

Resource Management Reform Bill: Local Government and Environment Select Committee Report

The Resource Management Reform Bill ("the Bill") is an omnibus bill designed to amend the Resource Management Act 1991 ("the RMA"), the Local Government (Auckland Transitional Provisions) Act 2010 ("the Transitional Provisions Act") and the Local Government Official Information and Meetings Act 1987. The Bill is designed to streamline the delivery of Auckland's first combined plan and resource consent regime, boost the quality of local decision-making and generally improve the RMA.

The Local Government and Environment Select Committee ("the Committee") recently considered the RMA and Transitional Provisions Act features of the Bill. The Committee's report recommends the Bill be passed subject to the Committee's amendments.

The key changes the Bill makes to the RMA are:

- Requiring consent and territorial authorities to be a party to Environment Court proceedings.
- Requiring evaluation reports prepared under section 32 to include an economic cost/benefit analysis of the proposal.
- Introducing a six-month consent timeframe for medium sized projects.
- Protected trees or groups of trees must be listed in the schedule to a district plan or protected by resource consents.

The Bill sets up the following framework to enable the delivery of Auckland's first combined plan:

- A Hearings Panel will be appointed to hold submissions on the proposed combined plan. The Panel may permit parties to question and cross-examine other parties and witnesses.
- The Auckland Council must attend each hearing session to clarify or discuss matters in the proposed combined plan.
- Following each hearing, the Panel must make recommendations on the proposed combined plan. The Auckland Council must then decide whether to accept the recommendations, or propose an alternative solution if it rejects.
- The Auckland Council is required to publicly notify its decisions. If there are no appeals, the proposed combined plan will be approved from the date on which the appeal period expires.
- In respect of heritage and designation orders, the Auckland Council's decision will be treated as a recommendation under sections 171 or 191 of the RMA.
- A merit based appeal may be pursued in the Environment Court if the Auckland Council rejects a recommendation of the Hearings Panel and decides on an alternative solution.
- An appeal based on a question of law may be brought in the High Court against any decision by the Auckland Council to accept any recommendation made by the Hearings Panel.
- The Government may intervene in the process by making regulations, but the Minister must consult with Auckland Council and the Hearings Panel.

The Committee amended several key aspects of the Bill. Amendments were made to the RMA clarifying that consent and territorial authorities *must* be party to Environment Court proceedings. An amendment now

requires Section 32 reports to include economic references that cover both positive and negative change. Further amendments also clarified how the six month consent process would operate.

The Committee amended the Transitional Provisions Act to reduce the power of the executive to make regulations for Auckland's combined plan. Amendments also clarified the Hearings Panel procedure and set out appeal rights.

What happens next?

The Bill will now come before Parliament for its second reading and should receive Royal Assent by the end of the year.

The proposed changes to the RMA are significant and the Transitional Provisions Act could set a precedent for any future combined plans. If you would like further information on the implications of the Bill, please contact one of our Resource Management team.

Here is a link to the [Committee's report](#).

A more detailed analysis of the provisions and Select Committee recommendations is outlined below.

Detailed analysis:

Resource Management Act amendments

District rules

The majority of the Committee recommended clarifying the rules that may be included in district plans regarding the felling, trimming, damaging or removal of trees. It was argued that district plans are not designed to protect individual trees and the amendments to the RMA would not prevent individual trees being protected through other methods, such as resource consent decisions.

The minority of the Committee said those changes would place too much focus on individual trees and ignore the collective and community significance of groups of trees. The minority also expressed concern that protecting individual trees would prove costly and impractical.

Consent and territorial authorities' subsequent processing

The Committee recommended that the RMA be amended to require consent and territorial authorities to be party to Environment Court proceedings, which includes being available to give evidence regarding their reports. That amendment is designed to strengthen the requirement under the RMA for consent and territorial authorities to provide reasonable assistance to the Environment Court in relation to any matters raised in their reports.

It was suggested that the amendment would make a local authority planning report central to determining an application, and require authorities to attend any hearing to assist the Court.

Evaluation reports

The majority of the Committee recommended amending the RMA so that evaluation reports required by Section 32 include reference to opportunities for economic growth that are 'anticipated to be provided or reduced' rather than those that are expected to 'cease to be available'. The altered wording would cover both positive and negative change. The amendment is also designed to increase the understanding of economic effects including economic growth and employment in the RMA.

The minority were concerned that the amendment could give every proposal some quantitative monetary value, as opposed to the intrinsic value of the environment it affects. The minority also thought there was now a possibility that Section 32 will require analysis beyond the capacity of some local authorities – potentially increasing costs.

Six month consenting process

The Committee recommended clarifying at which point the processing clock might be stopped for applicants attempting to obtain written approval from affected parties. The amendment would require a consent authority to either return an application or continue to process it after reaching the 130 working-day time limit. A

separate section would be inserted into the RMA to provide for the ability to object to a decision, return an application or continue to process it. However, there would be no right of appeal against a decision on an objection.

Local Government (Auckland Transitional Provisions) Act

Transitional regulations

The Transitional Provisions Act caused controversy when it was introduced into Parliament. This was because the Minister for the Environment, as a member of the Executive branch of Government, could suspend the operation of certain Acts when making regulations (known as a Henry VIII clause). Regulations made by a member of the Executive branch of Government would not be subject to the scrutiny and debate which Parliament and select committees would otherwise provide.

The majority of the Committee recommended amending the Act to restrict the ability of the Minister to recommend regulations regarding the preparation of the first Auckland combined plan. Regulation making powers should not be used to deal with unforeseen situations or issues. Rather, the Committee recommended that the Minister for the Environment must consult with Auckland Council and the Hearings Panel before recommending any regulations be made. The majority expressed the view that this approach would deal with the controversy and part of the minority agreed.

However, the remainder of the minority still opposed the amendment, as the power to make regulations is not restricted to exceptional circumstances.

Changes to Auckland Council's first combined plan

The Committee recommended several amendments to the proposed Part 4 of the Transitional Provisions Act, which sets out the process for development of the first combined plan for Auckland Council:

- The Hauraki Gulf Islands District Plan must be excluded from the first combined plan. The Islands are geographically isolated and are not identified as a growth area.
- Owners or occupiers of land covered by a proposed designation or heritage order would be the only parties directly notified of the designation or order by the Auckland Council.
- The Hearings Panel would have the authority to direct the Auckland Council to initiate a variation to the combined plan. A process for managing variations will be established.
- Reports prepared for pre-hearing session meetings and conferences of experts, and reports of alternative dispute resolution processes, must not include any material provided on a 'without prejudice' basis unless consented to by the party providing the information.
- Directions from the Hearing Panel to provide evidence would also apply to the Auckland Council. Evidence and reports would need to be available on the Council's website. Electronic notices would be provided to the council and relevant submitters unless considered unreasonable. Timeframes for preparing evidence would be flexible.
- Parties could apply to the Environment Court for an order cancelling or varying an order made by the Hearings Panel to restrict publication of a document or exclude the public from a hearing. The amendment would be similar to provisions already in the RMA.
- The Hearings Panel would be required to specify where it is making a recommendation outside the scope of submissions. The Council would be unable to consider new evidence or any other material that was not available to the Hearings Panel.
- A decision of the Auckland Council that was notified to a requiring authority would be treated as if it were a recommendation notified under Schedule 1 of the RMA. The requiring authority would decide whether to accept or reject the Council's recommendation. The Auckland Council would need to serve the decisions of requiring authorities on the relevant parties and make a copy of the decision available on its website.

Appeals to the Environment Court

The Committee noted that the combined effect of sections 139 and 150 of the Transitional Provisions Act could allow the Hearings Panel to make substantive recommendations that were not the subject of evidence. That power would represent a significant departure from existing law. The Committee recommended inserting appeal rights to provide a practical solution to that issue without preventing the rest of the operative plan from becoming operative.

The Committee recommended that there be a right to appeal to the Environment Court when the Auckland Council rejects a recommendation of the Hearings Panel and decides on an alternative solution. The appeal right would be available to anyone unduly prejudiced, regardless of whether or not the Auckland Council accepted or rejected the recommendation of the Hearings Panel.

The Committee further recommended that there be a right to appeal to the High Court on a question of law against any decision by the Auckland Council to accept any recommendation made by the Hearings Panel.

Judicial Review

The Committee recommended that anyone intending to appeal a decision of the Auckland Council or a requiring authority on a point of law, and who also intends to bring judicial review proceedings in respect of the same decision must lodge them together. The High Court would be required to hear both applications together. That would effectively impose a statutory timeframe on appeal and judicial review proceedings with a view to minimising delays.