

SUPPLEMENTARY PAPER – RMA TECHNICAL ADVISORY GROUP

Monday, 22 December 2008

Subject:	Section 274 – Representation at proceedings
Purpose:	To provide advice on whether the criteria for who can become a party to proceedings should be limited, whether timeframe should be reduced and, and whether amendment is needed to limit the ability of s274 parties to continue appeals.
Summary:	<p>1. Either limiting the application of section 274(1)(d) to plan preparation and changes or only enabling directly affected parties to join proceedings relating to resource consents may assist in reducing involvement in appeals on resource consent applications. The limitation of appeal rights will assist in reducing delays and costs in obtaining resource consents.</p> <p>2. No amendments are considered necessary in respect of s274(5), however amending s274(1)(d) will reduce the impact of s274 parties being able to continue appeals on resource consents.</p> <p>3. We do not consider such a limitation is suitable for plan preparation and changes due to the wider scope of plans or plan changes which make identifying affected parties more difficult.</p> <p>4. Reducing the notice lodgement timeframe from 30 to 15 workings improve timeframes for getting court processes started. Consequential amendments relating to combined service of s274 notices will also assist Court administration.</p>

Background

1. The provisions of section 274 enable people to become party to Environment Court proceedings. There are three specific areas within section 274 to which this supplementary paper refers:
 - a. whether the s274(1) criteria of who may be a party to proceedings should be limited further (in particular by removing (c) and (d));
 - b. whether the timeframe specified in s274(2) for giving notice should be reduced; and
 - c. whether s274(5) should be amended to limit the ability for a s274 party to continue proceedings when the appellant withdraws.
2. The objectives of any changes to section 274 are to reduce project delays and costs resulting from the ability of unrelated/unaffected parties to become involved in Environment Court proceedings.
3. There are concerns that the current broad ability for people to become involved in Environment Court proceedings is contributing to costly and lengthy appeal processes and delays in obtaining resource consents and plans becoming operative. This increases costs for all involved.
4. Section 274 was substantially amended 2003. The version of section of section 274 in force between 1998 and 2003 required notice to be given no less than 10 working days before the commencement of a hearing.

5. Between 1996 and until it was repealed in 2003 section 271A provided for submitters to become a party to proceedings. The intent behind the repeal was to amalgamate section s271A with section 274, to avoid confusion and to ensure consistency in relation to timeframes.
6. Section 274(1) was amended in 1996 to include 'any person representing a relevant aspect of the public interest'. Further changes made in 2003 did not alter the criteria.

Comment – parties to proceedings

7. The current interpretation of section 274(1)(c) is wide. Case law sets out considerations for applying section 274(1)(d) as whether the person is representing an interest, whether the interest is a public interest, and whether that interest is relevant to the proceedings.
8. To limit the scope of parties becoming involved in Environment Court proceedings, the criteria in s274(1) could be amended to remove (c) and (d). This would mean persons who have an interest greater than the public generally and persons representing a relevant aspect of the public interest would not be able to become a party to appeal proceedings. This could have a limited impact on removing trade competitors, however many potential trade competitors are also submitters and will therefore be able to appeal (or be a party to proceedings) regardless.
9. If s274(1)(c) is removed, consequential amendments may be required to enable iwi with statutory acknowledgements and possibly the Parliamentary Commissioner for the Environment to be a party to proceedings, as they currently use subsections (c) and (d) respectively.
10. In general terms the effect of this change would be that those who are not submitters would not be able to be involved in court proceedings. This would preclude, for example, involvement of directly affected parties who missed the original submission period for a consent application.
11. In relation to the deletion of section 274(1)(d) there was a deliberate intent by Parliament in 1996 to make provisions for representative bodies.
12. An option exists to repeal section 274(1)(d) while leaving section 274(1)(c) intact, which would reduce the current broad scope to what existed before the 1996 amendment.
13. The effect of this change would be to remove the right of diverse groups (e.g with environmental, tangata whenua or industry-related objectives), to apply to become a party. This could prejudice those groups who may have no earlier knowledge of the nature and effects of, for instance, a plan change, which may affect their interests. It would also be likely to lead to more litigation concerning whether the proposed party could bring itself within section 274(1)(c).
14. Another option may be to limit section 274(1)(d) to proceedings involving plans and policy statements only; or alternatively amending section 274 so that only directly affected parties can be involved in proceedings relating to resource consents.

Comment – continuation of appeals

15. Section 274(5) provides for circumstances whereby a person who has made a submission in the previous proceedings in relation to the same matter, can oppose the withdrawal or abandonment of current proceedings.
16. Originally the 2003 RMA amendment proposed that there would not be any ability for a 274 party to oppose the withdrawal of an appeal or abandonment of proceedings. This ability was added at Select Committee (possibly because the section says certain persons joining proceedings under s.274 are 'parties' - a status that can be taken as meaning they have the right to pursue an appeal in their own right).
17. The effect of this provision is that even if the actual original appellant decides to withdraw or abandon an appeal another party can keep the appeal process going. This can force

a hearing to proceed even where original appellant and respondent have reached agreement.

18. The ability for those parties to then keep proceedings going when the original appellant and respondent may have resolved the matter under dispute can impose cost and time penalties on the original appellant and respondent that would otherwise have been unnecessary. In theory the original appellant could still withdraw from proceedings, but this may leave them in a position whereby they may not be able to protect their interests (and agreements reached) if the third party is working towards a different outcome.
19. The ability of a third party to oppose the withdrawal or abandonment of proceedings also gives that party great leverage to negotiate outcomes for themselves. Taken to its extreme, this leverage may become out of proportion with the scale of their concerns or interests. It also has potential to be used as a tool for trade competitors to keep appeal against rivals alive for their own interests (rather than the interests of the person who made the original appeal).
20. A possible relief may be offered through limiting s274(1)(d) to plans and policy statements.

Comment – timeframe

21. Section 274(2) provides that a person in section 274(1) may become a party to proceedings by giving notice to the Court (and other parties) within 30 working days *after* the notice of appeal, inquiry is lodged (or other proceedings commenced).
22. This timeframe could be reduced to require persons wishing to become parties to give notice 15 working days after notice of the proceedings being lodged with the Environment Court. There would be no undue prejudice to new parties, as the Environment Court can exercise waiver powers under section 281.
23. This amendment will assist in addressing current practical difficulties for the Court, which must often send several letters to the parties within the 30 working day period, being required to update the lists of parties to be served each time.
24. An associated minor amendment to section 274 is to require parties to serve the applicant, appellant and council at the same time as they lodge their notice of intention to join proceedings, and give notice to all other parties 5 working days after the lodgement period finishes. The Court could then send one letter with a list of the parties to all the parties once the period for lodgement had closed. This amendment has been requested by the Chief Environment Court Judge and would consistent with section 121 for serving notices of appeal.

Conclusion

25. Either limiting the application of section 274(1)(d) to plan preparation and changes or only enabling directly affected parties to join proceedings relating to resource consents may assist in reducing involvement in appeals on resource consent applications. The limitation of appeal rights will assist in reducing delays and costs in obtaining resource consents.
26. No amendments are considered necessary in respect of s274(5), however amending s274(1)(d) will reduce the impact of s274 parties being able to continue appeals on resource consents.
27. We do not consider such a limitation is suitable for plan preparation and changes due to the wider scope of plans or plan changes which make identifying affected parties more difficult.

28. Reducing the notice lodgement timeframe from 30 to 15 workings improve timeframes for getting court processes started. Consequential amendments relating to combined service of s274 notices will also assist Court administration.