



AHM News

INTRODUCTION

We welcome November in, and with it comes warmer weather, the promise of summer, and a change in government with the potential to create some significant changes in the operation and functioning of various environmental elements.

In this newsletter we canvas the new and changing political landscape, the Resource Management Act amendments which came into force on 18 October 2017, and the progress of the Ngaruroro River Water Conservation Order application.

GOVERNMENT AND ENVIRONMENTAL POLICIES

After nine years New Zealand has a change of government. The new Labour / New Zealand First coalition government, supported by the Greens, campaigned strongly on the need for change – in direction, in policies and in approach. The coalition government has three years to make good on its policy and pre-election promises.

We set out our analysis of the parties' pre-election environmental policies and coalition agreements, and our thoughts on the potential implementation, if any, of policies given the coalition pressures and agendas.

Water Quality

The new government has affirmed its commitment to improving water quality. Labour has pledged to hold a "Clean Waters Summit" on cleaning up rivers and lakes in the first 100 days in office.

Notably the Labour/Green Agreement states that there will be a winding down of Government support for irrigation. This issue will bear watching for those in affected industries.

Water Tax

While Labour campaigned fiercely on implementing a national water tax and this is supported by the Greens, this policy is dead in the water. The Labour/NZ First Coalition Agreement states there will be 'no resource rentals for water in this term of Parliament'.

The Labour/NZ First Coalition Agreement does commit to introduce a royalty on exports of bottled water- perhaps a step towards a future national water tax?

Conservation

All three parties agree on the need to reduce waste, and ensure more effective and efficient disposal options exist.

NZ First's election policies focus on using conservation tasks to create jobs, and ending 'race based conservation' and replace these with better support for voluntary protection by private landowners. Labour's conservation policies focus on composting, recycling, disposing and reducing waste, as well as establishing a Tourism and Conservation Infrastructure Fund. The Greens wish to increase power and budget for the Department of Conservation, stop all mining on conservation land and sea-beds, and impose an immediate 20c charge on single-use plastic bags.

The Labour/NZ First Agreement specifies there will be an increase in funding for the Department of Conservation. Otherwise there appears to be little cohesion here within the coalition. There have been no indications that a ban on mining will be implemented.

Climate Change/Carbon Tax/Emissions Trading Scheme

The Government has confirmed its commitment to setting a zero carbon emissions goal and setting up an Independent Climate Commission in their first 100 days in office. The Labour/NZ First Agreement states there will be a Zero Carbon Act and an independent Climate Commission created. The Labour/Green Agreement details the goal of a Net Zero Emissions Economy by 2050, with regulation from the Independent Climate Commission.

Overseer

NZ First has an explicit policy calling for the full calibration of the nutrient tool Overseer against all soil and farm types. Neither Labour nor the Greens appear to have a formal policy detailing their stance on Overseer. This is one to watch, however it is unclear whether this will occur as yet - don't get your hopes up too high as Overseer is not at the top of NZ First's to-do list.

Biosecurity

The Labour/NZ First Agreement pledges an increase to MPI Biosecurity NZ's resourcing, and a Select Committee Inquiry into Biosecurity. Labour and the Greens concur on the need to research and reduce the threats created by introduced pests, and use of toxins, however there has been no explicit commitment to action as yet.



Resource Management Act

Labour policies record a desire to repeal changes made by National to the RMA in 2017, including the increased ministerial powers, the standardisation of plan formats, limits to public notification, and curtailment of appeal rights (discussed below). Labour also aims to assess the RMA and whether it will remain fit for purpose.

The Green's focus in this area is on ensuring the Ministry for the Environment can effectively engage with the RMA process. The Greens also want greater resource consent condition enforcement, and this is recorded in the Agreement.

NZ First is emphatic that the Treaty of Waitangi does not give ownership rights, and their policy states the aim to 'repeal the separate race-based planning that has been put into the Resource Management Act'. This stance is contrary to Labour and the Greens' inclusive and consultative approach to mana whenua.

Given the distance in policies here, it is not surprising there is little detail on the RMA in the Coalition Agreements. The opposing views of NZ First and the other coalition parties regarding mana whenua engagement has the potential to cause tension, or at least block any actions or RMA revision. Watch this space.



RESOURCE MANAGEMENT ACT CHANGES COMING INTO FORCE

Some key changes to the resource consent provisions came into force on 18 October 2017. These changes were introduced as part of the Resource Legislation Amendment Act 2017 and include fast tracking, notification of resource consent applications, natural hazards and subdivision considerations, positive effects of proposed activities to be considered, resource consent conditions and limitations on appeals.

Fast tracking

- Councils must exempt activities which infringe a boundary rule from needing a resource consent if neighbour approval is provided.
- Councils may exempt activities which cause marginal or temporary breaches of the rules from needing a resource consent.
- Councils have 10 days to process resource consent applications for district land-use activities that have 'controlled' status (these are called 'fast-track applications').

Notification of resource consent applications

- A new publicly available step-by-step process will determine whether or not to notify resource consent applications, and in the majority of cases resource consent applications for controlled activities, restricted discretionary or discretionary subdivision or residential activities, and boundary activities will not be notified.
- Limitations for notification have been introduced to those who are considered to be 'affected parties'.

A definition of 'residential activities' has been introduced which covers "*an activity that requires resource consent under a regional or district plan and that is associated with the construction, alteration, or use of 1 or more dwelling houses on land that, under a district plan, is intended to be used solely or principally for residential purposes*".

This is a very wide definition, and could apply to a broad variety of applications that may not on their face appear to be 'residential activities'.

Natural hazards and subdivision

Decision makers are now expressly required to consider risks from natural hazards when dealing with subdivision consents.

Positive effects

Decision makers on resource consents or notices of requirement must have regard to any positive

effects of the activity on the environment, and to any measures proposed to offset or compensate for any adverse effects.

Resource consent conditions

Resource consent conditions must be “directly connected” to an adverse effect or applicable rule, or relate to administrative manners governing the implementation of a resource consent. Applicants can still agree to conditions outside these areas (on an *Augier* or voluntary basis).

Appeals

- There is no right of appeal to the Environment Court of decisions on boundary activities, subdivision consents and ‘residential activities’, unless the activity is a non-complying activity.
- There is specification that submitters on a resource consent application can only appeal the decision to the Environment Court if their appeal relates to a matter raised in their submission.

Decisions on boundary activities, subdivision consents, and residential activities can now only be challenged in a judicial review action in the High Court - the focus of which is on procedural matters rather than a merits review.

NGARURORO RIVER WATER CONSERVATION ORDER APPLICATION TO BE HEARD BEFORE SPECIAL TRIBUNAL

A Special Tribunal has been appointed by the Environment Protection Authority to hear a Water Conservation Order (WCO) application in respect of:

1. the entire length of the Ngaruroro River;
2. the tributaries and hydraulically connected groundwater to the Lower Ngaruroro River; and
3. the 7km-long Clive River.

The WCO is sought by the New Zealand Fish and Game Council, the Hawke’s Bay Fish and Game Council, Ngāti Hori ki Kohupatiki, Whitewater New Zealand, Jet Boating New Zealand, and the Royal Forest and Bird Protection Society of New Zealand. Their application states that the rivers have certain outstanding values including:

1. significance in accordance with tikanga Maori;
2. cultural and spiritual purposes;
3. habitat for rainbow trout;
4. angling, amenity and recreation;
5. habitat for avifauna;
6. habitat for native fish;
7. boating amenity and recreation;
8. wild, scenic and natural characteristics; and
9. scientific and ecological values.



The applicants seek protection of these values through a number of prohibitions and restrictions. These include rules to maintain flow rates in the waterbody by limiting abstraction and precluding the grant of resource consents for discharges of contaminants that would cause water quality criteria to be breached.

The WCO application has proven controversial as it is being heard while the TANK (Tutaekuri, Ahuriri, Ngaruroro and Karamu catchments) process is proceeding. TANK is a collaborative

stakeholder group which was established in 2012 to recommend water quantity and quality limits for the Greater Heretaunga and Ahuriri catchment, in order to give effect to the National Policy Statement for Freshwater Management. The Group is made up of approximately 30 representatives from agricultural, horticultural, and public health sectors; environmental and community interest groups; regional and district councils, and tāngata whenua. Some water users see the WCO application as cutting across the collaborative TANK process¹.

The WCO application has also been controversial as it includes “hydraulically connected groundwater”. When the application was lodged in December 2015 the extent of the hydraulically connected groundwater was not known. The science developed through the TANK process has indicated that the extent of the groundwater hydraulically connected to the lower river is greater than first thought. This means that the WCO application is likely to affect more users and industries than first thought. There is therefore potential for the application to be re-notified as it applies to the lower river.

The Special Tribunal has issued directions for a hearing to commence with respect to the upper river in December 2017. This split hearing is intended to enable TANK science to catch up with the WCO process so that the parties have an authoritative hydrological model of the river.

[Disclosure: Atkins Holm Majurey is engaged on behalf of Horticulture New Zealand in this matter]

AHM SEMINARS AND UPDATES

Atkins Holm Majurey is involved in a number of seminars and updates on environmental law throughout the country.

Paul Majurey spoke at the Resource Management Law Association Conference in September and provided an update on the Sea Change ‘Tai Timu Tai Pari’ marine spatial planning process for the Hauraki Gulf.

On the 8 November 2017 Vicki Morrison-Shaw and Rowan Ashton are presenting at the Environmental Compliance Conference at the Heritage Hotel in Auckland and sharing their views on how better conditions of resource consent can improve compliance outcomes.

In the new year, Vicki and Rowan (back by popular demand) are presenting a case law update for the Environmental Law Seminar on 21 March 2018 run by Lexis Nexis. This presentation will include case law updates in relation to Part 2 of the RMA and resource consents, notification, subdivision, landscape, freshwater, fisheries, GMOs, conservation and the EEZ.

End notes

1. Resource Management Act 1991 s58C (2)(c).

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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