

## RMA Reforms Discussion Document

On 28 February Environment Minister Amy Adams released a discussion document detailing sweeping changes to the Resource Management Act (RMA). The proposed changes go much further than the reform programme of the government to date and are described in the discussion document as "a reboot" of the resource management system.

Driving the changes is concern that resource management processes continue to be "cumbersome, costly and time consuming" and that "the system is uncertain, difficult to predict and highly litigious".

The discussion document identifies six key areas that the government considers offer the best opportunities for improving the system. These are:

- Greater national consistency and guidance;
- Fewer and better resource management plans;
- More efficient and effective consenting;
- Better natural hazard management;
- Effective and meaningful iwi/Māori participation; and
- Working with Councils to improve practice.

A package of reforms are proposed in each of these target areas with the intention of making the system easier to use, increasing certainty and predictability, and reducing unnecessary duplication and cost.

The Government is seeking feedback on the proposed reforms by 5pm Tuesday 2 April 2013. We will be carrying out a detailed analysis of the proposed reforms and how they may affect clients' interests to assist with this submission making process. In the interim, we provide an overview to enable you to start thinking about how you may be affected and whether or not you may wish to make a submission.

### **Greater national consistency and guidance**

The discussion document proposes changes to sections 6 and 7 of the RMA that are intended to address concerns that these provisions currently give more weight to environmental matters than the potential positive effects of social and economic activities, and no longer reflect "contemporary issues". It is proposed to combine sections 6 and 7 into a new section 6 which would list environmental, social and economic matters which decisions-makers would be required to "recognise and provide for". Some of these are the same as or similar to current matters and some, such as "the effective functioning of the built environment" are new. A new section 7 would set out principles, such as using "best endeavours to ensure timely, efficient and cost-effective resource management processes" to guide decision makers. The proposed changes are similar to those recommended by the 2012 TAG Report on RMA Principles, but differ in some important respects such as closer alignment with the existing wording and retention of directives, such as to "protect" and "preserve".

The discussion document proposes development of guidelines to clarify how and when tools such as national policy statements (NPS), national environment standards (NES), and the power to call in plan changes or consents would be used and in what circumstances different tools would apply. Amendments are also proposed to streamline the process for addressing urgent issues. An example given is if central Government identified an urgent need for a region to have additional rules to manage risks from natural hazards, a streamlined process may allow Government to consult on a proposed rule for a limited time and then advise a final decision.

It is also proposed to clarify and extend Government powers to direct plan changes, including criteria setting out the circumstances in which the process could be used. A stepped process is proposed, providing for the Minister:

- To identify an issue or outcome they want addressed and invite the local authority to set out how they intend to do so in their planning;
- To direct a plan change, including specifying matters the local authority must consider and/or outcomes to be achieved;
- To directly amend an existing operative plan if the local authority's response to one or both of the above steps is inadequate.

Changes are also proposed to NPS and NES mechanisms, including establishing combined processes, clarifying that they can target a specific region or locality and further streamlining the processes for their development.

### **Fewer resource management plans**

The discussion document includes a number of proposals intended to reduce the number of plans and their complexity.

It is proposed that all councils would have a single plan in place within five years (per district or broader as agreed by councils in that area) that would be consistent with a national template developed by Government setting out structure, format and standardised terms and definitions. The national template could also include standard content for specific zones and rules for particular activities.

Changes are also proposed to sections 30 and 31 of the RMA to make "managing for positive effects" one of councils' core functions and requiring councils to ensure adequate land supply to provide for at least 10 years growth.

A new plan-making process is proposed to enable district and regional councils the choice of jointly preparing a single integrated plan for a district or larger area. Key features of this new plan-making process include greater emphasis on pre-notification engagement and collaboration, an independent hearings panel and narrowed appeals to the Environment Court. As for the proposed Auckland Unitary Plan process, the ability to appeal the council decision to the Environment Court would be limited to where it has deviated from the hearing panel's recommendation. Further, it is proposed that the Environment Court's consideration would be narrowed from a hearing de novo to an appeal by way of rehearing. This means that the appeal would not be treated as a new hearing, but the Court would have the ability to choose to rehear some evidence. Where the council accepted the hearing panel's recommendation, appeal would be limited to the High Court on points of law.

Some relatively minor changes are proposed to Environment Court processes with the intention of achieving faster resolution of proceedings, such as increasing the Court's power to enforce timeframes and strengthening provisions requiring parties to undertake alternative dispute resolution.

### **More efficient and effective consenting**

A number of changes are proposed to the current consenting process in order to reduce time and costs for users. These include:

- A 10 working day timeframe for processing straightforward, non-notified consents (for example bulk and location breaches to residential zone rules);
- A new process to allow an 'approved exemption' for technical or minor rule breaches and to allow an activity to be 'deemed permitted' (for example a residential site coverage exceedance by half a square metre);
- Enabling regulations, in addition to NES, to specify applications that will be processed as non-notified;
- Limiting the scope of consent conditions to those directly connected to the reason the consent is needed; and
- Limiting the scope of submissions and third party appeals to the reasons the application was notified, and the effects relating to those reasons.

As for the new plan-making process, it is also proposed to possibly narrow the scope of Environment Court appeals on consent decisions from de novo hearings to appeals by way of rehearing.

The discussion document proposes the introduction of a new requirement for councils to set their own fixed charges for certain types of consents. It is not proposed that fees would be capped. Councils would also be required to publish memorandum accounts, disclosing the revenue and expenses incurred for their consenting activities.

It is also proposed to expand the existing call-in provisions or enact new legislation to allow a board of inquiry or Crown body to process consents for designated nationally important issues, such as the availability of land for housing. Other proposals include providing consenting authorities with tools to prevent land banking and reducing the costs of the Environmental Protection Agency (EPA) nationally significant proposals process.

### **Better natural hazard management**

Learning the lessons from Canterbury, it is proposed to provide greater national consistency and guidance to improve the way natural hazards are planned for and managed, and ensuring the risks of all natural hazards are appropriately considered in resource consent decisions.

### **Effective and meaningful iwi/Māori participation**

The reform package aims to clarify the role of iwi/Māori in resource management processes and to provide for more meaningful and effective participation early in the plan-making process.

Proposals include clarifying the role of iwi/Māori by requiring councils who do not have an arrangement with local iwi to establish one which gives opportunity for iwi/Māori to directly provide advice during the development of plans. Other proposed changes include requiring consultation with iwi on NES, making it easier to use existing tools for participation such as joint management agreements and improving the awareness and accessibility of iwi management plans.

### **Working with councils to improve practice**

Finally, the discussion document proposes changes to council practice, including providing guidance on the development of best practice and requiring councils to publicly report on their service performance in relation to resource management accountabilities. Amendments to the RMA may include requiring performance information to be made publicly available enabling the Government and community to set (in collaboration with councils) clear expectations and enabling the Minister to specify how expectations are reported.

### **Where to from here?**

The Government is seeking feedback on this [discussion document](#) through submissions. The closing date for submission is 2 April 2013. The discussion document indicates that decisions are expected to be made in mid-2013 and lead to the passage of a resource management Bill by the end of 2013.

The proposed changes are significant. If you think that you might be affected and wish to make a submission, or if you would like any further information on the implications of the proposed reforms, please contact one of our Resource Management team members.

## **Contact Us**

### **Dunedin**

Level 10 Otago House  
Corner Princes Street & Moray Place  
Dunedin  
p: 03 447 3973

### **Queenstown**

13 Camp Street  
Queenstown  
p: 03 450 0700

### **Christchurch**

18a Birmingham Drive  
Middleton  
Christchurch  
p: 03 379 0037

### **Nelson**

94 Nile Street  
Nelson  
p: 03 379 0037