

Government Reform of Marine Aquaculture

In a recently released Cabinet Paper* the Government has signalled significant reform to management of marine based aquaculture under the Resource Management Act 1991 (RMA) and proposes new powers to drive aquaculture planning.

The Status Quo

Under section 12A and Part 7A of the RMA new aquaculture activity can only take place in Aquaculture Management Areas (AMAs), where such areas are provided for in the relevant Regional Coastal Plan. The Government is concerned that despite Part 7A coming into force in 2005 no new AMAs have been created. Although a small number of interim AMAs were created in 2005 and some older coastal permits are deemed to be interim AMAs, the planning processes will take too long to create any new AMAs. Part 7A is identified as providing little incentive for Regional Councils (RC) to initiate plan changes to create AMAs, and as discouraging private plan change requests. Currently RCs must invite private plan change applications. If the plan change is successful, the AMA space created must be offered by public tender without any preference for the proponent of the plan change.

Government Objectives

The Government considers that there is significant potential for economic development of the aquaculture industry and that current processes seriously impede that development. The Cabinet Paper states three objectives for the reforms:

- reduce cost, delays and uncertainty with the aquaculture regulatory process;
- promote investment in aquaculture development; and
- enable integrated decision-making.

Reform Proposals

The most significant change is a new power of intervention for the Minister in addition to the measures already within the RMA. This power would enable the Minister to amend Regional Coastal Plans by regulation, and would extend to changing, introducing or removing provisions relevant to management of aquaculture in Regional Coastal Plans. It is proposed that the power be used only in exceptional

* Cabinet Paper, *Aquaculture Reform*, Economic Growth and Infrastructure Committee, 10 March 2010.

circumstances and the paper states that the Government prefers to work with the relevant Councils. However the power will be enduring rather than a limited transitional measure.

A dedicated business unit in the Ministry of Fisheries has been established to be the Government's principal advisor on marine and land-based aquaculture as well as lead the reform process and implementation of any new law.

The provisions relating to the creation of AMAs and restricting aquaculture activities to AMAs will be repealed. Aquaculture will be reinstated within the normal RMA planning framework, which means that RCs will be expected to receive and process applications for coastal permits for aquaculture activities from the commencement date of any legislative reform. Consistent with normal RMA frameworks RCs will be able to introduce zoning and apply prohibited activity status to areas considered sensitive.

The Government does not expect a flood of applications but alternative options are being considered to the first in first out approach (**FIFO**) of the RMA for allocation of space for aquaculture. The Minister will also have a power to suspend applications to RCs for up to a year to enable them to address matters in their plans. This power may be exercised at the request of RCs where they are inundated by applications and the FIFO method is considered inappropriate.

The minimum period a consent could be granted for will be 20 years unless the applicant requests a shorter term or there is a significant risk or uncertainty about the effects of the proposal that cannot be addressed by consent conditions.

The present private plan change invitation process and the provision for a public tender following a private plan change application will be repealed. It is proposed that where a private plan change is successful the proponent will receive 80% of the zoned area sought, with the other 20% to be allocated to iwi to meet treaty settlement obligations.

Renewal or re-consenting requirements will be reduced, no longer requiring a full application and Assessment of Environmental Effects. A new stand alone process is proposed whereby an applicant seeking to continue the same activity will only need to produce information to address effects not considered when the consent was granted or where the scale and significance of effects has changed considerably over time together with information on monitoring issues and the consent holder's performance. Government officials are also exploring extending the stand-alone process to the RMA generally.

Specifying the activity status for marine aquaculture is currently being considered but no decisions have been made. Officials are looking at whether a restricted discretionary or controlled status could be appropriate.

The lapse period for applications will be reduced from five years to three to reduce speculative applications and ensure consents are implemented.

The undue adverse effects test (**UAE test**) will be retained. Certain coastal permits, depending upon the nature of the activity and species concerned, trigger the UAE test under the Fisheries Act 1986 (**FA**). The purpose of the test is to prevent adverse effects from the proposed aquaculture activity unduly affecting customary or recreational fishing. Undue effects on commercial fishing are allowed only where



a minimum of 90% of commercial fishers consent. The reform also proposes removing duplication of legal options to change UAE test decisions, and where possible linking RMA and FA common information requirements, processing timelines and hearing processes to achieve more efficient assessment of the effects on fishing.

Other proposals include requiring only persons accredited under the RMA to hear coastal permit applications and making guidance material available.

Further Work Streams

The Government has on going work streams in relation to aquaculture activities in the marine environment including:

- addressing settlement issues as well as alignment and integration with the Government's foreshore and seabed review;
- coastal charging including options for levies, charges and the possibility of extending rating law to areas of aquaculture;
- transitional arrangements; and
- retaining those parts of the Aquaculture Legislation Amendment Bill (No 2), which has received its second reading, that continue to be relevant such as provision for experimental aquaculture.

The reforms are not yet law and a Bill has not yet been introduced, however the Cabinet Paper contains direction for the reforms to be referred to the Parliamentary Counsel Office to draft an Aquaculture Amendment Bill.

Our LG Law senior personnel are:

Melinda Dickey

Partner

t: (09) 979 2210

e: dickey@brookfields.co.nz

Andrew Green

Partner

t: (09) 979 2172

e: green@brookfields.co.nz

Linda O'Reilly

Partner

t: (09) 979 2167

e: oreilly@brookfields.co.nz

John Young

Partner

t: (09) 979 2155

e: youngj@brookfields.co.nz

Andrew Cameron

Consultant

t: (04) 499 9824

e: cameron@brookfields.co.nz

Matthew Allan

Senior Associate

t: (09) 979 2128

e: allan@brookfields.co.nz

John Watson

Senior Associate

t: (09) 979 2262

e: watson@brookfields.co.nz

Stephanie Curran

Senior Solicitor

t: (09) 979 2137

e: curran@brookfields.co.nz

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Auckland t 09 379 9350
f 09 379 3224
Manukau 09 262 2145
09 379 3224
Wellington 04 499 9824
04 499 9822
www.brookfields.co.nz



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