
Resource Management Amendments on the move again

The Environment and Local Government Select Committee has reported back on the Resource Legislation Amendment Bill (the Bill). The Bill is very large and includes many changes to resource law that are not mentioned in this article. We have focussed on changes made by the Select Committee and the issues that will make the biggest impact to resource law. Key changes recommended by the Select Committee are:

- Restricting new regulation making powers to avoid duplication of requirements;
- Increased role for iwi;
- Increasing the new infringement fee for stock in waterways to \$2,000; and
- Removing requirements for councils to identify relevant adverse effects that were not anticipated by objectives and policies when notifying a consent application.

More information on the process and detail of the Bill is set out below.

In November 2015 the Bill was introduced to Parliament. The Bill proposed major changes to the RMA including: vastly increased options for Ministerial involvement in local plans; major changes to consent processing involving increased council discretion; and a new focus on providing for development capacity.

This Bill does not change the Part 2 purpose of the RMA except to include a new matter of national importance being the "management of significant risks from natural hazards".

After an extended period with the Select Committee, the Committee has now reported back. This means that the Bill, as amended by the Select Committee, will go back to the House to be debated. The timing for this will depend on the priority given by Government to the Bill and final sign off by the Māori Party.

To pass the Bill, the Government needs the support of the Māori Party because both its other support partners are currently opposed to the Bill. The Māori Party were not satisfied with the provisions for iwi participation in the Bill as introduced but subsequently came to an agreement with Hon Dr Nick Smith in November last year. That agreement has resulted in some changes to the Mana Whakahono ā Rohe / Iwi Participation Agreement provisions, in particular broadening their application beyond plan making processes, to also include consenting and monitoring involvement.

A press release from Hon Dr Nick Smith says that time is needed for the Maori Party to "digest all of the Select Committee's detailed changes to ensure they are consistent with their agreement with the Government". We expect that the Bill will now progress well before the last sitting day before the national election, being 17 August. We note that it could still be amended from the Select Committee's version if Hon Dr Nick Smith progresses further changes through a Supplementary Order Paper when the Bill is in the "Committee" stage after it has its second reading.

The Select Committee's Report and recommended changes to the Bill can be found here: [Report on the Resource Legislation Amendment Bill](#)

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Changes to the RMA

The Bill will change many areas of the RMA and most of the proposals remain intact with minor changes recommended by the Select Committee. The one proposal that has been extensively modified is the scaling back of the Minister's regulation making powers, discussed below.

The fundamental changes to the RMA as a result of the Bill and amendments by the Select Committee include:

- New regulation powers for stock exclusion from waterways. The Select Committee has recommended that the infringement fee be increased from \$750 to a maximum of \$2,000 or \$100 per stock unit for each infringement.¹
- A new regulation power remains for the Minister to prohibit or override rules that would "duplicate, overlap with, or deal with the same subject matter as is included in other legislation".² Examples of such duplication that have been discussed include GMOs and the National Environment Standards provisions have been amended to specifically include circumstances when an NES can make hazardous substances or new organisms a permitted activity.³ The Select Committee has deleted, after much public disquiet, the proposed powers for the Minister to regulate for: permitting a specified land use; prohibiting a specified rule; and specifying types of rules that are overridden by regulation.
- The creation of a template plan, renamed as "National Planning Standard".⁴ At a minimum the first set of national planning standards must be approved within two years and include: a structure and form for plans; definitions; and requirements for electronic functionality.⁵ It is unclear whether this first set is mandatory or if the Minister can give options (called "discretionary") for Councils to choose what they implement. Unless otherwise stated councils will have five years to amend their plans.⁶
- Substantial changes to the processing of consent applications. This includes: introducing a 10 working day timeframe for land use non-notified controlled activities⁷ (this no longer applies to regional council consents); introducing the new class of "boundary activities" that are to be deemed as permitted activities in some circumstances⁸; and limiting council fees for resource consents⁹, although this has been amended so that regulations can only require councils to fix fees rather than the regulation fixing the fee.
- Changing limited notification requirements by further limiting who is affected. Clause 128 of the Bill as introduced contained a list of the persons who would be "eligible" to be considered an "affected person". Only those persons who were both eligible and affected would be notified of an application. The Select Committee has clarified these provisions so that the only eligibility restrictions that remain are for boundary activities and activities that may be prescribed in regulations.
- The Select Committee has removed the requirement for councils to specify relevant adverse effects in public notices. This is because of the cost implications and "consequences of inadvertently omitting some" potential adverse effects.¹⁰ The Select Committee has also accepted submitters' concerns about councils having to disregard adverse effects if they were taken into account in the relevant objectives and policies of the plan¹¹.
- Removing appeal rights on subdivision, boundary activity and "residential" activity decisions unless the activity status is non-complying¹². Note it appears from the Select Committee amendments to this wording that this change may no longer capture 'bundled' consent applications which include subdivisions and land use consent applications as an overall proposal package.

Resource Management Amendments on the move again (Continued)

- Removing the ability for councils to use financial contributions¹³. This means that councils will have to rely on development contributions.
- Removing all council functions relating to hazardous substances¹⁴.
- Introducing new plan development processes¹⁵.
- Amendments to the process for developing national policy (NPS) and standards (NES) and the ability for more specific direction. A change is that the development of national direction will use a process similar to that currently used for a NES.
- Introducing a new function for councils for ensuring "sufficient development capacity" for housing and business land in urban areas¹⁶.
- Introducing a requirement for councils to initiate entering into "Iwi Participation Arrangements" that will now include the dual name "Mana Whakahone a Rohe". Guiding principles for the development and implementation of Mana Whakahone a Rohe have been included by the Select Committee¹⁷.
- Some alignment with the Conservation Act, Reserves Act and EEZ legislation.
- An increase in Public Works Act compensation from \$2,000 to \$50,000 for a dwelling.¹⁸
- Decision makers on resource consent applications must have regard to positive effects to offset or compensate for adverse effects.¹⁹ This amendment was included in the Bill as introduced however the Select Committee recommend the requirement not take effect until six months after royal assent.

When the new law will impact resource applications and plan changes

The order of the Bill is chronological. First are amendments which come into force immediately after royal assent, then those which are delayed until six months after royal assent, and then those delayed for five

years. Provisions which will be amended immediately after royal assent include the national planning standards, iwi participation arrangements, new collaborative and streamlined planning processes. Amendments to come into force after six months include the restrictions on subdivision appeals and amended notification requirements for resource consents. Amendments five years after royal assent include changes to the financial contributions requirements.

Savings and transitional provisions are also included in the Bill which clarify that applications for resource consent (or similar applications) which are lodged with a decision maker prior to the commencement of the amendment in question are not affected by the amendment where the application has not proceeded to the stage at which no further appeal is possible.²⁰

Want to know more?

If you have any questions about these changes or the process for the Bill becoming law, then please contact our specialist [Resource Management Team](#).

¹ See cl 103 new s360(3)
² See cl 105 inserts new s360D
³ cl 26 amends s43A
⁴ See cl 37 inserting new sections 58B-58J
⁵ New s58FA
⁶ See s58I
⁷ See cl 134 amending s152
⁸ See cl 121 and 122
⁹ Cl 105 inserts s360E
¹⁰ Page 23 of the Select Committee's report
¹¹ Page 24 of the Select Committee's report
¹² See cl 135 amending s120
¹³ cl 155 repeals s111 and cl 153 amends s108
¹⁴ cl 11 repeals s30(1)(c)(v) and amends s30(1)(d)(v), cl 12 repeals s31(1)(b)(ii)
¹⁵ Schedule 1 of the Bill amends Schedule 1 of the Act
¹⁶ cl 11 amends s30, cl 12 amends s31
¹⁷ cl 138 introduces new s58K – 58T
¹⁸ cl 171 amends s72 PWA
¹⁹ cl 131A amends s 104(1)(a)
²⁰ Schedule 2, amends Schedule 12