

Chairperson and Committee Members
REGULATORY MANAGEMENT COMMITTEE

28 AUGUST 2014

Meeting Status: **Public**

Purpose of Report: For Decision

IMPACTS OF NEW LEGISLATION IN PARTICULAR RESOURCE MANAGEMENT ACT CHANGES

PURPOSE OF REPORT

- 1 This report outlines amendments to the Resource Management Act 1991 and the resultant impacts on the Council's systems, processes, procedures and delegations of Council.

SIGNIFICANCE OF DECISION

- 2 This report does not trigger the significance policy.

BACKGROUND

- 3 The Resource Management Act (RMA) has undergone 17 amendments since it was passed into law in 1991. The latest changes were made in 2013. Many of these changes are taking effect in 2014 or 2015. The purpose of the 2013 reforms, according to the Ministry for the Environment guidance on the changes is:

“to help create a resource management system that delivers communities’ planning needs, enables growth, and provides strong environmental outcomes in a timely and cost-effective way. It does this through:

- *improving the resource consent regime*
- *streamlining the delivery of Auckland’s first unitary plan*
- *improving the information basis for local decision-making*
- *improving the workability of the RMA through minor and technical amendments including changes relating to District rules for trees, environmental monitoring data and RMA emergency provisions.”*

- 4 The key components of the Resource Management Amendment Act 2013 (RMAA 2013) include:
 - new and clearer information requirements for all resource consent applications
 - a new six-month timeframe for decision-making on resource consent applications that are notified and limited notified (130 and 100 working days respectively)

- changes to improve the accessibility of the direct referral process and to introduce an investment threshold for projects
 - changes to Section 32 of the RMA to improve the evaluation of effects of objectives, policies and rules
 - changes to provisions relating to the blanket protection rules for trees
 - changes to Section 360 of the RMA to allow regulations to be made requiring local authorities to monitor environmental data to inform better decision-making
 - minor and technical changes to improve the workability of the RMA.
- 5 Key changes from 2011 which take effect in September 2014 include:
- Compulsory accreditation for all hearing commissioners
- 6 The details of these changes and their impacts for the Council processes and delegations are discussed in the following sections of the report. The report is split into changes for resource consent processing and changes for District plan development

CONSIDERATIONS

Issues

Resource consent changes

- 7 There are three main areas of change for the resource consent process. These are:
- Information requirements;
 - Timeframes for 6 month notified and limited notified consents; and
 - Direct referral
- Each of these changes is explained in more detail below.
- 8 The changes to information requirements, new processing timeframes and six-month processing of resource consents do **not** come into effect until an Order in Council is advised by the Ministry for the Environment that aligns with other changes proposed through the on-going resource management reform process. (post September 2014 General elections)

Resource consent information requirements

- 9 Resource consent processing changes will change Section 88 and Schedule 4 so that the new Schedule 4 (assessment of environmental effects requirements) now includes matters which were previously in Section 88. The Schedule now includes all information required for an application including contact details.
- 10 The amendments change Section 88 to now simply state that applications must meet certain requirements to be accepted for processing. The

requirements themselves are all contained in Schedule 4 to make it easier for applicants and planners to prepare their resource consent applications.

- 11 The new Section 88B contains a table listing the provisions which have time limits and time exclusions elsewhere in the RMA. The table lists parts of the consent process that have time limits (such as the time limit for notifying an application), and for each part lists the possible exclusions from those time limits (for example, excluded time relating to a request for further information).
- 12 Section 88 now allows councils up to 10 working days (increased from 5 working days) to decide whether to accept an application. This extension recognises that more time might be needed for this check to be completed because of other changes to the resource consent process (particularly the new Schedule 4 requirements).

Timing of effect

- 13 These changes do **not** come into effect until an Order in Council is advised by the Ministry for the Environment that aligns with other changes proposed through the on-going resource management reform process. This change will not occur until after the 2014 General Elections.

Implications of the change

- 14 These information requirement changes will need to be integrated into processing guidance and templates in the Council's computer system (NCS) after they come into force.

Resource consent timeframes / six month consents

- 15 The amendments revise the timeframes for consent processing for notified and limited notified applications. These applications now must be processed in 130 and 100 working days, respectively.
- 16 The six-month timeframe (130 working days for notified applications and 100 working days for limited notified applications) comprises:
 - 20 working days to notify
 - 20 working days for submissions
 - either 75 working days (for notified) or 45 working days (for limited notified) from the close of submissions to complete the hearing
 - 15 working days for commissioners to prepare written decisions.
- 17 Under Section 95, the decision on whether or not to notify the application, and to serve notice, has been increased from 10 working days to 20 working days from lodgement.
- 18 Section 88C allows the processing clock to be stopped only once when further information is requested under Section 92(1). The clock can only be stopped in the period before a decision is made on notification (ie, during the first 20 working days from lodgement). Following the decision to notify, further information requests will not stop the clock.

- 19 If applicants consider they need more time to be ready to prepare their case (for example, in response to submissions), they can request to have their application placed on hold. While under Section 88C the processing clock can only be stopped once when further information is requested, Section 92(1) has not changed which means consent authorities can still request further information any number of times.
- 20 Section 103A provides the time limits for the completion of hearings of notified or limited notified applications (rather than time limits for commencement of hearings). Hearings must be completed no more than 75 working days from the end of submissions for notified applications. For limited notified applications hearings must be completed within 45 working days. This timeframe includes all the time for a hearing to take place and be concluded.
- 21 Section 103B makes pre-provision of evidence for hearings mandatory before consent hearings for notified and limited notified applications. The pre-reading of evidence by all parties can save time spent at the hearing. The new requirements are:
- Councils must provide the Section 42A report and any other evidence to the applicant and submitters at least 15 working days before the hearing
 - applicants must provide all their briefs of evidence to the council at least 10 working days before the hearing and the Council must make this available at its office .
- 22 Following the close of the hearing, there will still be 15 working days for a written decision to be issued.

Timing of effect

- 23 These changes do **not** come into effect until an Order in Council is advised by the Ministry for the Environment that aligns with other changes proposed through the on-going resource management reform process. This will not occur until after the 2014 General Elections.

Implications of the change

- 24 These timeframe changes will need to be integrated into processing timeframes in the Council's computer system (NCS) the development of the Regulatory Services Activity Management Plan, after they come into force. The requirements to complete notified and limited notified hearings within 6 months and pre-provision of evidence may require additional planning and administration resources to be available for all consent processing. Again this will be considered through the activity management planning.

Direct referral process

- 25 Section 87E (which is subject to regulations) has been changed to require Councils to grant a request by an applicant for direct referral to the Environment Court for a resource consent application if the value of the

investment in the proposal is likely to meet or exceed a threshold amount, unless exceptional circumstances exist.

- 26 Section 198C includes corresponding provisions for designations and heritage order applications.
- 27 The threshold amount and the matters that the Council will have regard to when determining whether there are exceptional circumstances will be described in regulations (still to be developed).
- 28 The requirements for the Content of a Council Planning Report under Section 87F has been broadened to include a summary of submissions. Sections 198D and 198J include the corresponding provisions for designations and heritage order applications. The report must:
- Provide a summary of submissions received
 - Address all the issues in Sections 104 to 112 to the extent that they are relevant and
 - Suggest conditions that should be imposed if the Environment Court grants the application.

Timing of effect

- 29 These changes do **not** come into effect until an Order in Council is advised by the Ministry for the Environment that aligns with other changes proposed through the on-going resource management reform process. This will not occur until after the 2014 General Elections.

Implications of the change

- 30 The implications of some of these changes for Council are unknown at this time as the investment thresholds are yet to be developed. There are likely to be more requests for direct referral in the future and resources will need to be available to respond to these requests in the same way as resource consents are processed.
- 31 Applications referred to the Environment Court are likely to require legal representation for the Council, not all legal cost associated with this will be recoverable from the applicant.

District Plan changes and reviews

- 32 Some aspects of the direct referral provisions have come into effect from 2013 and others will not come into effect until an order in Council is made.
- 33 There are two main changes to the development and change of District Plans. These are changes to requirements for:
- Section 32 analysis; and
 - Urban tree protection.

Section 32

- 34 The current Section 32 (analysis for policy statements and plans prior to notification and as part of decisions) has been replaced with new Sections 32 and 32AA. The new Section 32 sets out the requirements for preparing and publishing evaluation reports. New Section 32AA sets out the requirements for undertaking and publishing further evaluations previously included in the former Section 32(2).
- 35 The new sections do not change the overall purpose of Section 32 which is to ensure rigour in plan decision-making through requiring a critical evaluation of the objectives, policies and methods of proposals. The new sections provide greater guidance and specificity to councils about what is required in Section 32 reporting, particularly for the assessment of costs and benefits.
- 36 The main changes are that the assessment include an evaluation of:
- **Scale and significance**
 - Section 32(1) states what an evaluation report must examine and contain. The Section now requires that evaluations must contain a level of detail that corresponds to the scale and significance of the effects anticipated by the proposal.
 - **Benefits and costs of effects:** Section 32 now specifies that the assessment of the benefits and costs relates specifically to environmental, economic, social and cultural effects anticipated from the implementation of the provisions.
 - **Economic growth and employment opportunities:** As part of the assessment of benefits and costs, the Section now requires an assessment of the opportunities for providing or reducing economic growth and employment.
 - **Quantification:** Benefits and costs are now required to be quantified, where practicable. This seeks to ensure decision-makers have the best information on which to make decisions.
- 37 In addition the new provisions specify that the further evaluation (as part of the decision) needs to only cover the changes made since notification and can be included in the decision (rather than requiring a separate report).

Timing of effect

- 38 These changes take effect three months after Royal Assent of the legislation except for the purposes of preparing the first Auckland Unitary Plan, when the changes take effect on the day after Royal Assent. This means that any proposal notified after the date that the Section 32 provisions take effect will need to be accompanied by a Section 32 evaluation report that meets the new provisions.
- 39 Where a proposed policy statement or plan is at the stage where the further submission period has not yet closed when the Section 32 changes take effect, those Councils will need to meet the new requirements for further evaluations.

Implications of the change

- 40 In relation to the Proposed District Plan this means that the new provisions of Section 32 will not be applied to most of the provisions. However any provisions which are withdrawn (such as the coastal hazard provisions) will need to be assessed against the new Section 32 provisions when a plan change is developed for coastal hazards, or any other new plan changes or variations.

Urban Tree Protection Rules

- 41 Sections 76(4A) and 76(4B) of the RMA were inserted by the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (RMAA09). They came into force on 1 January 2012.

- 42 In 2011, the Environment Court declared that, despite Section 76(4A), councils could retain rules the Government considered amounted to a general tree protection approach (refer ENV-2010- AKL-241, NZEnvC 129).

- 43 The Court considered that a group of trees can be any trees that satisfy one or more of the following conditions:

- a. a cluster or trees identified precisely by location (usually by street address and/or legal description)*
- b. all trees of one or more named species in a defined area or zone*
- c. all trees in a class with defined characteristics in a defined area or zone*
- d. all trees in a named ecosystem (usually natural rather than artificial) or habitat or landscape (unit) or ecotone¹. “*

- 44 However, the Government considered that the conditions set out in ‘b’ and ‘c’ were at odds with the intention of the amendments under RMAA09

- 45 To address this, Section 76(4A) was amended under the Resource Management Amendments Act 2013 (RMAA13) to align with its original policy intent – the prohibition of blanket tree protection rules in urban areas.

- 46 Sections 76(4A), (4B), (4C), and (4D) now state:

“(4A) A rule may prohibit or restrict the felling, trimming, damaging, or removal of a tree or trees on a single urban environment allotment only if, in a Schedule to the plan,—

- (a) the tree or trees are described; and*
- (b) the allotment is specifically identified by street address or legal description of the land, or both.*

(4B) A rule may prohibit or restrict the felling, trimming, damaging, or removal of trees on 2 or more urban environment allotments only if—

- (a) the allotments are adjacent to each other; and*

- (b) *the trees on the allotments together form a group of trees; and*
- (c) *In a Schedule to the plan,—*
 - (i) *the group of trees is described; and*
 - (ii) *the allotments are specifically identified by street address or legal description of the land, or both.*

(4C) *In subsections (4A) and (4B),—*

group of trees means a cluster, grove, or line of trees

urban environment allotment or **allotment** means an allotment within the meaning of Section 218—

- (a) *that is no greater than 4000m²; and*
- (b) *that is connected to a reticulated water supply system and a reticulated sewerage system; and*
- (c) *on which there is a building used for industrial or commercial purposes or as a dwelling house; and*
- (d) *that is not reserve (within the meaning of Section 2(1) of the Reserves Act 1977) or subject to a conservation management plan or conservation management strategy prepared in accordance with the Conservation Act 1987 or the Reserves Act 1977.*

(4D) *To avoid doubt, subsections (4A) and (4B) apply—*

- (a) *regardless of whether the tree, trees, or group of trees is, or the allotment or allotments are, also identified on a map in the plan; and*
- (b) *regardless of whether the allotment or allotments are also clad with bush or other vegetation. “*

- 47 The new Sections 76(4A)–76(4D) do not remove the Councils’ ability to protect trees on urban allotments, do not place any restrictions on the types of trees to be protected, and do not limit the methods that the Council may use to assess the quality of a tree or group of trees. Rather, the Sections require urban tree protection rules in District Plans to be applied in ways that provide certainty for landowners and District Plan users about what, if any, tree protection rules affect their properties. This only applies to sites that meet the definition of “urban environment” above.
- 48 The amendments to Section 76 do not detract from the requirement of territorial authorities to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna pursuant to Section 6(c) of the RMA, or detract from the functions of Regional and District Councils to maintain indigenous biological diversity pursuant to Sections 30 and 31 respectively.
- 49 Sections 76(4A)–76(4D) do not prevent trees within an area of significant indigenous vegetation or a significant habitat of indigenous fauna from being protected by a rule in the District Plan.

Timing of effect

- 50 These changes have come into effect with a deadline to change plan provisions which are inconsistent with this change by 4 September 2015.

Implications of the change

- 51 The amendments mean that unless urban trees are specifically identified as being on the property, by address and/or legal description, (as heritage tree currently are) in a Schedule in the District Plan, they cannot be protected from removal on sites defined as being in the “urban environment”. If protection is desired a plan change will need to be notified by no later than 4 September 2015 with the new Schedule.
- 52 A plan change that proposes to Schedule one or more trees for protection should only be advanced following a public engagement process including the following steps:
- encouraging ratepayers, community groups, and members of the public to nominate trees or groups of trees for protection;
 - engaging environmental experts to identify what environmental outcomes are anticipated by protecting the subject trees;
 - identifying and considering alternative mechanisms for achieving those environmental outcomes (eg non-regulatory methods);
 - consulting affected landowners;
 - identifying the costs and benefits of the environmental, economic, social and cultural effects of protecting the subject trees or groups of trees.
- 53 The Council needs to decide whether, or not, to progress a plan change to the operative plan or a variation to the proposed plan to protect some urban trees and undertake any work prior to September 2015. This would be a substantial piece of work with associated costs and would be subject to the new Section 32 analysis requirements.
- 54 If a plan change and/or variation does not occur the rule relating to modification of native vegetation in the “urban environment” (as specifically defined in the RMA above) will no longer apply and the inconsistent provisions must be withdrawn from the operative plan by September 2015.
- 55 Currently it is estimated that approximately 15,000 mature native trees are currently protected by “urban tree protection rules” that will no longer be protected if they are not specifically listed in the District Plan.
- 56 To be clear the heritage tree protection will remain as the location of these trees is by address or legal description. Some ecological sites are currently specifically identified but others are not specific enough to retain their protection if they are in the “urban environment”. This could include up to 20 Ecological sites which would need to be more specifically identified.

- 57 This paper recommends that staff prepare a report that outlines the options for urban tree protection for consideration by the Committee before the end of 2014.

Section 360- National Monitoring framework

- 58 Changes to Section 360 of the RMA to allow regulations to be made requiring local authorities to monitor environmental data.
- 59 The regulations have now been developed for implementation in 2014. The regulations require detailed information on all stages of processing resource consents and plan change or plan reviews.

Implications of the change

- 60 The national framework will require the Council to keep and report on detailed processing times which are not currently recorded. There will need to be changes to procedures and databases for recording time taken at each step of the resource consent and plan change and these will need to be provided in the new monitoring template. There may be additional costs associated with this as the current system is not set up to collect this data.

Other changes that affect Council activities

Hearing Commissioners

- 61 Section 14 of the Resource Management Amendment Bill (No 2) 2011 introduced changes to the accreditation requirements of the RMA that will come into effect from 12 September 2014. The most significant changes are:
- 62 An extension to the range of hearings for which accreditation is required. Accreditation will also be required for hearings on:
- reviews of resource consents
 - applications to change or cancel resource consent conditions
 - proposed policy statements and plans
 - any hearing of an objection under Section 357C of the RMA
- 63 The requirement is for all members of hearing panels to be accredited, unless there are exceptional circumstances.

Implications of the change

- 64 All Hearing Commissioners must be accredited for notified resource consents and in addition from 12 September 2014 only accredited hearing commissioners can be used for decisions (unless there are exceptional circumstances) on:
- reviews of resource consents
 - applications to change or cancel resource consent conditions
 - proposed policy statements and plans
 - any hearing of an objection under Section 357C of the RMA.

- 65 This change means that the Council's delegations for hearing commissioners need to be amended to reflect this requirement.

Financial Considerations

- 66 There will be additional staff time and economic expertise needed to undertake the necessary assessments required under the new Section 32 and other changes. However these costs can be met from existing budgets or considered at the time of undertaking a plan change or reviewing resource consent fees.
- 67 It is a recommendation of this paper that the Committee be kept updated on the implementation of these RMA amendments and their associated costs.

Legal Considerations

- 68 The legal considerations are set out in the issues section of this paper.

Delegation

- 69 This report relates to functions under the Resource Management Act (1991). The Regulatory Management Committee holds the following delegation in relation to this Act:

7.19 Authority to exercise all of the Council's functions, powers, and duties under the Resource Management Act 1991, except under clause 17 of Schedule 1.

- 70 This enables the Committee to receive this report and request changes necessary to enable Council to appropriately carry out its functions under the RMA.

Consultation

- 71 The normal government legislative process, including submissions, was followed prior to these amendments being enacted.

Policy Implications

- 72 The issues in this paper relate specifically to the Council's District Plan and regulatory functions under the RMA and therefore the policy implications in response to the matters raised in the report will impact on either the implementation of the existing District Plan or the Proposed District Plan. The implications are covered in the body of the report under each set of legislation changes.

Publicity Considerations

- 73 It is not considered that there is a need for a media release at this time. However future decisions relating to these amendments will need to be publicised.

Tāngata Whenua and Other Considerations

- 74 There are no specific requirements in respect of tangata whenua or other issues in relation to this report.

CONCLUSION

- 75 In conclusion, the variety of amendments to the RMA in recent years, some of which take effect this year, serve in most cases to streamline RMA processes or clarify certain sections. However as with most amendments the consequential effect on Council is to increase costs and the required resources. In some cases the additional costs are “one-off” costs to update databases, processes or systems. In other cases this will add additional costs to Council’s operational budgets (for example the changes to section 32 and direct referral to the Environment Court).
- 76 Subsequent reports to this Committee will further update on the implementation of these amendments, the associated costs and decisions on policy, such as the urban tree protection rules.

RECOMMENDATIONS

- 77 That the Regulatory Management Committee notes the changes to the Resource Management Act (1991) in 2011 and 2013 will necessitate changes in delegations for the Regulatory Management Committee and staff and requests a report that makes the necessary changes to the governance structure and relevant staff warrants.
- 78 That the Council’s delegations for hearing commissioners are amended so that only accredited Hearing Commissioners can be appointed to hear and make decisions on notified resource consents, reviews of resource consents, applications to change or cancel resource consent conditions, proposed policy statements and plans and any hearing of an objection under section 357C of the Resource Management Act (1991).
- 79 That the Regulatory Management Committee notes that changes are required to the resource consent procedures and that staff are making the necessary changes to implement the new requirements.
- 80 That the Regulatory Management Committee notes that staff will keep the Committee updated on the implementation of the Resource Management Act (1991) amendments, including costs incurred via further reports to this Committee.
- 81 That the Regulatory Management Committee notes that a report outlining options for the urban tree provisions will be prepared for a Regulatory Management Committee meeting before the end of 2014.

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