

## Further RMA reform on its way

David Allen, Cedric Carranceja

19 June 2020

Before the COVID-19 crisis, a significant amount of RMA reform was already underway, including the progression of new National Policy Statements for freshwater management and indigenous biodiversity. A proposed Amendment Bill with the aim of reducing complexity, increasing certainty, reinstating public participation opportunities and improving freshwater management is awaiting its third reading before the House. Finally, a comprehensive long-term reform package for the RMA from the Resource Management Review Panel is expected to be released soon.

The latest reform to add to this extensive list is the COVID-19 Recovery (Fast-track Consenting) Bill, introduced on 16 June 2020. Its purpose is to urgently promote employment growth to support New Zealand's recovery from COVID-19 and support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.

The Bill seeks to achieve this purpose by establishing new fast-track resource consenting and designation processes for infrastructure and development projects. It also enables certain agencies to carry out specific works on existing infrastructure without the need for resource consent. Repeal is proposed after two years (though applications within the process can continue after that time). The Bill is extensive (83 pages) and establishes new and bespoke requirements and process (although many are familiar).

Two categories of projects have access to the fast-track process:

- Listed projects: The Bill lists 16 projects led by government agencies and Crown entities
- Referred projects: Projects can be referred to the Minister for the Environment and approved for fast-tracking through Orders in Council.

Any person or organisation with a project may apply to the Minister for the Environment to use the fast-track process. The Minister has broad discretion whether to accept or decline applications. Similar information is required for an application as for a normal consent, with additional information required for referred projects to address matters the Minister may consider. If accepted by the Minister, referred projects follow the same process as listed projects. Consents and designations for listed and referred projects will be considered and determined by an expert consenting panel instead of local authorities (which must include members nominated by relevant local and iwi authorities).

Key ways the fast-tracking process reduces timeframes are:

- Avoiding public notification but requiring the panel to seek comments from an extensive list of specified persons;
- Requiring panels to issue a decision within 25 working days after receiving comments (this may be doubled) and avoiding the need to hold a hearing; and
- Limiting appeals (points of law only by a stipulated, but relatively broad, range of people).

The panel may only decline a listed project if it would not be consistent with a national policy statement or the terms of any relevant Treaty settlement. By contrast, the panel has greater discretion to decline a referred project. The panel is required to apply the resource consent and designation decision-making criteria in the RMA. However, the panel must also apply the purpose of the Bill alongside Part 2 of the RMA and must act (and make its decision) consistently with the principles of the Treaty of Waitangi and any relevant Treaty settlements.

The requirements and processes in the Bill are extensive and untested. Robust information must be obtained by the applicant (especially as it is a 'one stop shop' with very tight timeframes and limited appeal rights). For referred projects a robust justification of the project will be needed for the Minister. With a hearing unlikely, clear documentation is critical, especially in relation to often complex policy and planning provisions. Applicants will need to focus on pre-application consultation and carefully develop conditions to address effects. Applicants will also need to consider conditioning opportunities for iwi/stakeholders/community involvement during design and construction of the project.

*This article was written by David Allen and Cedric Carranceja for the NBR (June 2020).*

## **Auckland**

188 Quay Street  
Auckland 1010

PO Box 1433  
Auckland 1140  
New Zealand

P: +64 9 358 2555

F: +64 9 358 2055

## **Wellington**

Aon Centre  
1 Willis Street  
Wellington 6011

PO Box 2694  
Wellington 6140  
New Zealand

P: +64 4 499 4242

F: +64 4 499 4141

## **Christchurch**

83 Victoria Street  
Christchurch 8013

PO Box 322  
Christchurch 8140  
New Zealand

P: +64 3 379 1747

F: +64 3 379 5659