

COVID-19: economic recovery, infrastructure and the RMA

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With the nationwide ‘Level 4’ lock-down still in place, significant attention is being given to how New Zealand’s economy will recover from the unprecedented COVID-19 fallout. The Government has signalled that infrastructure development will play a leading role in providing essential economic stimulus and job creation. This focus means the regulatory framework that applies to development under the Resource Management Act will in turn take centre stage, and be subject to an even greater degree of scrutiny than usual.

The immediate question is the extent that RMA processes can continue during the current lockdown, and through the ensuing period, where controls on physical interaction remain in place. Appearing before the Epidemic Response Committee, economist Shamubeel Eaqub stressed the need for councils “to really scale up as much [consenting work] as possible, because we know that we must have ‘shovel-ready’ projects once we come out of this lockdown”.

There are real challenges, given the RMA system’s focus on in-person interactions. For now, face to face meetings and hearings (including at the Environment Court) are effectively on hold. Nevertheless, councils are tasked with progressing matters as best as possible in the circumstances. Councils’ consenting functions have been deemed an essential service, and Environment Minister David Parker has encouraged councils to consider how resource consent hearings can be undertaken while restrictions are in place.

Once some sense of normality returns, thoughts will quickly turn to physically progressing new developments. The Government is working to identify infrastructure projects that are “shovel-ready”. Projects being progressed through the previously announced New Zealand Upgrade Programme, and the Provincial Growth Fund, will also be in the spotlight.

There will of course be a strong desire to see construction happen quickly. To that end, Minister David Parker has directed officials to develop options for fast-tracking consenting processes, noting that “in these extraordinary times we do not want the standard RMA consenting processes to constrain the pace of recovery.”

Fast-track consenting and planning processes have been rolled out several times over the past few years, including for the Auckland Unitary Plan, Christchurch Replacement District Plan, Kaikōura earthquake response, Pukeahu National War Memorial Park, and through the Housing Accords and Special Housing Areas Act. These processes, and the lessons learned from them, will provide a strong starting point.

As well as considering fast-track processes, the Government may also decide to focus on substantive legislative changes to prioritise infrastructure development over other concerns. In doing so, the Government could rely on existing tools under the RMA (such as the power to develop and implement ‘National Policy Statements’ that must be given effect to by councils), or changes to the RMA itself.

Prior to the lock-down, the Government was busy developing National Policy Statements in relation to freshwater management and indigenous biodiversity. Both would require an additional emphasis on environmental protection in planning and consenting processes. What becomes of these draft National Policy Statements, which have recently been through consultation processes, remains to be seen. There will no doubt be renewed and heated calls for the Government to refocus on development, perhaps even at the expense of enhancing environmental protection.

More broadly, the standard election year cries for major changes to the underlying RMA framework are likely to take on a specific infrastructure and jobs creation focus. Both major parties have previously indicated that an overhaul of the RMA would be part of their 2020 election platforms, with the drivers up until now primarily relating to housing shortages and freshwater.

The Government launched a review panel in July 2019, which was tasked with producing a proposal for reform by mid-2020. Meanwhile, the National Party has promised to ‘repeal and replace’ the RMA if elected. With concrete details not yet set out by either side, it remains to be seen how the COVID-19 pandemic will re-shape reform proposals over the coming months.

In assessing its options, the Government and political parties will no doubt be carefully considering the balance between closely guarded rights of public participation, and the need to ensure potential environmental, social and cultural effects are

appropriately addressed, alongside the desire for speed and decisions that give projects the 'green light'. That balancing act is the enduring challenge at the heart of the "sustainable management" purpose of the RMA, and the approach of New Zealanders to infrastructure development and environmental safeguards.

This article was written by Thad Ryan and Mark Mulholland for the NBR (April 2020).

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