

Second Generation Policy Statements and Plans – A legal perspective

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Topics to be covered

- Changes to the RMA since 1991
- Changes to the wider statutory framework
- Some specific issues in relation to second generation RPS and Plans
- Comment on the 2009 amendments

Changes to the RMA since 1991

- A much more detailed statutory regime for national environmental standards
- Some changes to the provisions relating to the making of national policy statements (Sections 46A and 46B)
- Relatively minor changes to date to the policy statement/plan making procedures under Part 5 and the First Schedule to the RMA

Changes to the RMA since 1991 (cont)

- The mandatory contents of plans has been reduced (only objectives, policies and rules)
- Plans must now “give effect to” any NPS, NZCPS and RPS
- There have been important changes to section 32 (2003-2005)

Changes to the RMA since 1991 (cont)

- Some changes to the RMA functions of regional councils:
 - investigation of land to identify and monitor contaminated land
 - dumping in the CMA
 - allocation of the taking and use of water
 - taking or use of heat or energy from water or material surrounding geothermal water

Changes to the RMA since 1991 (cont)

- maintaining indigenous biological diversity
- strategic integration of infrastructure with land use
- Some changes to the functions of territorial authorities (prevention or mitigation of the adverse effects of contaminated land)
- Imposition of coastal occupation charges (Section 64A)
- Interface with the Building Act 2004 (protection of other property from the effects of surface water)

Changes to the RMA since 1991 (cont)

- Amendments to the RMA as part of the enactment of the Foreshore and Seabed Act 2004
- New Section 6 matters – historic heritage and protection of recognised customary activities
- New Section 7 matters
 - the ethic of stewardship
 - the efficiency of the end use of energy
 - the effects of climate change

Changes to the RMA since 1991 (cont)

- the benefits to be derived from the use and development of renewable energy
- Aquaculture Management Areas – Part 7A RMA (subject to further reform at present)

Changes to the wider Statutory/Policy Framework

- The Local Government Act 2002:
 - development contributions
 - other statutory financial management policies
 - LTCCP process – can assist in identifying significant resource management issues of the region (or part)
 - Annual plan process

Changes to the wider Statutory/Policy Framework (cont)

- The Land Transport Management Act 2004
 - regional land transport strategies
- Biosecurity Act 1993
 - Regional Pest Management Strategies
- Civil Defence and Emergency Management Plans (under the Civil Defence and Emergency Management Act 2002)

Changes to the wider Statutory/Policy Framework (cont)

- Various Government (non statutory) policy statements
- Local legislation (Auckland)
- Growth strategies (non statutory)

Some Specific Issues

– Second Generation RPS and Plans

- The timing and sequencing of second generation documents
- Plans must give effect to a NPS, NZCPS and the RPS
- A rule (and resource consent) cannot be more lenient than a NES
- A plan must **give effect to** a RPS
- A district plan must be not inconsistent with regional plan for any matter specified in section 30(1)

Some Specific Issues

– Second Generation RPS and Plans (cont)

- Greater scope for cross over between regional and district plans (contaminated sites, infrastructure development, and biological diversity) plus existing national hazard/hazardous substances overlaps
- Need for co-operation between regional councils and territorial authorities

Some Specific Issues

– Second Generation RPS and Plans (cont)

- Plan drafting
 - getting linkages right (ie clear connections between rules, policies and objectives)
 - avoidance of subjective wording in rules/definitions
 - rules need to be consistent with statutory requirements
 - definitions should ideally be consistent with RMA definitions
 - clarity over the relationship between subdivision and land use

Some Specific Issues

– Second Generation RPS and Plans (cont)

- Other issues
 - greater consistency between plans in terms of standards for noise etc
 - include issues and methods in plans?
 - climate change – what information to rely on?
 - combining the RPS with the regional plan?
 - Renewables – what response?

2009 Amendments

- Amendments to documents altered by NPS
- Preservation of trees
- Some changes relating to how rules classify activities
- Removal of non-complying status
- Combined regional/district plans
- Timing of legal effect of rules in proposed plans and plan changes

2009 Amendments (cont)

- Trade competition submissions
- Restriction on rights of appeal to Environment Court