

Resource Management Act - Changes, Again!

1. The Minister for the Environment Hon Amy Adams has introduced more amendments to the Resource Management Act 1991 and related legislation, including the Local Government (Auckland Transitional Provisions) Act 2010 and the Local Government Official Information and Meetings Act 1987.
2. The Resource Management Reform Bill (the Bill) is extensive. It aims to further streamline the consenting regime, provide for the delivery of the first combined plan for Auckland, provide further powers to make regulations, and make technical and operational changes.
3. A number of the amendments are minor. However, a number are substantial changes, many of which will be welcomed by those seeking to develop land. In particular the Bill:
 - a. Introduces a six month consent time frame for medium sized projects. These changes follow the 2009 amendments, which sought to improve the consenting processes for small and large projects. On the other hand, some timeframes have been extended, such as an increase from five to ten days for a council to decide to accept an application or reject as incomplete.¹
 - b. No longer requires consent authority agreement for a request for direct referral to the Environment Court if the value of the investment in the proposal is likely to meet or exceed any threshold prescribed by regulations, unless there are exceptional circumstances.² It is uncertain whether the Government will regulate on a local, regional or national basis or if such regulation will be related to industry or trade. The Bill also makes other basic amendments to clarify the process and timeframes for direct referrals.
 - c. Amends trade competition provisions so that they also apply to direct referrals and call-in procedures.³
 - d. Changes the local authority's requirement for analysis that underpins plans, policy statements, standards and regulations by placing greater emphasis on economic development and employment. While the new section 32 retains the requirement to assess whether objectives of a plan are the most appropriate way to achieve the purpose of the RMA, it also emphasises the need for quantitative assessment of costs and benefits and the need to consider regional economic impact and opportunity costs (including employment and economic growth). These assessments also will need to be made to compare existing provisions with new ones.⁴
 - e. Introduces a one-off streamlined process to assist with delivering the first combined plan for Auckland following the recent governance reforms.⁵ The process is unique in that there will only be a single hearing on the Auckland Unitary Plan. The hearing will be held by Independent Commissioners appointed by the Minister. The only grounds to appeal the decision on the Unitary Plan will be on points of law to the High Court, unless the Auckland City Council rejects the hearing panel's recommendation, in which case parties will be able to appeal those parts of the decision to the Environment Court. This approach is likely to be met with significant controversy by

¹ Clause 90-99

² Clause 13-15

³ Clause 45-52

⁴ Clause 69-70

⁵ Clause 122-163

those wishing to develop in Auckland. The appointment of the hearing commissioners is very important and will be made by the Minister rather than the Council.

- f. Provides for Boards of Inquiry to become more aligned with the court process, enabling cross examination and the removal of the requirement to comply with rules around releasing documents under the Local Government Official Information and Meetings Act 1987.⁶
- g. Provides for a large number of technical amendments in order to try to clarify and improve the workability of the RMA, including:
 - i. Extending access to the emergency provisions under the RMA to all 'lifeline utilities' to enable action to save life and prevent injury or damage to property or the environment without first gaining resource consent;
 - ii. Improving the processing of proposals of national significance;
 - iii. Clarifying that a tree protection rule can only apply to a tree or group of trees specifically identified in a schedule to a plan by street address or legal description of the land. These amendments essentially over-ride existing case law and are likely to create significant administrative responsibility for councils to identify such trees or groups of trees..
- 4. The Bill also provides for regulations that prescribe environmental monitoring requirements, including time limits for reporting, for a council. These regulations could result in a considerable expense for councils/ratepayers.
- 5. The Bill precedes the larger-scale resource management reform the Government proposes, including what are likely be controversial amendments to section 6 and 7 of the RMA. It is anticipated that a discussion paper on the wider reforms will be issued in 2013.
- 6. Because the Bill has only just been introduced to Parliament it has not yet had its first reading or been referred to select committee. We expect that it will be referred to the Local Government and Environment Select Committee with submissions called for in early (i.e. February) 2013. Normally select committees have six months to report back on a Bill. Because this Bill relates to the Auckland Unitary Plan Process it might need to be considered in a shorter timeframe. Once the Bill is reported back it will be broken into three parts (RMA changes, Auckland Changes and Official Information changes). We presume that the Auckland part will be a higher priority for Government than the RMA changes.
- 7. If you require further information regarding the Bill or the RMA reforms generally, please contact our Resource Management Team.

⁶ Clause 127-129