

Section 6 and 7 TAG Report to the Minister finally released

The Minister for the Environment, Hon Amy Adams, released on 5 July 2012 the February report by the Technical Advisory Group ("TAG") which proposes substantive changes to the principles of the RMA ("TAG Report"). The TAG was asked to review s6 and 7 of the RMA and provide advice regarding whether the principles should be amended to better reflect the contemporary values and priorities of importance to New Zealanders. The TAG Report is **not** a Government policy, and there is no formal consultation process taking place, however the Government intends to consider the TAG Report as part of its wider reforms of the resource management system. The Ministry has invited informal submissions on the TAG report, which it will consider alongside the TAG report as well as other resources.

Whilst the recommendations in the Report will be welcomed in terms of its recognition of managing risks such as those associated with natural hazards and encouraging timely and efficient decision making, it proposes some fairly radical amendments to s6 and 7 and the way in which these sections are to be applied. The recommendations, if adopted by Government in its reforms, will ultimately change the way in which sustainable management is applied.

Sections 5, 6 and 7 of the RMA

Sections 6 and 7 of the RMA currently set out a series of "matters of national importance" which must be "recognised and provided for" and "other matters" to which "particular regard" is to be had by those making decisions under the RMA. The TAG Report notes that the matters set out in s6 and 7 are generally biophysical in character and do not contain any significant reference to the plethora of social, economic, cultural and health and safety issues referred to in s5(2) of the RMA. This creates a mismatch in the interpretation and application of Part 2 of the RMA.

The TAG Report states that whilst the current s6 and s7 are intended to inform the non-negotiable "environmental bottom lines" of s5(2), with s6 and 7 providing guidance on what those "environmentally focused" bottom lines are, the Courts on the other hand have established that promoting sustainable management requires an "overall broad judgement" to be applied to decision making under the RMA. Accordingly, the TAG recommends amendments to the principles of the RMA to promote consistency of interpretation and application of Part 2.

Recommended amendments to Section 6 and 7

The TAG has recommended that explicit recognition be given to the "overall broad judgement" under s6, and that the matters in s6 and 7 should be amplified by reference to other issues which are also considered central to informing this "overall broad judgement" of what constitutes sustainable management.

Section 6

The amendments proposed to s6 delete reference to "recognising and providing for matters of national importance" and instead require that when making a "broad overall judgement" a number principles are required to be "recognised and provided for" under s6, including:

- Natural Character
- Public Access;
- Physical Qualities of Outstanding Natural Features;
- Visual qualities of Outstanding Natural Landscapes;
- Biodiversity, terrestrial habitats and aquatic habitats;
- Archaeological and historical areas/sites;
- Wetland values;
- The management of natural hazards – to clearly allocate responsibility for natural hazard planning to avoid risks;
- Economic, urban and infrastructure issues; and
- Taonga species.

The TAG has also recommended a number of deletions to s6 (and 7) on the basis that those matters no longer warrant particular mention under Part 2 of the RMA, or they are implicitly embodied in the new provisions proposed. For example, the report recommends the deletion of the requirement to give regard to "the habitat of trout and salmon" (under s7(h)). Whilst the TAG considers that if reference is to be retained it should be expanded to include "areas of aquatic habitats, including eels, galaxiids, trout and salmon", it does not consider the reference necessary. Instead the Report considers that the general reference to 'significant aquatic habitats', which are defined as those that are identified in Regional Policy Statements as regionally significant are adequate.

The TAG also recommends deletion of the words surrounding the protection and preservation of outstanding natural landscapes and features, indigenous vegetation and natural character. Whilst these matters are still provided for under proposed new s6 and therefore require consideration as part of the broad overall judgement, some may argue that the wording has been diluted to tilt the balance in favour of development of resources.

The amendments also give emphasis to the economic benefits of development by requiring specific recognition of the significant benefits derived from the use and development of natural and physical resources.

However, the key new addition to the provisions is the recognition of managing risks associated with natural hazards. Whilst the Report recommends that Regional Councils continue to have the lead function in terms of managing risks of natural hazards, it recommends that the Government promulgate a National Policy Statement or National Environmental Standard on the management of natural hazards. The Report also recommends amendments to s106 to expressly include reference to liquefaction and lateral spreading, along with any other consequences/risks of the events included within the definition of "natural hazard" in s2 (rather than the likelihood of any event).

Section 7

The TAG recommends s7 be completely changed. Some s7 matters are now in s6. Some are completely gone such as reference to amenity values (s 7 (c)) and the habitat of trout and salmon (s 7 (h)). Now s7 focuses solely on process, identifying matters to encourage process-related methods to be followed by decision-makers, including requirements to:

- Achieve timely, efficient and cost-effective resource management processes;
- The use of concise and plain language and avoid repetition;
- Have regard to environmental compensation, off-setting or similar measures not encompassed in s5(2)(c);
- Promote collaboration between local authorities;
- Recognition of private property rights.

Conclusion

In summary, the TAG's recommendations are a radical departure from the status quo with wide ranging implications both in terms of process, and substantive decision making. Given the indication

from the Ministry that it will consider comments on the Report, the opportunity is available to influence further decision making on the direction of future RMA reforms.



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