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# BILLS DIGEST

Digest No. 2012

## Resource Management Reform Bill 2012

<b>Date of Introduction:</b>	5 December 2012
<b>Portfolio:</b>	Environment
<b>Select Committee:</b>	As at 10 December, 1st Reading not held.
<b>Published: 10 December 2012</b> by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 817-9626 (Ext. 9626)	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.  Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

### Purpose

The aim of the Bill is to amend the Resource Management Act 1991 (the RMA), the Local Government (Auckland Transitional Provisions) Act 2010, and the Local Government Official Information and Meetings Act 1987 to deliver “some fast, discrete improvements” to the consenting regime, provide for the delivery of the first combined plan for Auckland, provide further powers to make regulations, and make “technical and operational change”<sup>1</sup>.

### Background

The provisions in the Bill are “designed to precede larger-scale resource management reform that will deliver more substantive, system-wide improvements to increase the long-term resilience of the resource management system, including for freshwater management and the planning system more generally”<sup>2</sup>.

A regulatory impact statement may be found at:

- <http://www.treasury.govt.nz/publications/informationreleases/ris>

“The main measures in the Bill:

<sup>1</sup> Resource Management Reform Bill, 2012 No 93-1, Explanatory note, p. 1.

<sup>2</sup> Ibid., pp. 1 and 2.

- introduce a 6-month consent time frame for medium-sized projects, with other related improvements to consent processes, to address the remaining inefficiencies following the 2009 amendments that improved consenting processes for small and large projects;
- require a consent authority to agree to a request for direct referral if regulations are made that establish an investment threshold and if the proposal meets that threshold, unless there are exceptional circumstances;
- make other improvements to the direct referral provisions;
- introduce a one-off streamlined process to assist with delivering the first combined plan for Auckland following the recent governance reforms;
- introduce the ability for regulations to be made that require local authorities to monitor the environment according to specified priorities and methodologies so as to improve the quality of local decision-making;
- clarify the requirements on local authorities for the analysis that underpins plans and policy statements (as well as regulations), including placing greater emphasis on the need for quantitative assessment of costs and benefits and the need to consider regional economic impact and opportunity costs;
- improve decision-making by local authorities to ensure it is based on adequate, relevant, and robust evidence and analysis, and to increase the level of transparency of decision-making;
- clarify and improve the workability of the RMA through a number of technical changes, including-
  - extending access to the emergency provisions under the RMA to all lifeline utilities to enable action to save life and prevent injury or damage to property or the environment without first gaining resource consent:
  - improving the processing of proposals of national significance:
  - clarifying that a tree protection rule can only apply to a tree or group of trees that is specifically identified in a schedule to a plan by street address or legal description of the land, and that a group of trees means a cluster, grove, or line of trees that are located on the same or adjacent allotments identified by precise location:
  - removing the requirement for boards of inquiry hearing proposals of national significance and special tribunals hearing applications for water conservation orders under the RMA to comply with the meeting requirements under the Local Government Official Information and Meetings Act 1987<sup>3</sup>.

## Main Provisions

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### Resource Management Act 1991

EPA may recover actual and reasonable costs from applicant

The Bill enables the Minister of Conservation to delegate in writing to the Environmental Protection Authority (the EPA) certain functions, powers, and duties and so to recover from an applicant the actual and reasonable costs incurred in relation to a board of inquiry where a proposal of national

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<sup>3</sup> Ibid., pp. 2 and 3.

significance relates wholly to the coastal marine area (*Part 1, Subpart 1, Clause 5, amending Section 29 of the RMA (relating to functions powers and duties of a responsible Minister under Section 149ZD(4)); cf. Section 148*).

## Trees

Section 76 of the RMA provides that a territorial authority may include rules in a district plan for the purpose of “carrying out its functions under this Act” and “achieving the objectives and policies of the plan”. The section however provides that “a rule must not prohibit or restrict the felling, trimming, damaging, or removal of any tree or group of trees in an urban environment unless the tree or group of trees is (as one alternative) “specifically identified in the plan”.

The Bill limits this provision by replacing this last mentioned phrase with: “specifically identified in a schedule to the plan by street address or legal description of the land, or both, regardless of whether the tree or group of trees is also identified on any map in the plan”. The term “group of trees” is defined as “a cluster, grove, or line of trees that are located on the same or adjacent allotments”. The term “urban environment” is defined as “an allotment no greater than” 4,000 square metres “that is connected to a reticulated water supply system and a reticulated sewerage system” and “on which there is a building used for industrial or commercial purposes” or “a dwelling house”.

The Bill sets out three situations for which such protective rules may not be made:

- “all trees of 1 or more named species in a defined area or zone of the plan (for example, all cabbage trees in coastal areas x, y, and z)”
- “all trees in a class with defined characteristics in a defined area or zone of the plan (for example, all exotic trees over 5 metres high or 800 millimetres in girth in residential zones x, y, and z)”;
- “all trees in a named ecosystem (whether natural or artificial), habitat or landscape unit, or ecotone (for example, all native trees located in the valley floor of the district)” (*Part 1, Subpart 1, Clause 12, amending Section 76 of the RMA, subsections 4A and 4B and inserting new subsection 4C*).

## Parties

The Bill provides that that in relation to directly referred or called-in proceedings, a person is prevented from becoming a party to the proceedings by being directly affected by an adverse effect on the environment if the effect relates to trade competition or the effects of trade competition (*Part 1, Subpart 1, Clause 49, inserting New Section 308CA into the RMA; Clause 50, amending Section 308D*).

## Regulations

The Bill provides that regulations may be made to, *inter alia*, specify indicators or other matters by reference to which a local authority must monitor the state of the environment of its region (*Part 1, Subpart 1, Clause 61, amending Section 360 of the RMA*).

## Local Government (Auckland Transitional Provisions) Act 2010

### Combined plan for Auckland

The Bill provides for the preparation and promulgation of a combined plan for Auckland. This described in the explanatory note as: “a one-off streamlined process to assist with delivering the first combined plan for Auckland following the recent governance reforms”<sup>4</sup>.

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<sup>4</sup> Ibid., p. 2.

The Bill provides the following overview of the process (which is stated to be “only a guide to the general scheme and effect” of the provisions):

- the Auckland Council prepares a proposed plan for Auckland that meets the requirements of a regional policy statement, a regional plan, including a regional coastal plan, and a district plan;
- the plan is prepared in accordance with New Part 4 and, to the extent provided for by Part 4 of the RMA;
- the Council notifies the proposed plan and calls for submissions;
- at the same time as the plan is notified, the Council releases its reports on the proposed plan under Sections 32 of the RMA (headed: “Consideration of alternatives, benefits and costs”) and Section 165H of the RMA (headed: “Regional council to have regard to and be satisfied about certain matters before including allocation rule in regional coastal plan or proposed regional coastal plan”), and an audit of those reports as undertaken by the Ministry for the Environment;
- the Council notifies a summary of submissions and calls for further submissions;
- the Council then forwards all relevant information obtained up to this point to a specialist Hearings Panel appointed by the Minister for the Environment and the Minister of Conservation;
- the Hearings Panel holds a Hearing into submissions on the proposed plan by means of hearing sessions conducted in accordance with the procedural and other requirements of this Part;
- the Council must attend the hearing sessions and otherwise assist the Hearings Panel with the task of the Hearing;
- on the completion of the hearing of submissions, but no later than 50 working days before the expiry of 3 years from the date the Council notifies the proposed plan, the Hearings Panel must make recommendations to the Council on the proposed plan (unless that period is extended by the Minister for the Environment by up to 1 year);
- the Council must make decisions on the recommendations of the Hearings Panel no later than 20 working days after receiving the recommendations (unless that period is extended by the Minister for the Environment by up to a further 20 working days) and publicly notify the recommendations of the Hearings Panel and the Council's decisions on the recommendations;
- the proposed plan is amended in accordance with the Council's decisions on the recommendations and is deemed, subject to the appeal rights of submitters, to be approved or adopted, as the case may be;
- submitters on the proposed plan may appeal to the Environment Court on those recommendations of the Hearings Panel that the Council rejects;
- submitters on the proposed plan may appeal to the High Court, on a point of law only, on those recommendations of the Hearings Panel that the Council accepts;
- once all appeals are determined, the Council must then publicly notify the operative date of the proposed plan (*Part 2, Clause 125 of the Bill, inserting New Part 4 into the Local Government (Auckland Council) Act 2010, New Section 115*).

## Auckland combined plan

The Bill sets out the detailed provisions implementing the above described scheme for the delivery of the Auckland combined plan (*Part 2, Clause 125 of the Bill, inserting New Part 4 into the Auckland Act, New Sections 116- 163*).

## Local Government Official Information and Meetings Act 1987

### Narrowing the scope of definition of meeting

The Bill narrows the scope of the definition of meeting in relation to local authorities that are boards of inquiry or special tribunals given authority to conduct hearings under Section 149J (headed “Minister to appoint board of enquiry”) or Section 202 (relating to the minister’s powers to appoint a special tribunal in relation to an application for a water conservation order if he or she has decided not to reject it) of the Resource Management Act 1991 to only those meetings of the boards or tribunals that are hearings (*Part 3, Clause 127, amending Section 45, the interpretation section for Part 7 (headed “Local Authority meetings”) of the Local Government Official Information and Meetings Act 1987, by inserting new subsection (1A)*).

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