greater WELLINGTON
REGIONAL COUNCIL

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Committee **Environment**
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Resource Management Amendment Act 2005

1. Purpose

To advise the Committee of changes in the Resource Management Amendment Act 2005 ("the Act") that has now been passed into law.

2. Background

In May 2004 the Government embarked on a review of the Resource Management Act 1991 in response to concerns about lengthy and costly decision making processes and the balance between national and local interests. The review culminated in the Resource Management and Electricity Legislation and Amendment Bill, which was introduced into Parliament on 2 December 2004.

The Local Government and Environment Select Committee heard submissions, examined the Bill and reported it back to Parliament. The Act was passed by Parliament on 3 August 2005.

3. Key changes

Some of the key changes in the Act are outlined below.

3.1 New ministerial powers

The Act extends the powers of the Minister for the Environment by providing three new functions:

1. The Minister may investigate and make recommendations about the exercise or performance by a local authority of any of its functions, powers or duties under the Act.

2. The Minister may direct a local authority to prepare a plan or initiate a plan change that addresses a resource management issue relating to a local authority's function. The Minister does not have the power to direct the outcome of the process.

3. The Minister may require a local authority to supply information about the exercise of the performance of any of its functions, powers and duties under the Act.

3.2 New regional council functions

Regional councils are given three new functions. They are:

1. The investigation of land to identify and monitor contaminated land. Territorial authorities have a complementary new land use function of preventing or mitigating adverse effects from the development, subdivision, or use of contaminated land. A definition of contaminated land has been provided in the Act.

2. If appropriate, the establishment of rules in a regional plan to allocate: the taking or use of water; the taking or use of heat or energy from water; the taking or use of heat or energy from the material surrounding geothermal water; the capacity of air or water to assimilate a discharge of a contaminant; and space in a coastal marine area.

3. The strategic integration of infrastructure with land use through objectives, policies and methods. A new definition of infrastructure has been included in the Act.

3.3 National environmental standards

The Act amends the national environmental standard provisions, clarifying:

1. That rules or resource consents may be more stringent than a national environmental standard only if the standard explicitly allows it.

2. That national environmental standards do not override existing resource consents, but for existing water, coastal and discharge permits, a review can result in some or all of the standard prevailing over the permit.

3. The relationship between national environmental standards and water conservation orders, designations, and bylaws.

3.4 National policy statements

The Amendment Act provides the Minister with a choice of processes to use for consultation on a proposed national policy statement, and a list of matters that the Minister may consider when determining which process to follow. If a national policy statement includes provisions directing changes to policy statements or plans without notification or hearing, an ‘abridged’ process cannot be used – the national policy statement must go through a public board of inquiry or first schedule process.

3.5 Regional and district plans and policy statements

The Act requires that regional and district plans give effect to regional policy statements. Consultation processes for preparing or reviewing policy statements must now be agreed on by the affected local authorities during the triennial agreement process under section 15 of the Local Government Act 2002. A dispute resolution mechanism has been included for occasions when regional councils and territorial authorities cannot agree on the means by which they are to consult on the preparation of the regional policy statement.

A new section has been included in the Act prescribing a framework for the transfer of discharge permits. A regional plan may allow for a transfer if certain criteria are met including that the transfer must not increase the total net effect of burdens on the environment.

A two year timeframe has been introduced for decisions to be made on a plan after the proposed plan is notified. This excludes the time taken for appeals to the Environment Court.

3.6 Local authority hearing processes

There are a number of amendments relating to requests for further information including amendments around the applicant's response to a request, ability to cancel an application, and appeals on applications declined due to insufficient information.

The Act includes provision for a consent authority to strike out submissions in certain circumstances. If an authority uses the strikeout powers, it must record the reasons for doing so and there is a right for the submitter to object.

The Act provides more flexibility for the consent authority to either invite or require particular parties to a pre-hearing meeting on resource consents.

The Act brings in accreditation requirements for hearing committees, although decisions made by a committee whose make-up did not comply with the accreditation requirements is not automatically invalid.

Written resource consent decisions will need to explicitly cover a number of additional matters including the statutory provisions considered, provisions or policy statements and plans considered, principal issues of contention, summary of evidence heard, and the main findings of fact.

3.7 Environment Court powers

The Environment Court is now required to have regard to the decision that has been appealed.

The Act enables the Court to direct a local authority to prepare changes to a statement or plan, consult with specified persons, and submit the changes to the Court for confirmation.

The Act allows for a declaration to be sought on a council's decision to notify or not notify a resource consent application. The Court's declaration powers are limited to retrospective review, although appropriate enforcement orders can be made if it finds that a decision on notification has been made incorrectly.

3.8 Decision-making on matters of national significance

The Act modifies the call-in processes. The Minister has the option of a called-in application being dealt with by a board of inquiry or directly by the Environment Court. This amounts to direct referral for matters of national significance. In making a decision to get involved the Minister must take into account the capability of the council to process the project, the council's views on the use of intervention and the matter of national significance concerned. A list of criteria have been added which the Minister may have regard to in deciding if a proposal is of national significance.

The Act requires that a current, former or retired Environment Court judge chair any board of inquiry. The Act also gives a board of inquiry the power to permit cross-examination and requires the board to keep a full record of the hearing.

3.9 Consultation and joint management

Consultation

The Act clarifies that there is no duty to consult anyone (including iwi) about an application for resource consent.

Local authorities must now maintain records for each iwi and, if appropriate, hapu within its region or district. The Act also allows for a reciprocal exchange of information between local authorities and the Crown regarding inclusion on the list. The records held will not determine any disputes between iwi or hapu if more than one asserts exclusive rights to overlapping areas (the Act allows those disputes to be resolved through existing mechanisms under Te Ture Whenua Maori Act 1993, but does not impose any obligation or cost on the local authority to do so).

Joint management agreements

The Act introduces the concept of ''joint management agreements''. A joint management agreement is made by a local authority with one or more public authorities or iwi authorities and provides for the parties to perform or exercise any of the local authority's functions, powers or duties under the Act relating to a natural or physical resource.

3.10 Commencement

The Act came into force on 10 August 2005, with the following exceptions:

- Provisions relating to the accreditation of persons who may be given hearing authority (these come into force in 12 months);
- Provisions relating to requirements for accreditation when giving only one person hearing authority (this comes into force in 24 months);

- Provisions relating to the striking out of submissions by the hearing authority (these come into force in 24 months);

- Provisions relating to the priority for an allocated resource given to an existing consent holder over other applicants when the consent expires (comes into force in 36 months).

- Provisions relating to declarations and appeals to the Environment Court on notification decisions (come into force on a date to be appointed by the Governor-General by Order in Council).

4. Implementation

Of most immediate interest to Greater Wellington are the changes relating to local authority hearings processes, new regional council functions and regional policy statements. Other changes will have implications for Greater Wellington over time, such as those relating to the introduction of national environmental standards and policy statements.

4.1 Local authority hearing processes

The most pressing change in relation to the consent process has been in regard to requests for further information, with the applicant now able to refuse to provide this information. We have consequently updated our standard letters in relation to section 92 requests to outline the options now available to applicants, timeframes around exercising these options, and the potential consequences of these options. We are using this new standard letter with all further information requests, and it has been passed to the Wairarapa division for action.

We are already well placed in relation to accreditation requirements with all Environment Committee members having already achieved accreditation, and many of our regular commissioners and iwi appointees having also done the same. We are also well placed in relation to information that must be contained in a formal decision, with our standard templates and processes already clearly covering off all areas now explicitly referred to as a result of the amendments.

In relation to many of the other amendments, such as the ability to strike out submissions, timeframes and process around hearings (such as pre-circulation of evidence), and pre-hearing meetings, they have provided a number of different process *options* to Councils that can be exercised at our discretion. While we will exercise these options as and when we require them, we do not anticipate that we will need to do so on a frequent basis. We will also be incorporating all these new processes into our Consents Procedures Manual over the next month or so.

The amendments also introduce the ability to seek a judicial review on a decision to notify at the Environment Court level. This has previously been the jurisdiction of the High Court only. This is a significant new power for the Environment Court, and could lead to many more judicial reviews being sought. Consequently, this component of the amendments has yet to come into

force while the Environment Court is given time to assess its capacity to absorb the potential increase in its workload.

4.2 Regional council functions

The "investigation of land to identify and monitor contaminated land" is now a function of regional councils. Greater Wellington has a database with information about sites with a history of using, storing or manufacturing hazardous substances, including closed landfills, because these sites have the highest risk of having contaminated soils. We have investigated some of the sites on the database for the level of contamination in the soils, and will continue this programme. It is unclear whether or not this new function will require changes in the way we work, and we are currently discussing the implications with the Ministry for the Environment.

The new allocation function simply clarifies that regional councils can write rules in plans to allocate natural resources. This is something that Greater Wellington has always believed to be the case, and we will continue to consider rules for allocation when reviewing the regional plans.

The new function relating to the strategic integration of infrastructure with land use also clarifies a function that Greater Wellington has always considered to be within our broad functions. Implementation of this function will be through the Wellington Regional Strategy and the Regional Policy Statement.

4.3 Regional Policy Statement

The change to the Act requiring that regional and district plans give effect to regional policy statements will mean changes to the way we write objectives and policies in the Wellington Regional Policy Statement. It will also mean that robust and inclusive consultation processes with the territorial authorities are necessary to fulfil the requirements of the Act, and to ensure good outcomes. We are currently working on the project plan for the Regional Policy Statement review and this will be used to begin discussions with the territorial authorities.

5. Communication

The process that has resulted in this amendment was managed by central government and Parliament. We were a contributor to the process and no further communication is necessary.

6. Recommendations

That the Committee:

1. ***Receives** the report; and*

2. ***Notes** the contents.*

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