



BELL GULLY



Phase 1 Reforms for Projects of National Significance

How will they work in practice?

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Why have the reforms been introduced?

- Very likely that decisions on nationally significant projects will be appealed.
- Often takes longer to obtain resource consents for large infrastructure projects than it takes to build them.
- Existing process causes:
 - Uncertain timeframes
 - Delays
 - Extra costs
- Potential to threaten viability of projects that are in the national interest...

The old vs. the new

Current process	New options
Local authority consent process	'Normal' consent process
Appeal to Environment Court	Direct referral to Environment Court
Ministerial Intervention	Ministerial Intervention
	Environmental Protection Authority

How will the reforms work in practice?

Existing test - is the project of national significance?

- 8 factors (to have regard to) listed in Section 141B(2) RMA
- Reforms have added a ninth criterion:
relates to a network utility operation that extends, or is proposed to extend, to more than 1 region in NZ.
- This applies to proposals that may not *individually* be considered to be of national importance, but which will play an important role in operating nationally significant networks.

How will the reforms work in practice?

Ministerial intervention/EPA

- Minister can intervene and call-in project if matter is, or is part of proposal of national significance.
- Applicant can apply to EPA to have project called in.
- No Ministerial intervention if already lodged application with EPA on same matter.
- Minister or EPA decide if proposal 'nationally significant'.

How will the reforms work in practice?

1. 'Normal' consent process

- Applicant can elect to have any publicly notified application heard by:
 - Elected representatives; OR
 - Independent hearings commissioner
- Notified and submissions to local authority.
- Reports commissioned by local authority.
- Council hearing and decision.
- Appeal to Environment Court – de novo hearing.
- Appeal to High Court – points of law.

How will the reforms work in practice?

2. Direct referral to Environment Court

- Applicant can request any application be determined directly by Environment Court – by agreement with local authority.
- Bypasses local authority.
- Reports to be provided by local authority.
- Appeal to High Court – points of law.

How will the reforms work in practice?

3. Referral by EPA or Minister to Environment Court

- Bypasses local authority.
- Local authority reports at council's cost.
- Court commissioned reports discretionary.
- Minister (without delay) provides Court with application, submissions and other information received.
- No mandatory timeframes for decisions.
- Appeal to High Court – points of law.

How will the reforms work in practice?

4. Referral by EPA or Minister to Board of Inquiry

- Bypasses local authority.
- Local authority reports at council's cost.
- Board commissioned reports discretionary.
- Minister appoints Board (3-5 members one of which is current or former Environment Judge).
- Minister (without delay) provides Board with application, submissions and other information received.
- If hearing held:
 - Not more than 25 working days from closing date of submissions.
 - At least 10 working days notice of hearing.

How will the reforms work in practice?

- Board has same powers and duties as local authority.
- Board may permit cross-examination and must keep full record of its hearings.
- Board produces draft report.
 - Invites applicant, local authority, submitters to make comments on minor or technical aspects within 20 working days.
 - Comments on minor errors, comments on wording of conditions BUT NOT comments on Board's decision or reasons.
- Board produces final report.
 - No later than 9 months after public notice.
 - Board may apply to Minister to extend timeframe – but not more than 18 months.
- Appeal to High Court – points of law.
- No appeal to Court of Appeal but to Supreme Court in exceptional circumstances (which can remit to Court of Appeal).

Which option is best?

1. Normal consent process

- Applicant bears cost of commissioned reports.
- Local perspective.
- First instance decision must be given regard.
- Provision for independent commissioners has potential to mitigate concerns regarding independence or skills of elected decision-makers.
- Decisions can be appealed to Environment Court – cost and delay for all parties.
- 2 stage process can flush out issues and provide opportunities to resolve concerns.

Which option is best?

2. Environment Court (direct referral)

- Direct referral must be agreed to by consent authority.
- Consent authority can commission reports.
- Saves time if matter likely to be appealed to Court at outset.
- Court can order any party to pay other parties costs.
- No appeal on merits.
- Limited opportunity to test or refine evidence, strategy.
- Window for negotiations limited.

Which option is best?

3. Environment Court (call-in)

- Bypasses local authority hearing process.
- Saves time if matter likely to be appealed to Court at outset.
- As with direct referral, Court can order any party to pay costs.
- No appeal on merits.
- Limited opportunity to test or refine evidence, strategy.
- Window for negotiations limited.

Which option is best?

4. Board of Inquiry (call-in)

- 9 month timeframe – can be extended.
- Costs incurred by Board can be recovered from applicant (except those of appointing Board).
- Limited appeals.
- Potential for tactical requests for further information.
- Board may require detailed information and stakeholder alignment. Example: Contact's 12 month adjournment:
 - Sufficient information
 - Expert evidence
 - Early stakeholder consultation
- Recommendation only – Minister has final decision.

Discussion

Call-in powers:

- Long formed part of RMA framework but not used much until recently.
- Only five projects called-in to date.
- Scorecard: two consents granted, one declined, one adjourned for 12 months and one yet to be heard:
 - ‘Te Mihi’ geothermal power station - called-in February 2008 – granted.
 - North Island Grid Upgrade Project - called in August 2007 – granted.
 - ‘Te Waka’ wind farm proposal – called-in January 2008 – declined.
 - ‘Hauāuru mā raki’ wind farm proposal – called-in August 2008 – adjourned.
 - Turitea wind farm proposal – called-in December 2008 – yet to be heard.

The background of the slide is a photograph of ferns, likely tree ferns, with a blue color overlay. The ferns are dense and fill the frame. In the top left corner, there is a dark blue rectangular box containing the text "BELL GULLY".

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