

SUPPLEMENTARY PAPER – RMA TECHNICAL ADVISORY GROUP

Monday, 22 December 2008

Subject:	Approved/Licensed Contractors
Purpose:	To provide a summary of potential options for utilising a system of licensed or approved contractors
Summary:	<p>1. There is a current ability for the concept of ‘approved’ contractors and performance standards to be incorporated into plans. Legislative change may facilitate a greater use of these tools.</p> <p>2. Support and guidance for local authorities to make better use of performance standards in plans will assist to achieve the intended outcome.</p> <p>3. Global consents and National Environmental Standards can achieve the same outcome, without raising many of the implementation issues of the ‘approved contractors’ concept.</p>
Recommendation:	Make greater use of ‘approved contractor’ concept and other existing tools (including global consents, NES and performance standards) to streamline consent requirements and reduce consents for minor activities.

Background

1. The concept of approved (or licensed) contractors is an option to reduce both the complexity of plans and the number of resource consents required.
2. The concept of ‘approved contractors’ appears to be attractive largely in the area of relatively minor activities which currently require a resource consent in some local authority areas (pruning trees in Auckland for example).
3. The approved contractor status is achieved by the licensing/certification/qualification of the operator. The basic premise is that provided an approved contractor is used (and any other standards met), no resource consent should be necessary.
4. The objectives of such an approach is to :
 - a. reduce (or streamline) the resource consent requirements for recognised operators and improve consistency of controls; and
 - b. reduce the number of resource consents required for minor activities.
5. To remove a requirement for a resource consent there needs to be certainty that the conditions of carrying out the activity mean there will be no significant adverse effects.

Comment

6. The concept of having approved contractors go through a more streamlined resource consent process based on their performance is consistent with the enabling and flexible philosophy of the RMA. While there is already an ability for performance standards and ‘approved contractor’ concepts to be incorporated in plans (see examples in Appendix 1), legislative change or the introduction of regulations may facilitate a greater use of these tools, through clarifying their legitimacy, for example.
7. The approved contractor concept has been successfully used by several regional councils in relation to agrichemical spraying which is a permitted activity provided the

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- work is undertaken by GROWSAFE certified agrichemical applicators and other standards are met (e.g. Hawke's Bay Regional Council – see example in Appendix 1).
8. The RMA is effects-based therefore it is most appropriate that the 'approved' status lies with the operator undertaking works to ensure the environmental outcome, however this can create uncertainty for companies who sub-contract works to operators, and rely on them retaining this approved status. This can be an issue for projects which take several years to complete (see forestry example in Appendix 1).
 9. The quality of the approval/certification system is critical to ensuring environmentally-sound outcomes are achieved. In particular it is important that any certification system is linked to adequately and consistently managing the effects local authorities are concerned about. As such the concept of 'approved contractors' may not be applicable for all activity types.
 10. To set up a system of approved contractors, systems for assessing, recording and auditing the approved contractors is needed. There are several matters that need to be considered in relation to this, particularly:
 - a. who would be responsible for the administration of the system (including training, assessment and monitoring of operations);
 - b. whether the creation of a new set of assessment criteria, standards and monitoring outside the regional/district plan as part of a process to certify contractors as 'approved' would achieve the intended efficiency aim. There is a potential risk that the regulatory compliance burden will simply shift from an RMA consent framework to the 'approved contractor' framework;
 - c. whether there are some suitable existing certification systems for specific activities (e.g GROWSAFE certification for agrichemical spraying); and
 - d. The use of approved contractors will not always guarantee quality of outcome – a contractor may be accredited but still may not choose the most appropriate solution for undertaking works.
 11. Monitoring and enforcement relating to activities that have been carried out by an 'approved contractor' needs to be carefully worked through. It may be difficult to confirm that work has been undertaken by an approved contractor unless all paperwork is retained (or submitted to the local authority). There are also potential questions around liability in respect of approved contractors sub-contracting work, or themselves carrying out sub-standard work which results in unacceptable adverse environmental effects.

Alternatives

12. There are several other alternatives to consider which also achieve the objective. These are the use of :
 - a. Acceptable solutions/products, similar in concept to the way the Building Code allows for building consent applicants to demonstrate compliance. These solutions could be specified at either a national or local level, and be set in regulations.
 - b. Global consents (at a district or regional level) or National Environmental Standards (at a national level, regional or district level). Both of these can be used to provide for a consistent set of controls for a specific activity.
13. The Department of Building and Housing has advised that the acceptable solutions concept has worked well in the context of the Building Act. It provides certainty of outcome and has been relatively easy to monitor.
14. In the RMA context there is also some precedent to the use of tools similar to 'acceptable solutions'. The Ministry for the Environment administers a list of 'compliant woodburners'

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that meet the performance standard of the Air Quality National Environmental Standard (see example in Appendix 1).

15. There appears to be merit in the use of global or 'blanket' consents for certain minor activities. For example in some regions Transit (now part of NZ Transport Agency) holds 'global' consents for bridge maintenance. In effect a global consent can act like a permitted activity rule for the consent holder. However, these are not appropriate for activities where location is critical for assessing effects, or the environmental effects mean the application should be notified.

Conclusions

16. There is currently the ability for performance standards and 'approved contractor' concepts to be incorporated in plans (see examples in Appendix 1). Legislative change or the introduction of regulations may facilitate a greater use of these tools.
17. Providing support and guidance to local authorities to make better use of performance standards in plans will assist to achieve the intended outcome.
18. Global consents and NES (also already possible under the existing legislation) can achieve the same outcome, without raising many of the implementation issues as the 'approved contractors' concept.

Appendix 1: Examples of current use

1. Hawke's Bay Regional Council – agrichemical spraying: Widespread application of agrichemicals is a permitted activity under the HBRC Regional Resource Management Plan provided eight specific performance standards (conditions) can be met. This includes the requirement for the contractor, commercial user and employee undertaking the activity to hold a qualification that meets performance requirements specified in the plan. The plan specifies GROWSAFE certification as an example of what meets the criteria.
2. NES example: The Air Quality National Environmental Standard includes a so-called 'national wood burner standard' by specifying a performance standard for wood burners installed after a set date. Subsequently a list of compliant wood burner make and models has been produced (effectively a list of 'approved products' though not officially called such).
3. Forestry example: Environment Bay of Plenty has plan provisions to allow approved forestry operators to act under permitted activity status. However, the provisions apply only to contractors, with forest owners specifically excluded. Few used contractors use the provisions due to the need for contractors to have professional indemnity insurance in the event that the contractors lost accreditation mid-way through operations. Horizon's proposes to include a mechanism in their One Plan to identify forest companies/owners as approved operators subject to approvals of their Environmental Management System and subject to independent auditing of compliance with this.