Resource Management Amendment Act 1996

1996, No. 160

Index

An Act to amend the Resource Management Act 1991
[2 September 1996

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement---(1) This Act may be cited as the Resource Management Amendment Act 1996, and shall be read together with and deemed part of the Resource Management Act 1991 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the day on which it receives the Royal assent.

2. Interpretation---Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term ``proposed plan", and substituting the following definition:

`` `Proposed plan' means a proposed plan, or variation to a proposed plan, or change to a plan that has been notified under clause 5 of the First Schedule but has not become operative in terms of clause 20 of the First Schedule; but does not include a proposed plan or change originally requested by a person other than a local authority or a Minister of the Crown, unless the proposed plan or change is adopted and notified by the local authority under clause 25 (2) (a) of the First Schedule:".

3. Successors---The principal Act is hereby amended by inserting, after section 2, the following section:

``2A. (1) In this Act, unless the context otherwise requires, any reference to a person, however described or referred to (including applicant and consent holder), includes the successor of that person.

``(2) For the purposes of this Act, where the person is a body of persons which is unincorporate, the successor shall include a body of persons which is corporate and composed of substantially the same members."

4. Certain existing building works allowed---The principal Act is hereby amended by inserting, after section 10A (as inserted by section 8 of the Resource Management Amendment Act 1993), the following section:

``10B. (1) Land may be used in a manner that contravenes a rule in a district plan or proposed district plan if the use of land is a building work or intended use of a building (as defined in section 2 of the Building Act 1991) which is deemed to be lawfully established in accordance with subsection (2).

``(2) Subject to subsection (3), the building work or intended use of the building shall be deemed to be lawfully established if---

``(a) A building consent was issued and any amendments were incorporated in the building consent in accordance with the Building Act 1991 for the building work or intended use of the building before the rule in a district plan or proposed district plan was notified; and

``(b) The building work or intended use of the building, as stated on the building consent, would not, at the time the building consent was issued and any amendments were incorporated, have contravened a rule in a district plan or proposed district plan or otherwise could have been carried out without a resource consent.

``(3) Subsection (2) shall not apply if---

``(a) The building consent is amended (after the rule in the district plan or proposed plan has been notified) in such a way that the effects of the building work or intended use of a building will no longer be the same or similar in character, intensity, and scale as before the amendment; or

``(b) The building consent has lapsed or is cancelled, but the issuing under the Building Act 1991 of a code compliance certificate in respect of the building work shall not, for the purposes of this section, be deemed to have cancelled the building consent for that work; or

``(c) A code compliance certificate for the building work has not been issued in accordance with the Building Act 1991 within 2 years after the rule in the district plan or proposed district plan was notified or within such further period as the territorial authority may allow upon being satisfied that reasonable progress has been made towards completion of the building work within that 2-year period.

``(4) Subsections 10 (4), (5), and (6) shall apply to this section."

5. Changes to plans which will allow activities---(1) Section 19 (1) (b) (ii) of the principal Act is hereby amended by inserting, after the word ``withdrawn" where it first occurs, the words ``or rejected".

(2) Section 19 of the principal Act is hereby amended by adding the following subsection:

``(2) Where---

``(a) A submission is made in respect of a proposed plan which, if accepted, would allow an activity that would otherwise not be allowed unless a resource consent was obtained, and that submission is accepted; and

``(b) The time for lodging an appeal against the decision to accept the submission has expired and-

``(i) No such appeal has been lodged; or

``(ii) All such appeals have been withdrawn or dismissed---

then, notwithstanding any other provision of this Act, the activity may be undertaken as an activity which is allowed as if that part of the plan had become operative."

6. Planning Tribunal re-named Environment Court---(1) The principal Act is hereby amended by repealing section 247, and substituting the following section:

``247. There shall continue to be a Court of record called the Environment Court which shall be the same Court as the Court called the Planning Tribunal immediately before the commencement of this section and which, in addition to the jurisdiction and powers conferred on it by or pursuant to this Act or any other Act, shall continue to have all the powers inherent in a Court of Record."

(2) On and after the commencement of this section, every reference in the principal Act or any other Act or in any rule, regulation, bylaw, judgment, order, contract, agreement, or other document whatsoever---

(a) To the Planning Tribunal shall be read as a reference to the Environment Court:

(b) To a Planning Judge shall be read as a reference to an Environment Judge:

(c) To a Planning Commissioner or a Deputy Planning Commissioner shall be read, respectively, as a reference to an Environment Commissioner or Deputy Environment Commissioner.

7. Appointment of Environment Judges and alternate Environment Judges---Section 250 (3) (a) of the principal Act is hereby amended by omitting the expression ``5", and substituting the expression ``8".

8. Eligibility for appointment as Environment Commissioner or Deputy Environment Commissioner---Section 253 of the principal Act is hereby amended by inserting, after paragraph (d), the following paragraph:

``(da) Alternative dispute resolution processes:".

9. Appointment of Environment Commissioner or Deputy Environment Commissioner---Section 254 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsections:

``(3) At any one time any number of Environment Commissioners or Deputy Environment Commissioners may hold office.

``(4) If an Environment Commissioner or Deputy Environment Commissioner is not reappointed, he or she may continue in office until his or her successor comes into office, notwithstanding that the term for which he or she was appointed may have expired."

10. When a Deputy Environment Commissioner may act---Section 255 (1) (a) of the principal Act is hereby amended by omitting the word ``and", and substituting the word ``or".

11. Submitter may be party to proceedings---The principal Act is hereby amended by inserting, after section 271, the following section:

``271A. (1) Any person who made a submission may be a party to any subsequent appeal, inquiry, or reference proceedings before the Environment Court if, within 15 working days after receiving a copy of the notice of an appeal, notice for an inquiry, or notice of reference, as the case may be, the person advises the Registrar of the Environment Court that he or she wishes to be a party and specifies an address for service.

``(2) Notwithstanding subsection (1), any person to whom that subsection applies who does not advise the Registrar, within the 15-working days period, that he or she wishes to be a party to the proceedings, may advise the Registrar at a later date (being not later than 10 working days before the commencement of the hearing) that he or she wishes to be a party to the proceedings."

12. Successors to parties to proceedings---Section 273 of the principal Act is hereby amended by omitting the words ``in title" in both places where they occur.

13. Representation at proceedings---Section 274 (1) of the principal Act is hereby amended by inserting, after the words ``public generally,", the words ``any person representing some relevant aspect of the public interest,".

14. Environment Court has powers of District Court---Section 278 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

``(1) The Environment Court and Environment Judges have the same powers that a District Court has in the exercise of its civil jurisdiction."

15. Powers of Environment Commissioner sitting without Environment Judge---(1) Section 280 (1) of the principal Act is hereby amended by omitting the words ``(not including the power to hear and determine proceedings)".

(2) Section 280 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

``(1A) The Principal Environment Judge may only confer the power to hear and determine any proceedings under subsection (1) with the consent of all parties to the proceedings."

(3) Section 280 (2) of the principal Act is hereby amended by inserting, after the words ``in writing", the words ``to an Environment Judge".

16. Reply to appeal or request for inquiry---The principal Act is hereby amended by repealing section 289, and substituting the following section:

``289. Where notice of an appeal or inquiry is given, the person whose decision is appealed against, or is the subject of the inquiry, shall---

``(a) Within 20 working days after being served with the notice of the appeal or inquiry or such further time as an Environment Judge may allow, lodge with the Environment Court a written reply in the prescribed form to the matters raised in the notice, and serve a copy of the reply on the person who gave the notice, and, where the applicant is not the appellant, on the applicant; and

``(b) Within 30 working days after being served with the notice of the appeal or inquiry or such further time as an Environment Judge may allow, serve a copy of the reply on every other party to the proceedings who has advised the Registrar, in accordance with section 271A, that they wish to be a party."

17. Notice of appeal---Section 300 (5) of the principal Act is hereby amended---

(a) By adding to paragraph (d) the word ``; and":

(b) By adding the following paragraph:

``(e) The relief sought."

18. New sections (relating to infringement offences) inserted---The principal Act is hereby amended by inserting, after section 343, the following heading and sections:

``Infringement Offences

``343A. Infringement offences---In sections 343B to 343D---

`` `Infringement fee', in relation to an infringement offence, means the amount fixed by regulations made under section 360 (1) (bb), as the infringement fee for the offence:

`` `Infringement offence' means an offence specified as such in regulations made under section 360 (1) (ba).

``343B. Commission of infringement offence---Where any person is alleged to have committed an infringement offence, that person may either---

``(a) Be proceeded against for the alleged offence under the Summary Proceedings Act 1957; or

``(b) Be served with an infringement notice as provided for in section 343C.

``343C. Infringement notices---(1) Where an enforcement officer observes a person committing an infringement offence, or has reasonable cause to believe such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be served on that person.

``(2) Any enforcement officer (not necessarily the officer who issued the notice) may deliver the infringement notice (or a copy of it) to the person alleged to have committed an infringement offence personally or by post addressed to that person's last known place of residence or business; and, in that case, for the purposes of the Summary Proceedings Act 1957, it (or the copy) shall be deemed to have been served on that person when it was posted.

``(3) Every infringement notice shall be in the prescribed form and shall contain the following particulars:
``(a) Such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence; and
``(b) The amount of the infringement fee specified for that offence; and
``(c) The address of the place at which the infringement fee may be paid; and
``(d) The time within which the infringement fee must be paid; and
``(e) A summary of the provisions of section 21 (10) of the Summary Proceedings Act 1957; and
``(f) A statement that the person served with the notice has a right to request a hearing; and
``(g) A statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and
``(h) Such other particulars as are prescribed.

``(4) Where an infringement notice has been issued under this section, proceedings in respect of the offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957; and, in that case, the provisions of that section, with all necessary modifications, shall apply.

``343D. Entitlement to infringement fees---A local authority shall be entitled to retain all infringement fees received by it in respect of infringement offences where the infringement notice was issued by an enforcement officer of that authority."

19. Regulations---Section 360 (1) of the principal Act (as amended by section 163 of the Resource Management Amendment Act 1993) is hereby amended by inserting, after paragraph (b), the following paragraphs:
``(ba) Prescribing those offences under this Act that constitute infringement offences against this Act:
``(bb) Prescribing forms of infringement notices, and any other particulars to be contained in infringement notices, and prescribing the infringement fee (not exceeding $1,000) for each infringement offence, which may be different fees for different offences:".

20. Right of port companies to occupy coastal marine area---Section 384A of the principal Act (as inserted by section 177 of the Resource Management Amendment Act 1993) is hereby amended by adding the following subsection:

``(12) For the purposes of this Act, the consent authority for any coastal permit approved under this section is the regional council whose consent, but for this section, would normally be required."

21. Existing geothermal licences and authorisations deemed to be water permits---Section 387 (4) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:
``(aa) Refund or remission of rentals, the Minister:".

22. Uses of lakes and rivers not restricted by section 9---(1) Section 417A of the principal Act (as inserted by section 199 of the Resource Management Amendment Act 1993) is hereby amended by repealing subsection (1), and substituting the following subsections:

``(1) Notwithstanding section 374 (4), for the purposes of this Act, subsections (1) and (2) of section 9 do not apply in respect of any activity carried out on the surface of water in any lake or river---

``(a) Unless the activity is specifically referred to, and is controlled or restricted or prohibited by a rule, in a district plan or proposed district plan deemed to be constituted under section 373; or

``(b) Until a district plan or proposed district plan prepared under the First Schedule provides otherwise.

``(1A) Nothing in subsection (1) shall apply to any commercial activity (being an activity that has, or has the potential to have, as its sole purpose or a related purpose the production of assessable income) carried out in the district of the Queenstown-Lakes District Council.

``(1B) The application of subsection (1) or subsection (1A) may be excluded or modified at any time in accordance with the First Schedule."

(2) The Resource Management (Transitional) Regulations 1994 (S.R. 1994/34) are hereby revoked.

23. Certain existing permitted uses may continue---(1) Section 418 of the principal Act is hereby amended by repealing subsections (1) to (1C) (as substituted by section 200 (1) of the Resource Management Amendment Act 1993), and substituting the following subsections:

``(1) For the purposes of this Act, section 15 (1) (c) shall not apply in respect of any discharge from any industrial or trade premises which would not have required any licence or other authorisation under the Clean Air Act 1972, unless a regional plan provides otherwise.

``(1A) Notwithstanding subsection (1), for the purposes of this Act, section 15 (1) (c) shall apply to any discharges from industrial or trade premises used for the storage, transfer, treatment, or disposal of waste materials or other waste-management purposes, or for composting organic material, commenced after the 1st day of October 1991.

``(1B) For the purposes of this Act, section 15 (1) (d) shall not apply in respect of any discharge of a contaminant from---

``(a) Any industrial or trade premises which would not have required any licence or other authorisation to discharge contaminants onto or into land under any of the Acts, regulations, or bylaws, or parts thereof, amended, repealed, or revoked by this Act; or

``(b) Any factory farm---

unless a regional plan provides otherwise.

``(1C) Notwithstanding subsection (1B), for the purposes of this Act, section 15 (1) (d) shall apply in respect of any discharges from industrial or trade premises used for the storage, transfer, treatment, or disposal of waste materials or other waste-management purposes, or for composting organic material, where that use of premises is in the nature of a waste-transfer station, land fill, rubbish dump or tip, unless---

``(a) The discharge is expressly allowed by a rule in a proposed regional plan; or

``(b) An application for a permit to discharge the contaminant has been lodged with the regional council."

(2) Section 418 (6) (a) (ii) of the principal Act is hereby amended by omitting the words ``or any lease or licence described in section 426 (1)".

(3) Section 418 (6A) of the principal Act (as inserted by section 200 (5) of the Resource Management Amendment Act 1993) is hereby amended by omitting the expression ``120 (2) (a)'', and substituting the expression ``12 (2) (a)''.

(4) The following regulations are hereby revoked:
(a) The Resource Management (Transitional Provisions) Regulations 1994 (S.R. 1994/197):
(b) The Resource Management (Transitional Provisions) Regulations 1994, Amendment No. 1 (S.R. 1995/60).

24. Savings as to bylaws---(1) Section 424 of the principal Act (as amended by section 202 (1) of the Resource Management Amendment Act 1993) is hereby amended by omitting the expression ``3 years'' from subsections (2), (3), and (4), and substituting in each case the expression ``8 years''.

(2) Section 424 (11) of the principal Act (as added by section 202 (2) of the Resource Management Amendment Act 1993) is hereby amended by inserting, after the words ``subsection (2)'', the words ``or subsection (4)''.

(3) Section 202 (1) of the Resource Management Amendment Act 1993 is hereby consequentially repealed.

25. Decision of local authority---Clause 10 of the First Schedule to the principal Act (as substituted by section 214 (1) of the Resource Management Amendment Act 1993) is hereby amended by adding the following subclauses:

``(2) The decisions of the local authority may include any consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in submissions.

``(3) The local authority shall give public notice of the fact that it has made its decisions, and the proposed policy statement or proposed plan shall be deemed to have been amended in accordance with those decisions from the date of the public notice."

26. Notification of decision---Clause 11 (1) of the First Schedule to the principal Act (as substituted by section 214 (1) of the Resource Management Amendment Act 1993) is hereby amended by omitting the words ``A local authority'', and substituting the words ``At the same time as a local authority gives public notice under clause 10 (3), it''.

27. Merger with proposed policy statement or plan---Clause 16B of the First Schedule to the principal Act (as substituted by section 215 of the Resource Management Amendment Act 1993) is hereby amended by adding the following subclause:

``(2) From the date of public notification of a variation, the proposed policy statement or proposed plan shall have effect as if it had been so varied."

28. Validation---(1) Any proposed policy statement or proposed plan, or policy statement or plan, or part thereof, on which a decision has been made, under clause 10 of the First Schedule to the principal Act, before the commencement of this Act shall not be invalid because it includes decisions that were consequential alterations arising out of submissions or other relevant matters the local authority considered relating to matters raised in submissions.

(2) Any proposed policy statement or proposed plan, or policy statement or plan, or part thereof, on which a decision has been made, under clause 10 of the First Schedule to the principal Act, before the commencement of this Act shall be deemed to include any amendment which was made as a result of decisions on submissions to that proposed policy statement or proposed plan, whether or not those decisions were publicly notified.

(3) For the purposes of subsection (2) of this section, the amendments made as a result of decisions shall be deemed to have been included in the proposed policy statement or proposed plan from the date the local authority gave its decision under clause 10 of the First Schedule to the principal Act.

This Act is administered in the Ministry for the Environment.