
ENVIRONMENT/ RESOURCE MANAGEMENT

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RMA BILL - STILL ROOM FOR IMPROVEMENT



David McGregor
SENIOR PARTNER

Yesterday the Local Government and Environment Committee reported back on the Resource Management (Simplifying and Streamlining) Amendment Bill. Bell Gully is pleased that a number of the concerns we identified with the first draft of the Bill have been redressed (refer [Bell Gully's take on changes to the RMA](#), 3 April 2009).

However, we still have serious concerns with several of the proposals.

The key changes made are:

Scope of appeals

The Select Committee has removed the provisions limiting appeals on proposed plans and plan changes to points of law. As we noted in April, this proposal had the potential to heighten concerns that local authorities often act as "the judge in their own cause" in this context.

Trade competitors

The Bill still goes too far in terms of the provisions restricting the rights of trade competitors, by curtailing landowners' rights to seek appropriate provision for their own properties in district and regional plans. A person who could gain an advantage in trade competition through a submission on a plan may only proceed if, "directly affected by an effect of the proposed policy

statement or plan" that, "adversely affects the environment". As such, landowners can no longer make submissions seeking a zoning for their own properties to help facilitate any activity which is subject to trade competition.

We consider that this restriction is inappropriate.

Incentivising faster decision-making

The first draft of the Bill introduced a new requirement that local authorities adopt a policy for discounting administrative charges where a resource consent is not processed within the statutory timeframe and it is at fault. Bell Gully raised concerns that the Bill did not provide sufficient clarity on the extent of any discounts, or ensure that the amount of the discount would continue to increase as time went on after the trigger date has passed (to encourage ongoing efforts to resolve the application as quickly as possible).

The Select Committee has amended the Bill to require the Minister to make regulations setting out model discounts.



Andrew Beatson
PARTNER

These must be followed by all local authorities, unless they choose to implement a policy which is “more generous than that provided for in the regulations”.

We would expect that the regulations will be designed in a way which meets our concerns.

Public notification

The first draft of the Bill specified that public notification would only be required if the consent authority was satisfied that the adverse effects of the activity beyond the immediate environment, “will” be more than minor. That wording imposed a high threshold of certainty and has been replaced with the word “may”.

The Select Committee has also adopted Bell Gully’s suggestion that the reference to effects beyond the “immediate environment”, which we considered to be vague and uncertain, be replaced with the words “adjacent land”.

The new provisions specify that when the consent authority is deciding whether adverse effects may be more than minor, it must disregard any effects “on persons who own or occupy” the land involved and on, “any land adjacent to that land” (whose owners and occupiers are likely to be treated as affected persons, unless the effects on them are considered to be less than minor or they have provided a written approval).

Representation at proceedings

The final matter raised in our earlier newsletter related to provisions in the Bill which provided that only the Attorney-General could represent the public interest in proceedings in the Environment Court. We noted that other parties, including statutory or iwi authorities and industry representatives, would often be better placed in terms of institutional knowledge, inclination and resources to do so.

This concern remains unresolved, although we note that it may be possible for these groups to be involved if they made a submission about the subject matter of proceedings.

Non-complying and Restricted Discretionary Activities

The Select Committee rejected the proposal to abolish non-complying activities.

It is also proceeding with changes to the consenting regime for restricted discretionary activities, with the Bill reversing a recent High Court case which had stated that while a consent authority’s discretion to refuse consent was limited to any specified matters, it was entitled to grant consent on the basis of other considerations.

Infrastructure

The Select Committee has removed the provision in the first draft of the Bill which enabled territorial authorities to require (rather than request) changes to outline plans.

As requested by Bell Gully, it has also amended the Minister’s call in powers on proposals of national significance to include those that cross district council boundaries (and not only those that cross regional boundaries). This will assist infrastructure providers such as ARTA to access new consenting pathways (although further amendments might be required once the Auckland Council is established and the region no longer has any districts).

The Select Committee noted that “any changes to the designation process would benefit from further analysis in the wider context of a review of the way the RMA manages infrastructure as a whole”.



Vivienne Holm
SENIOR SOLICITOR

We understand that infrastructure is one of the work streams which is being prioritised by the Ministry and that a bill can be expected early next year.

Key initiatives identified to date include:

- a review of the role of designations and facilitating infrastructure development and an examination of options for reviewing and streamlining the designation mechanism;
- an investigation of alternatives to designations planning for and managing the effects of activities on network infrastructure;
- an investigation of whether compensation under the Public Works Act 1981 needs to be shorter but more generous to landowners; and
- streamlining and integrating processes under the Public Works Act and other legislation.

Second phase of reform

In addition to infrastructure the Government has identified nine further related work streams on future RMA reform as follows:

- addressing barriers to sustainable and cost-effective aquaculture development;
- alignment of consenting processes under the RMA and the Building Act 2004 (to create a “one stop shop” system or simpler proposals);
- alignment of consenting process under the RMA and the Conservation Act 1987;
- developing further the scope, functions and structure of the EPA;
- alignment of consenting processes under the RMA and Forests Act 1949 and Forests Amendment Act 1993;
- investigating generic issues in the RMA that were too complex to be dealt with in phase 1;
- alignment of consenting processes

under the RMA and Historic Places Act 1993;

- exploring better approaches to urban planning; and
- establishing a fairer and more efficient water management system.

These investigations present an opportunity for those experiencing difficulties with the Act to take the initiative and pursue any other amendments which have not yet been identified. Bell Gully is pursuing such amendments on behalf of several clients and is happy to advise on these matters.

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