



# *Reactions to the Resource Legislation Amendment Bill*

As we noted in our December 2015 newsletter, the Resource Legislation Amendment Bill (“the Bill”) was introduced in November 2015 and submissions on it closed mid March 2016. The Select Committee was initially scheduled to report their findings back to Parliament on the 3 June 2016. This date has been pushed back to 6 September 2016.

## **PROVISIONS OF THE BILL WITH GENERAL SUPPORT**

Reactions to the Bill have been mixed, with most submitters supporting some aspects of the Bill but opposing others. Areas with general support include:

### **MĀORI PARTICIPATION**

The Bill will require local authorities to consult with tangata whenua in a range of situations including throughout the collaborative process, the streamlined planning process, and the appointment of hearings commissioners with tikanga Māori understanding and knowledge of local iwi and hapu. The majority of submissions were positive on the Bill’s proposed iwi participation arrangements. While some submissions considered that such participation decreased efficiency, many considered that iwi participation was not only necessary but also increased efficiency in bringing issues to the fore and dealing with them before they became more serious and time consuming, as well as facilitating cultural agreement. This particular area has proven to be politically polarising, with New Zealand First making a submission against the Bill and focusing on their dissatisfaction with Māori participation provisions in the Bill, whereas, unsurprisingly, the Māori Party has come out in strong support of the Maori participation elements of the Bill.



## **WATER RIGHTS**

The Bill requires stock to be excluded from water bodies (according to a stepped timetable) and removes redundant provisions on water quality classes from the RMA. The general feeling among submissions is support for both of these changes.

## **COLLABORATIVE PROCESS**

The collaborative process included in the Bill is intended to encourage public engagement, resulting in plans reflecting community values, and reduced litigation costs and delays. Submissions are generally in favour of the collaborative process, and see that it is a positive move towards more meaningful public engagement in the resource management process. Several submitters were concerned that the collaborative process will introduce greater delays, which were not in line with the aims of the Bill.

## **PROVISIONS OF THE BILL THAT ARE CONTESTED**

### **ENHANCED MINISTERIAL POWERS**

Many submissions focused on the enhanced ministerial powers created under the Bill, and in particular the ministerial regulation making powers allowing the overturning of local decisions, overriding or withdrawal of existing rules, and prohibiting local authorities from making certain rules.

Submitters raised concerns around the breadth of these powers, the low threshold required to exercise them, and the possibility that these powers could amount to a Henry VIII clause as the Minister could effectively override the ability that local authorities have under the RMA to regulate land use, by passing regulations.

Submitters generally considered this expansion of powers to be a negative element of the Bill, and critique centred around the fact that these provisions could result in a diminution of local democracy, public perceptions of the legitimacy of the plan-making process, and also that such powers are likely to result in a blurring of the distinct roles of central and local government under the RMA.

### **RESTRICTIONS TO APPEAL RIGHTS**

The Bill limits rights of appeal in the collaborative planning and streamlined planning processes, and removes the right of appeal against a decision of a consent authority on a



resource consent application for boundary changes, subdivisions (except non-complying status subdivisions) and residential activity resource consent applications where the status is controlled, restricted discretionary or discretionary. The majority of submitters considered the proposed limitations on appeal rights to be a negative component of the Bill, however a smaller number of submitters considered the changes would better enable rapid growth and increased development.

### **DIMINISHED PUBLIC PARTICIPATION**

Several parties identified that the Bill diminishes public participation through the restrictions it imposes on public notification, the increased use of limited notification on plan changes and the reduction of appeal rights. Such submitters also emphasised that public participation is an essential part of resource management.

### **REMOVAL OF HAZARDOUS SUBSTANCES FROM THE RMA**

Some submissions praised the removal of sections dealing with hazardous substances in the RMA due to duplication with the Hazardous Substances and New Organisms Act 1996 (“HSNO”), which they contended makes any process regarding hazardous substances costly and ineffective. However, most submitters were concerned that the provisions as drafted were unclear and uncertain.



Some submitters expressed concerns that the Bill does not clarify whether all elements of hazardous substance control would be removed (e.g. just land use or regional functions such as hazardous substances discharge as well), and what the timing of the changes and status of hazardous provisions were in the meantime. Other submitters (mostly local authorities) considered that control of hazardous substances needs to be within the power of the local authority to ensure appropriate protection and response to hazardous substance issues in the local area is enacted effectively and efficiently. The Bill’s lack of reference to genetically modified organisms also raised queries among the submitters as to the status and future of such organisms.

### **SUBMISSIONS TO NOTE**

#### **PROPERTY COUNCIL NEW ZEALAND**

Property Council New Zealand submitted strongly on the need for the Bill to promote growth in a rapid, effective and certain manner. Property Council sees the Bill merely as a stop gap for the short to medium term, and strongly calls for a wider legislative reform looking at urban planning, infrastructure, local government and environmental law. However their submission

does support the Bill, and in particular supports the Minister's expanded powers for creating greater efficiency and rapidity in acting under resource management restrictions, the proposal to allow limited notification of plan changes, and the Bill's proposal to treat land subdivision as a permitted activity subject to rules in plans.

## **LOCAL GOVERNMENT NEW ZEALAND**

Local Government New Zealand ("LGNZ") applauds the intention of the Bill to remove red tape, but is concerned that the changes create a more complex planning framework. In particular, LGNZ is concerned that the increased ministerial powers are too extensive, and LGNZ harbours concerns regarding the potential reduction in public participation, the fast track process, and the fixing of fees for hearing commissioners. LGNZ supports iwi participation (although suggests that the Crown should resource iwi participation with council) and the majority of amendments to appeals processes.

## **TIMING**

The date for the Select Committee report has pushed back from 3 June 2016 to 6 September 2016, due to the sheer volume of submissions (more than 1,000), and the complex and significant nature of the changes proposed in the Bill.

## **CONCLUDING COMMENTS**

A lot of the elements of the Bill which have raised the most concerns are those that aim to streamline and enable growth and development in urban locations. While good goals in and of themselves, it is possible that these changes swing too far and threaten fundamental legal principles such as the right to appeal and the democratic involvement in local decision making.

It appears that this is a bill which will leave all parties dissatisfied, however it is unlikely that any resource management legislation will please everyone.

## **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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