu Tikanga Taiao. The Authority is establishing a process to identify which types of applications and issues are of particular significance for Māori. This will enable applicants in future to identify those applications with particular implications for Māori cultural values and the Treaty of Waitangi, and will enable applications with little or no risk to be screened out.

As part of the Evaluation and Review process, ERMA New Zealand staff may seek further information from the applicant, or elsewhere, on issues of significance to Māori, if there is insufficient information in the application.

The Authority takes advice on the application from Ngā Kaihautu Tikanga Taiao but the Authority makes the final decision. However, on occasions where the application has particular significance to Māori or in terms of the Treaty of Waitangi, the Authority may include on the decision-making committee persons with particular knowledge or expertise in Māori issues. Members of Ngā Kaihautu Tikanga Taiao may be appointed by the Authority to serve on such committees.

The Authority advises the general Māori community about applications received through the public notification process and other non-statutory processes, as outlined above.

In addition, iwi and other Māori organisations and individuals on the Application Interest List are notified of relevant applications. A wide range of individuals and organisations will also have information about applications by being on the mailing list for The Bulletin and Perspective.

CONSULTATION BY APPLICANTS WITH MĀORI

The Authority has produced a Quick Guide (Number 7) for potential applicants, to help them identify and assess risks to Māori interests, in particular for new organism applications.

Applicants are encouraged to talk with ERMA New Zealand staff about the need to consult with Māori and the best way to proceed. If there are no significant issues in relation to Māori interests, there may be no need to consult.