



Resource Management Amendment Act 2005 – Improving natural resource allocation

This is one of a series of information sheets giving an overview of the amendments to improve the Resource Management Act (RMA).

WHAT WERE THE ISSUES?

Natural resource allocation raises issues where there are competing demands for scarce resources or there is a need to limit discharges to manage pollution. There was uncertainty amongst some regional councils about their role in the allocation of natural resources. In addition, concerns have been expressed by users of natural resources about security of rights, which in turn, is affecting maintenance and long term investment in existing infrastructure. A particular concern was the ability for new entrants to apply for consents before the expiry of existing consents and, in this way, effectively prevent existing consent holders obtaining new consents.

HOW HAS THE RMA BEEN IMPROVED?

Clarification of regional council's role

Section 30 is amended to clarify that a regional council's functions include the establishment of rules in a regional plan to allocate any of the following natural resources:

- water (other than open coastal water)
- heat and energy from water
- heat and energy from material surrounding geothermal water
- the capacity of air or water to assimilate the discharge of a contaminant.

In addition, regional councils can, in conjunction with the Minister of Conservation, establish rules in regional plans to allocate open coastal water, heat or energy from open coastal water and space in the coastal marine area.

Subject to Part 2 of the RMA, a plan can allocate resources amongst competing activities. However, it cannot include rules that reallocate a resource that is subject to existing resource consents. This does not affect a council's powers to set minimum or maximum flows under section 68(7) of the Act. Plans are not required to allocate the relevant resource in the way that reflects existing consents and

plans do not have to anticipate applications for new consents to replace expiring ones. Therefore, plans can set rules that provide for reallocation of the resource when existing consents expire.

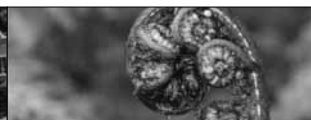
Right in priority

New sections 124A-124C set up a process to give existing consent holders priority over new applications when an existing consent holder applies for a new consent to replace its existing consent. The process is a default position that can be changed by the regional plan. The default rule will not come into force until three years after the commencement of the Amendment Act. The intention is to allow regional councils to consider the issue of natural resource allocation and to change a regional plan to vary the default rule, where the council considers it appropriate.

The effect of the rule will be to require regional councils to assess applications for resource consents to carry out activities under sections 12, 13, 14 or 15 of the Act against existing consents. Where there would be a conflict between the new application and the existing consent, the regional council must place the new application on hold and notify the existing consent holder that the application has been received.

Provided that the existing consent holder makes an application for a new consent for the same activity, at least three months before the expiry of its existing consent, then the application from the existing consent holder will be determined first. This does not amount to a right of renewal, or even a presumption in favour of renewal, of the existing consent. It simply ensures that the application from the existing consent holder for a new consent to replace its existing consent is considered before other new competing applications.

Section 124A(2) allows councils to override the default rule by creating an allocation plan or by having a plan that expressly states that sections 124BA-124C of the RMA do not apply. Councils may change or vary their plans in accordance with Schedule 1 to include new provisions if they decide to vary the default rule.



The Act sets out additional factors that must be considered by a consent authority in determining applications from existing consent holders that have been afforded priority under section 124B. Those factors are:

- the efficiency of the person's use of the resource
- the use of good industry practice by that person
- whether the existing consent holder has been served with an enforcement order or convicted of an offence under the Act. The consent authority must consider the number of enforcement orders or convictions, their seriousness and how recent they were.

Section 124C provides that where the consent authority grants the application for the existing consent holder, then the other applications lapse to the extent that the use of the resource has been granted to the existing consent holder.

Recognition of the value of existing investment

Section 104A requires consent authorities to have regard to the value of existing investment when determining applications for new consents to replace existing consents. This requirement only applies to applications made under section 124 of the Act, that is, where the existing consent holder applies for a new consent for the same activity and the application is made at least three months before the expiry of the existing consent.

Flexibility for transfer of water and discharge permits

The Act clarifies that water permits can be transferred in whole or in part and for limited periods. Section 137 has been amended to enable the transfer of discharge permits where this is expressly allowed by a rule in a plan or by consent of the authority. Discharge permits cannot be transferred if the transfer would worsen the actual or potential effects of the discharge on the environment or would contravene a national environmental standard. If the discharge is to water, then the permit can only be transferred if both sites are within the same catchment. If the discharge is to air, then the permit can only be transferred if both sites are within the same airshed.

Applications for the transfer of a discharge permit must be lodged jointly by the permit holder and the person to whom it will be transferred.

SUSTAINABLE WATER PROGRAMME OF ACTION

The Government has also embarked on a Sustainable Water Programme of Action, co-ordinated by the Ministries for the Environment and Agriculture and Forestry. The Sustainable Water Programme of Action is one component of the Sustainable Development Programme of Action. Its aim is to find the best ways of managing the freshwater resources that are important to New Zealanders. It is about ensuring our lakes, rivers, wetlands and other freshwater resources are fairly used, protected, and where necessary, preserved – now and for future generations.

One of the priorities for the Sustainable Water Programme of Action is to examine and develop means of improving the efficiency and effectiveness of water allocation. The results of the initial round of consultation are available at www.mfe.govt.nz. The next stage of the Programme will be a set of proposals for discussion in early 2006.

OTHER RMA INFORMATION SHEETS

Other information sheets in this series include:

- Overview
- Summary
- Improving national leadership
- Improving decision making
- Improving local policy and plan making
- Improving certainty for consultation and iwi resource planning.