

STAFF REPORT

TO: Environment & Planning Committee

FROM: Neil Jackson, Policy Planner

REFERENCE: R429

SUBJECT: **RESOURCE MANAGEMENT (SIMPLIFYING AND STREAMLINING) AMENDMENT ACT 2009: IMPLICATIONS FOR PLAN DEVELOPMENT PROCESS - REPORT EP09/12/03 - Report prepared for meeting of 11 December 2009**

1. PURPOSE OF REPORT

The purpose of this report is to identify the extent to which the amended Resource Management Act simplifies and streamlines processes for the development of plan provisions.

2. PRACTICE ISSUES

The following practice issues are addressed:

- a) Detail required in summary of submissions
- b) Status of further submissions
- c) Reporting on submissions
- d) Detail required in decisions notified to submitters
- e) Status of rules

Also a practice issue is that section 32 is not changed by the 2009 Amendment Act. The section 32 evaluation must cover:

- The appropriateness of objectives in relation to the purpose of the Act
- The appropriateness of policies, rules or other methods, in terms of efficiency and effectiveness, in relation to achieving the objectives.

This means that the scope of alternative provisions sought in submissions, at all levels in the hierarchy of plan provisions, still needs to be ascertained. This is the context for preparing a summary of decisions requested, and for reporting on submission requests.

3. DISCUSSION

The plan development provisions are given in Schedule 1 of the Act:

3.1 Detail required in summary of submissions

Changes to clause 7 appear to allow an abbreviated summary of decisions requested in submissions. Either:

- stating the general thrust of decisions requested on a particular plan provision, without itemising every word change requested; or
- focussing on the plan provisions for which decisions are sought, without identifying every submitter. (Useful where there are multiple repetitive requests.)

However, all decisions requested in submissions will need to be identified somewhere to ensure that none is missed out. There is no mandate to ignore any identifiable submission request.

We will need to devise a process that combines identifying every decision requested in each submission, with aggregating similar requests about any particular plan provision, to avoid duplication and achieve the streamlining intended by the amended legislation.

Further amendments to clause 7 are:

- The period for making further submissions is limited to 10 working days after the summary is notified;
- The notice must state the last date of that 10-day period;
- The notice must also state the limitations on the content and form of further submissions.

3.2 Status of Further Submissions

Clause 8 previously allowed any person to make a further submission. That right is now limited to:

- Any person representing a relevant aspect of the public interest
- Any person that has an interest in the proposed policy or plan greater than the interest than the general public has
- The local authority.

“A relevant aspect of the public interest” needs a connection between the person and the issue or locality to which the original submission relates. Examples of connections are: the objectives or charter of an incorporated body; or an office held, or pursuit followed, by an individual.

“An interest greater than the interest that the public in general has” includes a proprietary interest, a statutory acknowledgement, or an official duty or responsibility for something. That is, something that a person owns, has rights to, or has responsibility for. It does not include an intellectual or hobby interest, nor the “values” interest of a public pressure group or environmental lobby.

There is potential for argument about the status of a further submission to detract attention from the main issue - making a decision on a matter raised by an original submission (which a further submission can only support or oppose).

It is suggested that Council need not deal with the status of a further submission unless there is an obvious conflict with the status criteria, or the status of one party is challenged by another.

The form for further submissions should advise people that status criteria apply.

3.3 Reporting on Submissions

Reporting on submission requests remains optional. Our past practice has been to group submissions dealing with similar matters as issues, and to address them collectively. No change is proposed.

The changes to clause 10 (see below) allow a more relaxed approach to addressing minor submission items. This could be through a statement along the lines of “The remaining submission items on (plan provision x) are inconsequential to the main purpose of that provision.”

3.4 Detail Required in Decisions Notified To Submitters

Clause 10(3) now explicitly states: “To avoid doubt, the local authority is not required to give a decision that addresses each submission individually.” This makes it optional whether we continue to enter into the database and/or include in decision letters, the allow/allow-in-part/disallow result for each submission item.

This practice has provided a check that all recorded submission requests have been addressed. It can be retained for that purpose, but does not need to be incorporated in decision letters.

The focus in the new law allows a re-drafted policy or rule to be presented as “the decision”, with reasons why that form of the policy or rule is preferred (or why alternatives were rejected). A reason is not required in relation to every requested word change, tweaking of dimensions, or grammatical preference.

3.5 Status of Rules

Prior to the Amendment Act, plan rules had legal effect from the day they were publicly notified, unless the plan specified otherwise. That status is changed by the new section 86B.

The default position now is that a rule in a proposed plan has legal effect only when a decision on submissions relating to the rule has been made and publicly notified.

There are exceptions, these are rules relating to or protecting soil, water or air, historic heritage, or significant indigenous habitats.

Section 86E requires that a proposed rule that has legal effect on a date other than that given by the default provision, must be clearly identified.

In addition to the identification required by section 86E, for practical plan administration it will be necessary to identify proposed rules that, at the time of notification, do not have legal effect. Those rules will acquire legal effect when Council makes decisions on submissions. (Any proposed rule that escapes without any submission is to be treated as being operative from the expiry date of the submission period.)

4. SUMMARY

4.1 Benefits

Simplifying and streamlining benefits from the Amendment Act are not immediately obvious in relation to submissions, further submissions, reporting, and decisions on submission requests.

4.2 Rules

In relation to rules, the Amendment Act has created additional complications in tracking the status of rules in the Plan as they are worked through the notification, submission, and appeal stages of the plan development process.

5. RECOMMENDATION

That this report be received for information.

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