Water NZ Meeting – 13 July 2017

Resource Legislation Amendment Act 2017

The Resource Legislation Amendment Act 2017 (**the Amendment**) obtained Royal Assent on 18 April 2017 . The Amendment principally amends the Resource Management Act 1991 (**RMA**), as well as 5 other acts[1], with the stated aim of creating "a resource management system that achieves the sustainable management of natural and physical resources in an efficient and equitable way."

The Amendment contains around 40 individual changes aimed at delivering improvements to the resource management system. The changes include greater centralisation of resource management decision making and process changes intended to streamline decision making. Some of the significant changes and their implications are discussed below.

Procedural Principles

New procedural principles are included in the RMA requiring all persons exercising powers to take all practicable steps to:

1. use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised; and
2. ensure that policy statements and plans include only those matters relevant to the purpose of the RMA and are worded in a way that is clear and concise; and
3. promote collaboration between or among local authorities on their common resource management issues.

These procedural principles augment existing obligations to avoid unreasonable delay. Recourse to these principles will be a useful tool for participant's navigating RMA processes.

Iwi Participation agreements - Mana Whakahono a Rohe

The Amendment's provision for Iwi participation agreements / Mana Whakahono a Rohe (**Agreements**) has attracted considerable controversy. These Agreements are intended to provide a formal mechanism through which Iwi Authorities may participate in resource management processes, and to assist local authorities to comply with their RMA duties, including in particular under sections 6(e), 7(a), and 8 RMA.

The Amendment provides for Iwi authorities or local authorities to initiate the process to reach an Agreement. Agreements must address:

[1] The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; The Environmental Protection Authority Act 2011; The Conservation Act 1987; The Reserves Act 1977; and The Public Works Act 1981.

1. how Iwi will participate in plan making processes;
2. how Iwi and Councils will collaborate with monitoring under the RMA;
3. a process for identifying and managing conflicts of interest; and
4. a process for resolution of any disputes regarding the agreement.

Agreements may also address:

1. how a local authority is to consult or notify an iwi authority on resource consent matters, where the RMA provides for consultation or notification;
2. the circumstances in which an iwi authority may be given limited notification as an affected party; and
3. any arrangement relating to other functions, duties, or powers under the RMA.

Once an agreement is reached it cannot be altered or terminated without the agreement of the participating authorities. The Amendment also includes guiding principles for the initiation, development, and implementation of agreements, including working in good faith, transparent communications, commitment to meeting statutory timetables, minimising cost delays and recognising any Treaty settlement legislation.

National planning standards – Of most potential relevance to the Water Industry

The Minister must prepare national planning standards within two years of the Amendment coming into force. A procedure for public submissions to the draft national planning standards is required by the Amendment. National planning standards must address:

1. a structure and form for policy statements and plans,
2. definitions; and
3. Requirements for the electronic functionality and accessibility of policy statements and plans.

Beyond these minimum requirements there is scope for the Minister to specify objectives, policies and methods (including rules) that must be included in plans. Can also:

1. Specify objectives, policies and rules to give effect to NES and NPS **e.g. NPSFW and NESDW**

Changes to Resource Consent processes

The Amendment introduces a number of new features to resource consent processes:

1. Boundary activities – these are activities which breach boundary rules in district plans between privately owned land. If the relevant neighbour consents to the activity, then the activity is permitted.

2. Deemed permitted activities – these are activities that would be permitted but for a marginal or temporary non-compliance with rules. Provided that the environmental effects of the non-compliance are no different than they would be without the non-compliance, and the effects to any person are less than minor, the consent authority has a discretion to deem the activity permitted.

3. Fast track applications – These are applications for a controlled activity land use consent (other than subdivision of land) or other applications prescribed in regulations. Unless the application is notified, decisions must be made within 10 working days.

4. Express consideration of environmental offsets – decision makers must have regard to any environmental benefit proposed to compensate for any adverse effects that may arise from the activity

5. Further requirements for consent conditions – conditions may only be imposed on consents where the applicant agrees to the condition or the condition is "directly connected" to an adverse effect on the environment or an applicable rule or NES. This sets a higher standard for imposition of conditions than the "logically connected" threshold set by the Supreme Court in the *Estate Homes* case.

6. Limited appeal rights – Rights of appeal to the Environment Court against resource consent decisions are removed to the extent the consent is for:

    a) a boundary activity (unless the boundary activity is a non-complying activity)
    b) a subdivision (unless the subdivision is a non-complying activity)
    c) "residential activity" (unless the residential activity is a non-complying activity).

In addition, the notification provisions have been re-written as a step by step code. These provisions are similar to the current provisions but contain important differences.

"Collaborative" and "Streamlined" planning process

The Amendment provides for two new plan making processes: "collaborative" and "Streamlined".

The collaborative process is available to Councils if certain criteria are met. The process provides for the establishment of a collaborative group (**CG**) whose membership reflects a balanced range of the interests. The CG's purpose is to seek to achieve consensus, after which the council must draft a proposal that gives effect to the consensus position of the CG. Provisions on matters where consensus

was not reached may be included by the council. The council then publicly notifies the proposal for submissions. A review panel is established which provides recommendations on the proposal and matters raised by the submissions. The Council must then accept or reject the recommendations of the review panel report. The extent to which recommendations are accepted affects the availability of rights of appeal to the Environment Court.

The Streamlined Process is available on application of a local authority to the Minister where certain criteria are met showing that the expeditious preparation of a planning instrument is required. Where the Minister considers the streamlined process is appropriate they must issue a direction specifying the details of a bespoke streamlined process. Minimum process requirements are prescribed by the amendment. The Minister's Direction must be presented to the House of Representatives and can be disallowed (revoked) if the House resolves to do so. The proposed planning instrument is provided to the Minister within the time-frame specified by the Direction. The Minister may approve the instrument, send it back to the council for further consideration, direct changes to be made before implementation, or decline to approve the instrument. There are no rights of appeal against any decision or action of the responsible Minister, council, or any other person, other than judicial review.

Strike out of submissions

The Amendment includes a power for local authorities to strike out submissions or parts of submissions where the submission is frivolous or vexatious, discloses no reasonable or relevant case, or is otherwise an abuse of process.

Provisions to manage natural hazard risks

The Amendment inserts "*the management of significant risks from natural hazards*" into section 6 RMA as a matter of national importance.

Section 106 RMA, which provides particular circumstances in which a subdivision consent may be refused, is amended to include the criteria of a "significant risk from natural hazards". Determining the risk from natural hazards requires a combined assessment of: the likelihood of the hazard, the damage that would result to the relevant land, and whether the use of land sought would exacerbate such damage.

Requirements to ensure land is available for housing and business

The functions of Territorial Authorities and Regional Council are amended to include "*the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the*" district/region. This amendment integrates with the National Policy Statement on Urban Development Capacity 2016, which provides specificity as to what "sufficient capacity" entails in particular regions and districts.

Ministerial Powers

The Amendment includes new powers for the Minister to make regulations:

1. that exclude stock from water bodies, estuaries, and coastal lakes and lagoons. Infringement fines of up to $2000 per offence are provided.
2. Prescribing situations where limited or public notification of resource consent applications is precluded.
3. to prohibit or remove specified rules or types of rules that would duplicate, overlap with, or deal with the same subject matter that is included in other legislation e.g. matters regulated by the Hazardous Substances and New Organisms Act 1996 or the Fisheries Act 1996. This power does not apply to rules that regulate the growing of crops that are genetically modified organisms, so regulating such plants remain open to local authorities.

Entry into force

The entry into force of the Amendment's provisions is staggered. Amendments including in relation to natural hazards, procedural principles, development capacity, hazardous substances, Iwi participation agreements, and plan making processes, apply from the day after Royal Assent. Changes to consenting procedures will come into effect from 1 October 2017.