Second stage of resource management reforms coming into force mid October

18 October 2017 marks the commencement date for a number of amendments to the Resource Management Act 1991, Conservation Act 1986, Reserves Act 1977, Public Works Act 1981 and the Exclusive Economic Zone and Continental Shelf Act 2013.

The main objective of this collection of reforms was to ‘fix’ the housing crisis by introducing a number of provisions that would streamline and fast track housing development.

Among the key amendments coming into force now are:

- certain boundary activities (such as minor breaches to recession planes and setbacks) will no longer require resource consent and will be deemed to be permitted activities when the affected neighbour gives written approval (section 87BA);
- council may exempt ‘marginal or temporal’ rule breaches from requiring resource consent (section 87BB);
- processing times for controlled activities have been reduced from 20 working days to 10 working days through the ‘fast tracked process’ (section 95(2)(a));
- a new definition for ‘residential activities’ is introduced that limits notification and appeal rights for residential activities. Residential activities are given the broad definition of activities “ that require resource consent under a regional or district plan and that is associated with the construction, alteration, or use of 1 or more dwelling houses on land that, under a district plan, is intended to be used solely or principally for residential purposes”(section 95A(6));
- a new step by step by process to determine whether notification is required is introduced. This also includes a presumption that controlled activities will not be publically or limited notified (section 95A and section 95B);
- when considering applications for resource consent or notices of requirement for designations, councils must regard offsetting measures

proposed by an applicant (section 104(ab) and section 168A(3A));

- new tests to limit the scope of consent conditions have been introduced. Consent conditions must be: ‘directly connected’ to an adverse effect of the activity on the environment, an applicable rule, or a national environmental standard; for the implementation of the consent; or agreed by the applicant (section 108AA);and
- appeal rights to the Environmental Court are now limited for resource consents relating to subdivisions, ‘residential’ activities, and ‘boundary’ activities that are non complying activities (section 120(1A)). The scope of appeal has also been restricted for submitters to points raised in their submissions (section 120(1B)).

While the majority of these changes are aimed towards smaller residential projects and will not have an effect on larger more complex projects, there are some changes that will certainly change the way applications are framed. By way of example it is noted that limitations have been placed on appeal rights for subdivisions which relate to both applicants and submitters. As there will be no appeal rights to the Environment Court for discretionary subdivision consents, applicants may consider designing their proposals to trigger non–complying activity rules, in order to preserve their right to appeal should the application be decline – a somewhat perverse outcome of reforms designed to speed process. Submitters will also need to be cautious in drafting submissions to ensure they are wide enough preserve appeal rights. Again it is not clear how this will achieve the purpose of streamlining rather than expanding the process!

For a comprehensive list of the RLAA amendments see the Ministry for the Environment checklist available by following the link below or contact a member of the Greenwood Roche Resource Management Team

http://www.mfe.govt.nz/sites/default/files/media/overview-changes-resource-legislation-amendment-act.pdf