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Resource Management (Simplifying and Streamlining) Amendment Act 2009

The Government's promise to overhaul the RMA has lead to the enactment of the Resource Management (Simplifying and Streamlining) Amendment Act 2009, which came into force on 1 October 2009. The Amendment makes numerous minor changes to the RMA and some more significant changes discussed in this article.

Enforcement - penalties increased and Crown agencies liable

There is an increase in the penalties for offences. Maximum fines have increased from $200,000 to $300,000 for a natural person, and $600,000 for corporates and unincorporated bodies.

Crown organisations (defined in the Crown Organisations (Criminal Liability) Act 2002) are now subject to the enforcement regime. This will include bodies such as district health boards and school trustees.

Upon conviction a court may direct a local authority to review the defendant's resource consent. On a court ordered review the local authority will now have the power to cancel the consent.

Financial penalties for trade competitors

Stringent new provisions in Part 11A apply to trade competitors who use the RMA to submit against the interests of a competitor. The new provisions also apply to "surrogates" of the trade competitor if they "knowingly receive" direct or indirect help from a trade competitor. A trade competitor can now only participate in an RMA process if directly affected by an effect to the environment that does not relate to trade competition. There are serious financial consequences for contravention of the trade competition provisions. A person declared to be in contravention by the Environment Court is required to pay indemnity costs. Following any Environment Court declaration the High Court must award damages for any loss suffered by the successful trade competitor. Proceedings may be brought up to 6 years after the contravention.

Resource consent processes

Applicants for resource management approvals (including consent applications and requirements for designations) have greater choice over the way in which an application is to be considered. There is:

- Enhanced ability to appoint independent commissioners to hear applications.
- New ability for applicants to go straight to the Environment Court, where the local authority has consented to this path ('direct referral'). This bypasses the need for a council hearing so that the Environment Court becomes the first instance decision-maker where the application is direct referred.
- For proposals of national significance, an applicant can apply to a new body, the Environmental Protection Agency (EPA), who will make a recommendation to the Minister for the Environment whether to 'call-in' a proposal, to be heard either by a board or inquiry or by the Environment Court. The EPA will process matters 'called-in'.

The bar has been raised on public participation in applications for consent. Public notification need only occur where the application involves adverse effects beyond the immediate neighborhood. For the purposes of public notification a council is to disregard the effects on "adjacent" owners and occupiers in new s 95D. For applications not publicly notified, the council must still consider whether neighbours are affected, and if so, limited notification must still be undertaken, by giving notice to those neighbours.

There are changes to the process by which a council can seek further information from an applicant, and related changes to "stopping the clock" for consent processing timeframes.

Councils will be required (once regulations are promulgated) to adopt a discount policy for late processing. This will provide a financial sanction for failure by a council to meet statutory deadlines in processing applications.

The Environment Court's ability to award security for costs is restored. The cost of filing an appeal has already been raised to $500 (from $55).

The Minister of Conservation's power to make decisions and recommendations for restricted coastal activities (the ministerial veto) has been repealed.

Plan-making

Where a proposed change to a district or regional plan is notified (including a complete review of the plan) the law was that the proposed new rules had legal effect from the date of notification. That has now been changed, and not all rules will have interim legal effect (ss 86A-86G). Proposed new rules that will have immediate legal effect include rules to protect water, air, soil (for soil conservation), significant indigenous vegetation and fauna, and historic heritage. A council may apply to the Environment Court to have other rules given interim effect. Other than this, a rule will generally only have legal effect once decisions on submissions are publicly notified.

The further submission process is to remain, but in a modified form which introduces a test for standing. Only certain persons may now make a further submission including where they have an interest greater than the public generally or claim to represent a relevant aspect of the public interest. The time period for making further submissions is tightened to 10 working days.

Councils are able to carry out a rolling review of plans, provided each provision is reviewed at least every 10 years.

Councils are required to consider greater use of combined district and or regional plans.

Appeals against plans to continue

The proposal (in the Bill) to limit appeals against district and regional plans to questions of law did not make it past the Select Committee, despite strong lobbying by the local government sector. The Select Committee's acceptance of the status quo reflected concern that restrictions on merit-based appeals would leave little control over the plan-making process. There are some 136 district and regional plans across 85 local authorities in New Zealand.

Joining proceedings by interested parties

The time for interested parties to join proceedings under s 274 of the Act is tightened, as is the test for standing. The time for giving notice is 15 working days from the close of the appeal period. Whereas previously any person who made a submission on the original application could join an appeal under s 274, they must now show a greater interest in the proceedings than the public generally.

Proposals of national significance, national environmental standards and policies

Barriers have been removed for incorporating national environmental standards and national policy statements into district and regional plans. The existing provisions relating to call-in for proposals of national significance have been substantially reformed in new Part 6AA.

Trees

Despite media focus this issue is largely a sideshow to the more significant procedural changes, though is relevant to Auckland, due to blanket protection rules based on tree height and girth in the plans for Auckland, Manukau, North Shore, and Waitakere. Blanket tree protection rule in plans will continue to have effect until 1 January 2012, to allow councils time to protect specific trees by identifying them. However “trimming” is made lawful from 1 October 2009 in an urban environment (as defined in s 76(4B)) unless the tree is otherwise protected by a blanket protection rule until 1 January 2012 or the tree is scheduled. What constitutes "trimming" will be a question of fact and law in each case, with most Auckland Councils attempting their own definitions in the absence of legislative definition.

Phase II Reforms

The Government has announced that further reforms to the RMA are planned in a Phase II process to address more complex including water allocation, aquaculture, and the RMA’s relationship with other legislation.

The Ministry for the Environment has a series of helpful sheets on its website addressing the amendments in greater detail.