Government changes to RMA

In February and March 2013 the Minister for the Environment, Hon Amy Adams, released two documents for consultation that included a myriad of reforms to the RMA (see links to previous articles outlining the changes proposed in the discussion documents here and here).

The Minister has now released a response to the consultation and has made some changes to what was proposed. The changes that remain on the table will now be drafted into a Bill and introduced later this year.

The Bill will be sent to Local Government and the Environment Select Committee. The Select Committee will ask for public submissions and report its findings to Parliament before the Bill progresses.

Changes to sections 6 and 7

The most contentious proposal is to amend sections 6 and 7 of the RMA. Matters within these two sections will be merged and referred to as "principles" that must be recognised and provided for when making the "*overall broad judgment under section 5 in order to achieve the purpose of*" sustainable management.

The major change from the February consultation document is that "*intrinsic values of ecosystems*" will not be removed in its entirety. Instead, section 6 will include the principle of "*effective functioning of ecosystems*", which is defined as "*the biologic and genetic diversity of ecosystems and the essential characteristics that enable the proper functioning of an ecosystem*".

The provisions relating to public access, relationship of Māori to natural resources, kaitiangitanga, climate change, aquatic habitats and availability of land for urban expansion have also been amended.

The changes proposed in February involved removing consideration of "amenity values" and including provisions relating to infrastructure, management of significant risks from natural hazards and availability of land for development. These proposals are confirmed.

Rather than "protecting" historic heritage, as was proposed in February, the Government will require consideration to be given to its "importance and value".

The February document also required councils to specify significant habitats of indigenous vegetation and fauna in plans. This mapping obligation has been abandoned. However, outstanding natural features and landscapes will still have to be identified in order to receive the protection conferred by section 6.

New section 7 is to specify how the RMA is implemented i.e. timely, efficiently, using clear language and collaborating with other councils. In addition, there is a reference to private property rights "*to ensure that restrictions are not imposed under this Act on the use of private land except to the extent that any restriction is reasonably required to achieve the purpose of this Act*". This is slightly amended from the version promoted in the February discussion document.

Subdivision restrictions relaxed

Subdivision can currently occur only if a rule in a district plan specifically permits it or if consent is obtained. This will be reversed so that subdivision will be allowed without the need for consent (like other land use activities) unless a rule in a plan specifies that consent is required. The timing for implementation of this provision (which is new since the February discussion document) is not specified and it will be important to enable councils time to review plans and include rules where appropriate. Most plans do already include rules on subdivision.

Template plans

Government is pressing ahead with the concept of template plans that appear to be mandatory for councils to follow. This could be a large and expensive undertaking for councils that are already well down the track of developing their second generation plans.

The template plan will provide not only common definitions but also a "*common structure and format*" and "*where appropriate, common content*". This template will be developed primarily by the Minister for the Environment. The Minister for Conservation (Hon Dr Nick Smith) will develop content relevant to the coastal marine area. Consultation on the template will occur. Once in force, councils will have one year to implement the standardised format with "*full transformation*" within five years.

The first template must be developed within two years of enactment of the Bill.

In addition to following the template, councils will have to compile all content in their relevant regional policy statement and regional and district plans into a single document, to be made available electronically within a maximum of three years.

Plan development

Councils will have the option of developing a plan through a process similar to Auckland's, except it will be run as a joint council planning process – resulting in a single set of integrated rules for regional and district councils.

This option has a hearing by an independent panel that makes recommendations to councils. The councils then either accept or reject, and any provision that is accepted can only be appealed on a point of law. The Land and Water Forum's proposed collaborative process for freshwater plans will also be included in this set of reforms (see link to previous article outlining the proposed process).

Councils will have to choose the preferred method of plan development (that includes the current Schedule 1 process) and document this choice in a "Council planning agreement" that will be revised after every triennial election.

Provisions relating to consultation with iwi/hapū will be strengthened by requiring specific reporting of how the consultation ideas have been considered. In addition, councils must invite iwi/hapū to enter into an arrangement detailing how the parties will work together in the plan development process. Changes proposed in the February consultation document regarding iwi management plans have been dropped.

National tools

Government has signalled that the use of National Policy Statements (NPS) and National Environmental Standards (NES) should be more consistent. A list of items that could be regulated by a national tool will be produced. When a NES or NPS is developed, the template plan will be updated to include relevant provisions that implement the national tool(s). The national tools will also apply to specific areas where there is a resource management issue of national significance.

The February discussion document included a proposal enabling the Minister to direct changes to individual plans. This proposal has been tempered, instead establishing a process for a dialogue between the Minister and a council that could result in an independent commissioner developing plan content that the council would then notify and progress. In addition, the Minister could intervene at the invitation of a council for an "*important and urgent issue*". The Minister will also be able to intervene when a process step has not been complied with.

Housing

In addition to the new principle in section 6 regarding "*the effective functioning of the built environment, including the availability of land to support changes in population and urban development demand*", councils must ensure there is adequate land supply to provide for at least 10 years of projected growth.

The template plan will likely provide rules around non-notification for rezoning relating to housing demand. The February discussion document's proposed amendments to prevent land banking will not be progressed.

Consents

The 10-day fast track consent process is still favoured by Government and will apply to "simple" consents. The relevant activities will be: listed in regulations; controlled activities; inter-boundary rule breaches; and residential activity proposed on a single residential site in a residential zone.

Technical breaches of rules that are "*so minor as to be effectively indistinguishable from those allowed without a consent*" will be able to sidestep the need for any consent on a case-by-case basis.

Notification provisions will change so that where an inter-boundary rule requiring consent is breached, only the neighbour on that adjoining boundary will be notified. Controlled activities or activities identified in regulations or the template plan will not be notified.

Before assessing whether public notification is required for a more significant application council will have to assess the application against the objectives and policies of the plan. Currently councils must assess if the effects are no more than minor, so this additional assessment could result in a lot more work for councils.

The rationale is that this initial assessment against objectives and policies "*will provide a pathway for non-notification … where that type of activity and its effects have already been planned for and anticipated by the… plan.*" This additional value judgement is perhaps unnecessary when plans can already provide rules for when applications will not be notified.

When notifying an application the council will have to include the reasons consent is required and the particular effects on the environment that have resulted in notification. Submitters will be restricted to commenting on the effects specified by council. If submissions go beyond these effects "*councils will be required to strike out submissions that are irrelevant to those matters or have no evidential basis.*" This additional role for council could be a large burden for controversial applications that attract hundreds of submissions, particularly where parts of a submission stray into irrelevant matters.

If an application is notified before a hearing there will have to be a pre-hearing meeting (already provided for in the RMA but rarely used) for clarification and to "*provide an early opportunity for resolution*". If the application is eventually appealed then the Environment Court will be required to take into account the report about the pre-hearing meeting and note who attended and reasons for non-attendance. This consideration by the Environment Court would be relevant for establishing the validity of an appeal, so it will be important for submitters to engage with the pre-hearing meeting process.

The consultation document proposed that appeals to the Environment Court would be "merit" based rather than *de novo* (afresh). This proposal has been abandoned and appeals will remain *de novo*. Some changes to the appeal process are proposed that will encourage judicial conferences to help parties negotiate and make mediation compulsory.

If an applicant does not want to appeal there is currently a procedure for objection to conditions to the council. This provision will be amended so that the objection will be heard by an independent commissioner.

The consultation document also contained proposals that have now been dropped relating to a Crown body to process consents, a requirement for councils to produce "memorandum" on consent activities, and expanding section 106 (refusal of subdivision consent because of hazards) to encompass all land-use consents and designations.

Council monitoring

The consultation document discussed the need for increased performance monitoring by councils. This issue is not taken much further by the response document, except to note that the Department of Internal Affairs is already working on broader performance monitoring of councils. Regulations will be used to specify what monitoring is required.

No GMO restrictions

Council's ability to include rules relevant to controlling Genetically Modified Organisms (GMOs) will be explicitly removed. Only the EPA in carrying out its hazardous substance regulatory role (previously undertaken by ERMA which is now part of the EPA), will be able to regulate GMOs.

Next steps

Anderson Lloyd will continue to monitor the development of this reform, the resulting Resource Management 2013 Reform Bill and future water reforms. For any questions or further information please contact one of our Resource Management team members.

Click the link to view the Resource Management Summary of Reform Proposals 2013.

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