AHM News

INTRODUCTION

The Government has been busy in the last couple of months. The Resource Legislation Amendment Bill has finally worked its way through the system and passed into law, further amendments are proposed to the National Policy Statement for Freshwater Management (NPSFM), and a proposal to establish Urban Development Authorities is currently being consulted on. While these changes go beyond mere tinkering, they are not the substantive reforms being called for in some quarters. In this article we provide a brief overview of these changes. If you would like further details of what these amendments mean for you please get in touch.

RESOURCE LEGISLATION AMENDMENT ACT 2017

The Resource Legislation Amendment Act 2017 (RLA) was passed into law on 18 April 2017, with the majority of the changes coming into effect a day later.[1]

The RLA amends the Resource Management Act 1991 (RMA) as well as five other acts[2], 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 RLA 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 more significant changes to the RMA include:

- The introduction of new procedural principles which apply to all persons exercising powers under the RMA;
- Provision for iwi participation agreements to set out how iwi authorities will participate in resource management processes, as well as assist local authorities to comply with their RMA duties;
- A requirement for the Minister to prepare national planning standards specifying format, structures, definitions and accessibility mechanisms, within two years of the RLA coming into force.
- Changes to resource consent processes in relation to boundary and deemed permitted activities, providing for fast tracking of certain applications, requiring consideration of environmental offsets, imposing restrictions on conditions and limiting appeal rights on boundary, subdivision and residential activities (except non-complying activities).
- Introducing two new planning processes – a collaborative and a stream lined process with specific criteria guiding when the processes can be used;
- Providing the Council with a power 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;

- Including provisions to manage natural hazard risks;
- Imposing requirements on councils to ensure land is available for housing and business uses;
- Providing the Minister with power to exclude stock from waterbodies, prescribe when notification of resource consent applications is precluded and prohibiting or removing rules that would duplicate other legislation (e.g. Hazardous Substances and New Organisms Act 1996). One exception is genetically modified crops which the council can still choose to regulate.

NATIONAL POLICY STATEMENT FOR FRESHWATER MANAGEMENT

The Government has proposed a number of amendments to the National Policy Statement for Freshwater Management 2014 (NPSFM) as part of its Clean Water consultation document.

The amendments are aimed at meeting the swimmable targets (90% of all lakes and rivers being swimmable by 2040) as well as building on proposals outlined in 2016 in the Next Steps for Freshwater document.

The proposed amendments include:

- Requiring councils to identify waterbodies suitable for swimming, those that that will be once improved, plus timeframes for improvement.
- Requiring councils to monitor macroinvertebrates in 'appropriate' (i.e. wadeable) rivers and streams.
- Limiting the concept of "maintain or improve" to within a freshwater management unit (i.e. catchment/part catchment).
- Requiring councils to establish in-stream objectives for dissolved inorganic nitrogen (DIN) and dissolved reactive phosphorus (DRP).
- Requiring councils to consider the community's economic wellbeing when making decisions about water quantity, deciding what level or pace of water quality improvements will be targeted and when establishing freshwater objectives.
- Amending policy CA3 to clarify that councils can only set freshwater objectives below national bottom lines:
  - for attributes that are currently below national bottom lines and only in the physical areas where the infrastructure contributes to the degraded water quality; and
  - if it is reasonably necessary for the continued operation of the infrastructure.
- Removing the footnote in the current NPSFM in relation to coastal lakes and lagoons and providing direction about the monitoring requirements for such waterbodies.
- Further clarification of what Te Mana o Te Wai means and how it will be implemented as well as a new objective and policy requiring councils to recognise Te Mana o Te Wai when giving effect to the NPSFM.

Submissions on the Clean Water consultation document closed on 28 April 2017. No indication has as yet been given as to when the amendments may come into force – however, given it is an election year; the Government may wish to push this through prior to the election.

URBAN DEVELOPMENT AUTHORITIES

The Government has released a Discussion Document which proposes the creation of Urban Development Authorities (UDAs). UDAs are ad hoc bodies that would be established to support and fast-track urban development projects. The proposal would allow UDAs to be endowed with a variety of planning, compulsory acquisition and funding powers. The UDAs proposal has the potential to significantly alter the legal landscape for landowners, developers, territorial authorities, infrastructure providers and planners.

Why UDAs?

UDAs are part of the Government's response to Auckland's growth pressures over housing and infrastructure. However, UDAs are also proposed to be an enduring part of the regulatory landscape and to apply to New Zealand generally. UDAs were first suggested by the Productivity Commission in its 2015 "Using land for Housing" report as institutions that can amalgamate land parcels to make large -scale development economic; coordinate the provision of infrastructure; and remove or ease planning barriers to the provision of innovative and lower-cost housing.

Building and Construction Minster Dr Nick Smith has said UDAs would enable major redevelopment projects like those proposed or under way in areas such as Hobsonville, Tamaki, Three Kings and Northcote to occur three to five years faster:

"The international experience in cities like London, Melbourne, Sydney, Toronto and Singapore is that UDAs can create vibrant, new suburbs, with greater gains for housing, jobs and amenities than through usual incremental, piecemeal redevelopment."

The legislation is intended to cover complex and strategically important developments including residential, commercial and associated infrastructure projects. Dr Smith considers the key to the success of UDAs is in how they interact with councils and businesses.

Establishment process

It is proposed that central government and territorial authorities work together to identify opportunities for the establishment of UDAs. Areas may be viable for UDAs due to a proportion of the land being in public ownership, land being underdeveloped, or a lack of adequate modern infrastructure in an area. Proposals will then be assessed by officials. Following this, central government and territorial authorities must agree to proceed before the proposal is subject to public consultation. Provided central government and territorial authorities remain in agreeance the UDA is then established by order in Council specifying:

1. The development project;
2. The development area;
3. The strategic objectives;

4. Any conditions;
5. The development powers available to the UDA; and
6. The organisational nature of the UDA.
7. In terms of organisational structure UDAs are intended to be publicly controlled entities with certain allocated development powers.

Development Plans

UDAs will have responsibility for producing a development plan that accords with the UDAs strategic objectives. Development plans would address:

1. How each of the development powers are proposed to be exercised (e.g. the nature of any new land use rules, the location of infrastructure).
2. How the development powers will contribute to delivering the strategic objectives.
3. An assessment of effects on the environment.
4. Any infrastructure levies of development contributions anticipated.
5. Any further development powers that the UDA intends to seek.

Development plans will be subject to a process of public consultation, objections from affected persons, and a hearing before independent commissioners in relation to objections. The Minister will make the final decision as to the form of the development plan, taking into account any recommendations from commissioners.

Where to from here?

The Ministry of Business, Innovation and Employment (MBIE) is accepting submissions in response to the UDAs Discussion Document. MBIE's website regarding the discussion document and the submission process can be found here. Submissions close on 19 May 2017 at 5pm.

End notes (from page 1)

1. Changes to consenting procedures will come into effect from 1 October 2017.
2. 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.

Questions, comments and further information

If you have any questions, comments or would like any further information on any of the matters in this newsletter, please contact the authors:

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