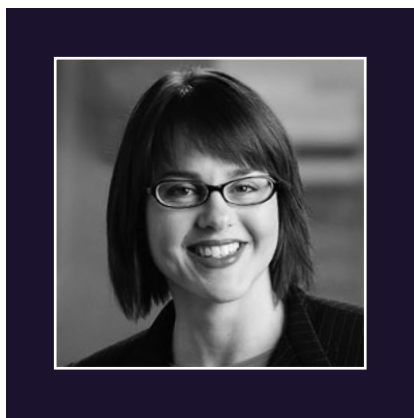


RMA to be patched up before Christmas

“Proposed changes to the Resource Management Act (‘RMA’) just announced by Associate Minister for the Environment David Benson-Pope will be welcomed by both resource consent applicants and submitters alike.”



Theresa Le Bas – Senior Associate

The Benson-Pope band-aid to dress the RMA’s minor ailments is out of the medicine cabinet and ready for application, but major surgery has been postponed for the foreseeable future.

Proposed changes to the Resource Management Act (‘RMA’) just announced by Associate Minister for the Environment David Benson-Pope will be welcomed by both resource consent applicants and submitters alike.

The Associate Minister plans to implement these changes through the introduction of a bill before Christmas.

Aware of the interest in this issue and possible implications of these changes, Bell Gully’s Resource Management and Environment Team will keep you informed of progress and ensure that all clients have an opportunity to have their say in the upcoming select committee process.

Proposed changes

The changes include:

At local authority level:

- Training and accreditation for council hearing committee members;
- Inquisitorial-style council hearings;
- Recognition of investment in existing infrastructure and developments;

In the Environment Court:

- Environment Court hearings to focus on matters in contention;
- Resource consent notification disputes to be heard by the Environment Court;

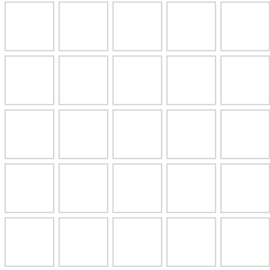
At central government level:

- Development of national policy statements; and
- Improving access to ministerial call-in powers.

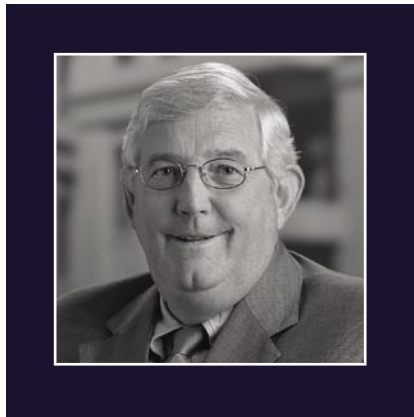
At local authority level

Changes proposed to regional and district council hearing processes will result in a more robust assessment and decision-making process for resource consent applications, which might in turn decrease the number of frivolous and vexatious appeals to the Environment Court.

- **Training and accreditation for council hearing committee members**
Chairpersons of council hearing committees will undertake mandatory training and accreditation on hearing procedures, statutory interpretation and how to assess and test evidence. It appears that the proposed training and accreditation process will be voluntary for committee members assisting chairpersons.



“Increasing the legal sophistication of the hearing process at regional and district council level is intended to lighten the load on the Environment Court by improving the efficiency and timeframes of the appeal process.”



David McGregor - Partner

Consistency in the competency and process followed by council committees across both regional and district council jurisdictions will be a welcome relief for all resource consent applicants and submitters who may have endured less-than-acceptable performance from a hearing committee in the past. Of course, perhaps council officers reporting and making recommendations to those committees should also undertake the same training.

- **Inquisitorial-style council hearings**

In an attempt to refine the issues that might end up in the Environment Court on appeal, compulsory attendance at pre-hearing meetings and the prior submission of written briefs of evidence to the council hearing committee are proposed.

While the green sector may perceive the latter proposal as raising the cost of public participation in the RMA resource consent process, resource consent applicants and serious submitters will agree that both

proposals help to clarify legitimate issues at an early stage and places the responsibility for producing credible expert evidence on those who raise the issue.

- **Recognition of investment in existing infrastructure and developments**

Renewing soon-to-expire resource consents will have a more certain outcome with the introduction of a requirement that councils recognise existing investment as one of the factors to be considered in the decision-making exercise.

This is a very important and welcome criteria in the decision-making process for existing industrial and commercial activities which, over the passage of time, may no longer make it on to the “in” list but which still perform a vital role in the economy.

In the Environment Court

Increasing the legal sophistication of the hearing process at regional and district council level is intended to lighten the load on the Environment Court by improving the efficiency and timeframes of the appeal process.

- **Environment Court hearings to focus on matters in contention**

In order to reduce the number of matters that have to be completely re-heard through a de novo hearing on appeal, a suite of provisions have been proposed which will confirm the Court’s role as an appeal authority and give the Court powers to order independent expert evidence, define issues for appeal at an early stage, and to have regard to the regional or district council’s decision in the first instance.

Many of the provisions will simply codify the tracking system of case management developed by the Environment Court over the last two years.

- **Resource consent notification disputes to be heard by the Environment Court**

The proposed ability to consider and issue a declaration on whether a resource consent application should have been notified by a regional or district council represents a significant expansion to the Environment Court’s jurisdiction.

The removal of the expensive and intensive High Court function that currently reviews council decisions to process resource consent applications on a non-notified basis will be a welcome change for both applicants, interested parties and respondent councils.

However, Parliament intends only to give the Environment Court this power of judicial review once the existing backlog of cases has reduced to “acceptable” levels, and this is a concern.

The review of council notification decisions is prone to abuse by trade competitors, and it is expensive for both resource consent applicants and respondent councils to defend non-notification decisions through the High Court.

The sooner the notification issue can be reviewed by the Environment Court, the sooner parties will be able to save time and money in obtaining a decision.

At central government level

Attempts to improve central government’s role in RMA processes are anticipated through amendments to strengthen and broaden existing provisions dealing with national policy statements and standards and ministerial call-in powers for large or complex projects.

- **Development of national policy statements**

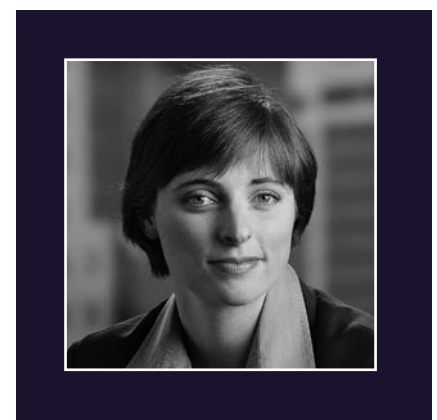
Proposed amendments to the RMA finally signal a central government commitment to the development of national policy statements and standards for infrastructure including energy, telecommunications, transport, water and wastewater.

While ministries and departments have always had the power under the RMA to undertake these tasks, allocations of human and financial resources have not been supportive. The new provisions may signal a change in central government’s commitment to assist local government in identifying environmental “bottom lines” and ideal standards when assessing the effects of activities proposed in resource consent applications.

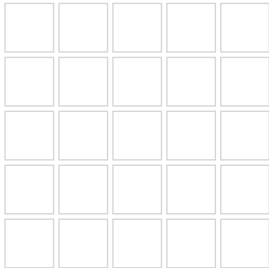
- **Improving access to ministerial call-in powers**

While the Project Aqua saga concluded in an expensive and disappointing outcome for Meridian Energy, it did prove to be a fundamental test of the call-in powers of the Minister for the Environment.

“The sooner the notification issue can be reviewed by the Environment Court, the sooner parties will be able to save time and money in obtaining a decision.”



Michelle Smith - Solicitor



Resource Management

Large and complex projects, particularly those associated with essential network utilities such as road networks, wastewater treatment facilities and electricity schemes, typically require authorisation and protection through a suite of planning tools.

Tools include the designation of land in a district plan to guarantee ownership through compulsory acquisition, resource consents under both district and regional plans, and sometimes plan changes to signal a community's long-term commitment to and provision for a project.

The Minister's powers to call-in projects have, accordingly, been extended beyond resource consent applications to also include plan change applications, notices of requirement to designate land and issue heritage orders.

Advice and information

Bell Gully's Resource Management and Environment Team can advise on all areas of resource management law, including applications and appeals under the Resource Management Act. Contact any of the team for more information.

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

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