Resource Management Amendment Bill 1999

The Resource Management Amendment Bill was introduced into the House in July 1999 by former Environment Minister the Rt Hon Simon Upton. The Local Government and Environment Select Committee considered the Bill and reported its recommendations back to the House on Tuesday 8 May 2001.

In December 2001, the Government announced that it would make further changes to the Bill as part of its response to the Business Compliance Costs Panel report. These changes will be made by way of a Supplementary Order Paper during the Parliamentary debate on the Bill.

The Bill as introduced had four main purposes:

1. To improve the implementation of the Resource Management Act (RMA), with particular emphasis on reducing costs and debys (whilst ensuring environmental outcomes are not compromised and retaining opportunities for public participation).

2. To strengthen the parts of the RMA which provide for the establishment of national instruments (national policy statements, national environmental standards) to assist with the management of nationally important environmental issues.

.3. To enhance the provisions of the Resource Management Act for historic heritage, and to transfer the regulation of archaeological sites from the Historic Places Act 1993 to the Resource Management Act.

4. To make other miscellaneous improvements to the RMA.

Provisions aimed at reducing time and costs

The time and cost provisions the Committee, by majority, recommended proceed included:

- Clarification that parties joining an appeal (not submitters) are subject to the awarding of costs provisions, and requiring parties to provide notice to the Environment Court of their intention to appear within 30 working days of receiving a notice of appeal.
- Simplification of the list of matters a consent authority must consider when making a decision on a resource consent application.
- Allowing rules in proposed plans that have reached the point of being beyond challenge to replace corresponding rules in the old operative plan.
- Allowing a council to send out a summary of its decision on a resource consent, requirement for a designation or a plan provision rather than having to send out a full copy of the decision.
- Increasing the ability of local authorities to delegate powers, duties and functions to employees.
- Clarification that the time limit clock should be stopped rather than reset when further information is requested or affected party approval is being sought.

- Clarification that the time limit clock for the processing of resource consents starts on the day the application is 'first lodged' with the council, not when the council decides to 'receive' it.
- Introduction of a time limit for the territorial authority to approve a survey plan of subdivision (within 10 working days).
- Alteration of the definition of working day so that the Christmas break is reduced by 5 working days (to 20 December - 10 January).
- Extension of the default period for the lapsing and cancellation of consents from two years to five years.
- Allowing councils to take financial contributions under rules in proposed plans as soon as they are publicly notified.
- Removing the requirement for all parties to consent to have an Environment Commissioner hear a case without an Environment Judge present.
- Redrafting of the notification provisions, making it clear that in determining who is adversely affected by a proposal the consent authority takes into account only those effects that are additional to those of permitted activities, and making it clear that for controlled and restricted discretionary activities the relevant adverse effects are only those which the council retains control or discretion over.
- Extension of the minimum lease term qualifying as a subdivision from 20 years to 35 years.
- Requiring councils to provide, if requested, an estimate of any additional charges that may be imposed in the processing of resource consents.
- Giving councils the ability to defer proposed rules coming into force immediately.
- Providing councils with more flexibility to refuse the subdivision of hazardprone land or land without sufficient access or road frontage.
- Clarification that a council cannot simply make a recommendation on a requirement for a 'rolled-over' designation if there have been no submissions on that requirement.
- Expanding the situations where the transfer of powers from a local authority to another public authority may occur, along with shifting of the responsibility to the transferee.
- Removing the control of subdivision from the list of functions of territorial authorities and instead providing for subdivision as a method to address land use effects.

The Committee recommended against the introduction of limited notification of resource consent applications for activities with minor effects. However, the Government subsequently announced, as part of its response to the Business Compliance Costs Panel report, that it would put limited notification back into the Bill during the Parliamentary debate. This will mean that if an affected party does not give writtenapproval to the application, only the persons identified by the council as being affected can make submissions and participate in a hearing.

Strengthening of national instruments

The main changes strengthening national instruments in the Bill as introduced were:

- Expansion of the scope of national policy statements to allow them to specify methods by which local authorities must implement the policies and the timing, along with simplification of the preparation process and replacement of the Board of Inquiry with a Ministerial Advisory Committee.
- Provision for a greater range of matters to be included as national environmental standards and clarification of how national environmental standards affect existing resource consents.

The Committee, by majority, agreed and recommended that the scope of national policy statements should be expanded. However, it did not agree with the national policy statement specifying methods or the proposed replacement of the Board of Inquiry with a Ministerial Advisory Commit tee. Instead, the Committee recommended that improvements could be made to the current provisions in the Act, by allowing the Minister to develop terms of reference for the Board of Inquiry, and by removing some of the excessive steps in the national polic y statement preparation process.

The Committee, by majority, recommended that the changes relating to national environmental standards proceed, although the national environmental standard should state whether plans need to be amended immediately or if the First Schedule should be used to implement any changes, and whether existing resource consents should be reviewed.

Historic heritage and archaeological provisions

The Bill as introduced contained three key changes relating to this aspect, which originated from the Historic Heritage Management Review initiated in 1998:

- Integration of the statutory protection of archaeological sites under the Historic Places Act 1993 into the Resource Management Act 1991.
- Strengthening of the recognition of historic heritage in the Act by including the protection of historic heritage as a new matter of national importance.
- Alteration of the statutory role of the Historic Places Trust.

The Committee was briefed by the Minister for the Environment on the Government's position on these changes. The Committee accepted the Government's position and recommended that:

- The archaeological controls from the Historic Places Act 1993 not be transferred into the Resource Management Act.
- The statutory role of the Historic Places Trust not be altered.

The Committee, by majority, supported the remaining heritage clauses as they would strengthen historic heritage management. One key recommendation was the raising of the status of iwi planning documents, so that local authorities must 'take into account' these documents when preparing or changing their regional policy statements, regional plans and district plans. Local authorities are currently required to only 'have regard to' iwi planning documents. The Committee recommended a very broad definition of 'historic heritage', which includes such things as historic sites, structures, places and areas, cultural landscapes and archaeological sites.

Other relevant amendments

There are several other relevant amendments that the Committee, by majority, recommended proceed. These included:

- Removing the ability of the Environment Court to order the payment of security for costs.
- Providing regional councils and district councils with an explicit function to maintain indigenous biological diversity (and not significantly reducing the role of regional councils as proposed by the Bill).
- Clarification that a local authority can reject a resource consent application that is deficient.
- Introduction of a requirement for councils to prepare a section 32 report demonstrating that provisions in policy statements and plans are appropriate, having regard to efficiency and effectiveness.
- Introduction of a requirement for councils to prepare a monitoring report every five years that evaluates the efficiency and effectiveness of the provisions in policy statements and plans.
- Providing for bonds to be imposed beyond the life of a resource consent to address situations where the adverse environmental effects of an activity may continue to occur after the resource consent expires.

Provisions not proceeded with

The Committee recommended that the decision of a local authority to not notify a resource consent application should be able to be challenged in the Environment Court, rather than having to go to the High Court for judicial review. However, the Government subsequently announced, as part of its response to the Business Compliance Costs Panel report, that it would take this out of the Bill when it is debated in Parliament. Challenges to notification decisions will remain heard in the High Court.

There are several provisions that which the Committee, by majority, recommended not be proceeded with. These included:

- Contestable consent processing, where resource consent applicants could choose whether their application was processed by a council or by a private consent processor. The Committee considered that the current consent processing system is working reasonably well, and whilst a few councils may not performing well in this area, there was insufficient reason to make such a radical change.
- Commissioner hearings, where resource consent applicants or submitters would be able to select between a council and an independent commissioner to hear and make the decision. The Committee considered that commissioners do not necessarily provide higher quality decisions, the proposal could remove local input on decisions that have environmental impacts, and practice improvements are likely to be more effective and less costly in the long term.
- Direct referral of consent applications to the Environment Court without a council hearing being held. The Committee considered that the amendment would have negative effects on public participation and local democracy, that council level

hearings allow subsequent appeals to focus on the areas of disagreement, and was concerned that the proposal would add to the Court's already heavy workload.

- Changing the definition of 'environment'. The Committee considered there was little benefit in changing the definition, particularly as the amendment could have a destabilising effect on the current case law.
- Changing the definition of 'amenity values'. The Committee considered that the removal of the term 'aesthetic coherence' could lead to the Environment Court interpreting the definition of 'amenity values' at a lesser level.
- Limiting the effect of a proposed plan, so that rules in proposed plans would not take effect until the rule under question was beyond the point of challenge. The Committee was particularly concerned that limiting effect of proposed plans would lead to people taking pre-emptive action knowing that proposed rules may foreclose options in the future.
- Reversing the presumption of subdivision so that the subdivision of land would be permitted unless restricted by a rule in a district plan. The Committee considered that the change would have minimal impact in practice, and had concerns about possible adverse effects on the environment and on public participation.
- Providing the Crown with special exemptions from the subdivision requirements of the RMA, for the disposal of surplus Crown owned-land held under the New Zealand Railways Corporation Restructuring Act 1990 and under the Land Act 1948. The Committee considered that it was undesirable for the Crown to be exempt from the requiremmts of subdivision that apply to private landowners, and was concerned the proposed exemptions would result in the responsibility for meeting subdivision requirements being passed onto the purchaser.
- Removing the provisions allowing a plan to contain 'catch-all' rules requiring a resource consent for any activity not specifically referred to. Instead the Committee recommended that the current provisions be redrafted to refer to any activity that has adverse effects not covered by the plan.
- Making the preparation of regional policy statements optional if regional plans adequately provide for the same matters. The Committee considered regional policy statements to be important for integrated management.
- Allowing an applicant to refuse to supply further information, thereby forcing the consent authority to complete processing the application without it. The Committee considered that applicants must continue to supply further information if requested by the consent authority.
- Removing the non-complying activity category of resource consent. The Committee considered the category to be useful, particularly in relation to providing certainty to the community and to applicants as to what activities are considered appropriate.