

**Resource Management Amendment Act 2003:
reducing costs, strengthening standards**

“Behind the headlines, the Act simplifies procedures and strengthens key provisions.”



David McGregor - Partner

The level of vitriol - mainly from the business community - generated by the recent Resource Management Amendment Act (the Act), has masked a number of procedural changes and improvements.

Behind the headlines, the Act simplifies procedures and strengthens key provisions.

Reducing costs, strengthening standards

The Resource Management Amendment Act came into force on 1 August 2003, and has four main objectives:

- reducing compliance costs and timeframes without compromising environmental outcomes or public participation;
- strengthening national standards for nationally important environmental issues;

- enhancing the provisions for historic heritage; and
- miscellaneous improvements to the original Resource Management Act.

There are several key features of the Amendment Act that should be noted.

Limited notification process

A new “limited notification” process provides an alternative method of processing resource consent applications with only minor adverse effects.

Under the old regime, applications with only minor environmental effects had to be fully and publicly notified if an affected party’s approval was not forthcoming.

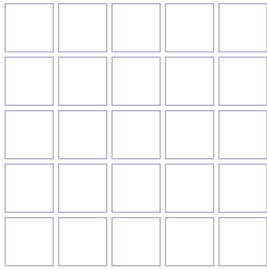
For example, if consent was required to expand an activity on a site, the permission of all of those likely to be affected, such as neighbours, was required.

If one neighbour objected to the proposal, then the consent authority had no option but to notify the application publicly.

With the new limited notification process, approval is still required, but submissions will only be invited from those directly affected. Public notification, such as newspaper advertising, is not necessary.

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Theresa LeBas - Senior Associate

Codification of the permitted baseline

The concept of the ‘permitted baseline’ is a judicial innovation.

It defines the environment against which the degree of adverse environmental effects of a proposed activity will be gauged.

The permitted baseline comprises the existing environment, what is permitted as of right under the relevant plan and, when appropriate, what is authorised under a current but yet to be implemented resource consent.

Consent authorities use the baseline to decide whether the effects of an activity are minor, and whether a person is adversely affected by a proposal.

It is also used in decisions on both notification and on whether to grant or decline a consent.

Under the previous regime, consent authorities had to disregard any adverse effects envisaged by the permitted baseline test.

However, the baseline was difficult to apply, unsuitable for many operative plans, and relevant objectives, policies and rules were often overlooked.

With the advent of the Act, effects can be considered as a whole rather than by adhering to a formalistic approach. Councils *may*, rather than *must*, take into account the adverse effects of activities on the environment if a plan permits an activity with those effects.

The effects of permitted activities will be considered on a case-by-case basis but the permitted base line concept will not be given priority over consideration of all of the effects of an activity and the plan as a whole.

Development of national environmental standards and national policy statements

National environmental standards prescribe technical standards for the use, development and protection of natural and physical resources and also prescribe the methods of implementing such technical standards.

The Act expands the matters for which national environmental standards can be prepared.

The regulations in the standards can prohibit or permit an activity subject to compliance with terms and conditions in the regulations, or compliance with rules in a plan.

If the regulations allow resource consent to be granted for an activity, they may also specify the type of consent required and define the matters over which control is reserved or discretion restricted.

If an activity is permitted by a rule or a resource consent, but is prohibited or not authorised by the regulations, then the regulations will prevail.

Similarly, if an activity is permitted by the regulations, but prohibited or not authorised by a rule or resource consent, then the latter will prevail.

These amendments are intended to make it easier for central government to become involved in developing simple, effective and consistent environmental controls.

The success of this measure will be measured by the frequency of its use.

Historic heritage

The protection of historic heritage from inappropriate subdivision, use and development is included as a new matter of national importance, replacing the requirement to have “particular regard to” the recognition and protection of the heritage values of sites, buildings, places or areas.

Processing changes

A number of procedural amendments have been introduced to reduce compliance costs. These include:

- When further information is requested or an affected party approval is sought,

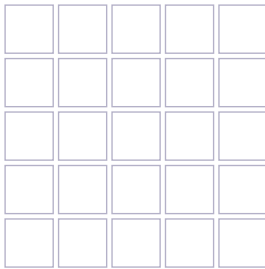
the clock on statutory time limits will be stopped, rather than reset to zero.

- The list of matters that a consent authority must consider when making its decision on a resource consent application has been simplified.
- Before a plan is notified, a written record is required, showing that provisions in policy statements and plans are appropriate.
- The default period for the lapsing and cancellation of consents has been extended from two years to five years.
- The minimum lease term qualifying as a subdivision has been extended from 20 years to 35 years.
- A territorial authority must now approve or decline a survey plan of subdivision within 10 working days of receipt of the plan.
- Consent authorities now have greater flexibility to refuse or better control the subdivision of hazard-prone land and land without sufficient legal or physical access.
- The control of subdivision has been removed from a territorial authority’s list of responsibilities and subdivision can now be used as a method to address land-use effects.
- Consent authorities can defer proposed rules that are planned to come into force immediately.
- Rules in proposed plans that are beyond challenge can replace corresponding rules in the earlier operative plan.

“If an activity is permitted by a rule or a resource consent, but is prohibited or not authorised by the regulations, then the regulations will prevail.”



Lisa Fraser - Solicitor



Resource Management Amendment Act 2003



Michelle Smith - Solicitor

- Consent authorities can now take financial contributions enabled or required by rules in proposed plans as soon as they are publicly notified.
- A territorial authority that proposes a recommendation or decision on any heritage orders or designations rolled over into a proposed plan may now do so only by submission.

- Consent authorities will have increased abilities to delegate powers, duties and functions to employees.
- Bonds can be imposed beyond the life of a resource consent, in order to secure the ongoing performance of conditions relating to long-term effects.
- The Christmas break is reduced by 10 working days, and now runs from 20 December to 10 January.

Advice and information

Bell Gully's Environment and Resource Management Team can advise you on all types of resource management issues.

The team has the expertise and experience to advise public and private-sector clients at all stages of a project – from concept to construction.

Contact the team at the numbers below for more information.

For further information, please contact your usual Bell Gully adviser or:

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