Hauraki Gulf Marine Park Amendment Bill

Government Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Hauraki Gulf Marine Park Amendment Bill and recommends that it be passed with the amendments shown.

Background

Purpose of the bill

The Hauraki Gulf Marine Park Amendment Bill (the bill) addresses a problem that has arisen regarding applications for resource consents (including restricted coastal activities) that were made but not finally determined before the Hauraki Gulf Marine Park Act 2000 (the principal Act) came into force. The bill introduces a transitional provision into the principal Act so that the continuation and completion of these applications must be in accordance with the law as if the principal Act had not been enacted.

The bill also deals with those circumstances where a consent authority has sought further information under the principal Act; and also where the Minister of Conservation (the Minister) has referred an application back to a hearing committee or the Environment Court for a report or recommendation on matters contained in sections 7 and 8 of the principal Act. In these cases the application is to be determined as if the requirement or referral had not been made.

Hauraki Gulf Marine Park Act 2000

The principal Act requires any consent authority, when considering applications for resource consents for the Gulf, its islands and catchments, to have regard to sections 7 and 8 of the principal Act. This requirement is additional to the matters the consent authority is required to consider under the Resource Management Act 1991 (RMA). In section 9(5) of the principal Act, sections 7 and 8 are to be treated as though they are a national policy statement for the coastal environment of the Gulf. National policy statements become operative as soon as they are approved. Possibly this needs to be reviewed when the RMA is next amended.

Transitional provisions necessary

The principal Act does not include a transitional provision for RMA applications that were filed before the principal Act came into force on 27 February 2000. We have not been able to determine why such a clause was not included in the legislation. The Chairperson confirms that the issue was not raised at the select committee that considered the principal Act. Our concern now is to rectify the problems identified.

The matter first came to public notice in relation to the restricted coastal activity resource consent applications by Whitianga Waterways Limited. In May 2001 the Minister referred these applications back to the Waikato Regional Council hearing committee, which had recommended the grant of restricted coastal activity permits under the RMA on 28 October 1999. The Minister said the hearing committee had not taken the provisions of the principal Act, passed after it had been through both council and Environment Court hearings, into account in making its decisions. This effect of the principal Act is widely seen as being unfair.

We received conflicting legal opinions about the necessity of the bill. Some legal counsel, including our advisers, believe that, without the transitional provisions, the Minister had no discretion but to refer the application back to the hearings committee of the Waikato Regional Council. Other legal views contended that there were sound legal reasons for this not being the case. It was also suggested that because the appeals in the Whitianga Waterways case only related to the district plan changes, the Minister was obliged to decide on the restricted coastal activity within 20 days of the original consent recommendation.

The Department of Conservation advised us that it disputes those views because the scope of the appeals was only determined by an interlocutory decision. Furthermore, the High Court appeal document made specific reference to that interlocutory decision. Regardless, it appears there is a problem ensuring the Minister is informed of any Environment Court interlocutory or consensual outcomes relating to restricted coastal activities, and work needs to be done on how this can be corrected.

Other consent applications may be affected

The explanatory note to the bill, as introduced, refers to other restricted coastal activity resource consent applications that may also be affected by the lack of transitional provisions in the principal Act. The note also considers there are, additionally, an unknown (but considered small) number of other resource consent applications that may be affected. A few submitters (mainly opposed to the bill) have raised concerns that the bill will give blanket protection to many resource consent applications in process.

We questioned officials and submitters about the number, nature and extent of applications to which the bill could apply, in order for us to consider the overall effects arising from the legislation.

We were frustrated at the lack of information about resource consent applications that may be affected. Only one party to any other resource consent application brought such a case to our notice. None of the councils in the catchment of the Hauraki Gulf were able to provide detailed information in the time available. However, we are now aware that hundreds of applications could be affected in varying degrees. It is right that we mitigate what could be a significant prejudice. Addressing these concerns is one of the major reasons for us supporting this bill, which is not only about correcting the difficulties experienced by the Whitianga Waterways application.

Overview of submissions

Addressing the effects of bill

We asked submitters to note that we were required to consider the bill urgently and to focus their comments on the content of the bill and how it might affect them. In hearing evidence, we did not want to revisit either the principal Act, or the RMA. Also, although the bill results from the Whitianga Waterways development consent

applications, we agreed that it is not our role to consider the particulars of those consent applications.

Local support for Whitianga Waterways canal development

The overwhelming majority of submissions (51 out of a total of 59) support the bill. Most of them are supporters of the Whitianga Waterways canal development and want it to proceed without further delays. Submitters have identified economic and social advantages that will flow from this development, and many express concern that further delays would result in commercial uncertainty, a fall in business confidence and delays to other initiatives.

Many submitters told us they believe retrospective legislation is unfair, and that once resource consents have been obtained under the RMA, it is not reasonable to expect that these extensive and time-consuming processes must be gone through again under the provisions of the principal Act.

Opposition to bill

The submitters opposed to the bill referred to negative environmental and ecological effects from the canal development and considered that the bill is being fast-tracked to suit the commercial interests of developers. Submitters also expressed concern about the unknown numbers of other resource consent applications that would no longer be subject to the principal Act. Maori submitters were concerned about an overall lack of consultation (in reference to the principal Act and to the bill) and risks to the principles of maintaining a sustainable environment.

We acknowledge the professional and dignified way these people made their submissions. We believe that matters brought forward by these submitters might better be addressed in regard to their claims in the Waitangi Tribunal and any subsequent negotiations with the Crown in the settlement of the Hauraki claims.

Proposed amendments

A few submitters made suggestions for redrafting the proposed section 49A for the sake of clarity.

We considered these points and sought advice from officials and the Parliamentary Counsel Office. We are of the opinion that such redrafting is not necessary, and would not materially change the meaning of the provisions in the bill. We recommend, however, a

substantive amendment to remove new subsection 49A(3)(a) and make consequential amendments to other provisions. We believe that subsection 3(a) is unnecessary and the subsection could cause problems in respect of the approach taken by some councils to requests for further information.

Many submitters asked that in section 49A(4) the word "may" be replaced with "must" (or "should", or "will"). One submitter believes that without this change the Minister's decision to consider the application as if the referral had not been made could itself be challenged by way of judicial review. Another suggested it was important that the consent authority or the Minister show confidence in the statutory provisions as established. It was also suggested that such redrafting would be more consistent with the intent of the bill, and the mandatory language of subsection (2).

We recommend accordingly that the word "must" be substituted for "may" in section 49A(4).

Application of section 37 of the RMA

Under section 37 of the RMA, the statutory timeframe of 20 days in which the Minister is required to make a decision can be extended. The submission from Whitianga Waterways proposed rewording subsection 49A(5) to ensure that the Minister's decisions are made within the 20 working days.

We received an oral undertaking from Department of Conservation officials that they would do all they could to assist the Minister to process the Whitianga Waterways application within 20 days. We have, therefore, agreed that amendments to the bill to provide that section 37 does not apply are not required.

Resource consent applications covered by bill

We considered whether to amend the bill to limit the types of resource consent applications, or to specify the consent stage at which applications would be covered.

Options we looked at included limiting the bill to applications for restricted coastal activity resource consents, or to particular stages of a consent process.

We discussed at length the policy issues, noting that tightening of applicability could limit the effect of the bill, while addressing the

particular situation of Whitianga Waterways. On balance, we recommend that the bill's provisions should continue to apply to all consents (not just to restricted coastal activity applications) and to applications at any stage in the process.

Committee consideration

We carefully considered the submissions we received. We believe the bill is necessary to redress an injustice. It is not part of our consideration of this bill to address the local and complex matter of tangata whenua for the area covered by the principal Act. That is best dealt with through other avenues.

As we considered the submissions opposing the Whitianga Waterways development and the bill, we note that a development this size will have an impact on the environment, but also that the project has been through exhaustive and comprehensive resource consent processes under the RMA.

We have weighed up the wishes of the majority of the submitters, and their concerns. If the bill does not proceed there could be significant prejudice to hundreds of applications, delays in consent processing and large cost burdens. We acknowledge the Whitianga community for bringing this problem to our attention.

Appendix

Committee process

The Hauraki Gulf Marine Park Amendment Bill was referred to the Committee on 23 May 2001. The closing date for submissions was 1 June 2001 for urgent consideration and report back to the House. We received and considered 59 submissions from interested groups and individuals, and we heard 15 submissions orally. Hearings were held in Auckland on 8 June 2001, and took 6 hours and 50 minutes. Consideration took a further 3 hours and 14 minutes.

We received advice from the Ministry of Economic Development, the Ministry for the Environment and the Department of Conservation.

Committee membership

Jeanette Fitzsimons, Chairperson

Martin Gallagher, Deputy Chairperson

David Benson-Pope

Georgina Beyer

Ann Hartley

Joe Hawke

Owen Jennings

Brian Neeson

Eric Roy

Hon Dr Nick Smith

John Tamihere, Lindsay Tisch and Richard Worth also participated as temporary members.

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous) Subject to this Act,	Text struck out unanimously
New (unanimous) Subject to this Act,	Text inserted unanimously
(*Subject to this Act,*)	Words struck out unanimously
Subject to this Act,	Words inserted unanimously

Hon Jim Anderton

Hauraki Gulf Marine Park Amendment Bill

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Hauraki Gulf Marine Park Amendment Act **2001**.

(2) In this Act, the Hauraki Gulf Marine Park Act 2000[1] is called the principal Act.

[1] 2000 No 1

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 New section 49A inserted

The principal Act is amended by inserting, after section 49, the following section:

"49A **Transitional provisions**

"(1) This section applies to an application for a resource consent for the Hauraki Gulf, its islands, and catchments—

"(a) made before the commencement of this Act; but

"(b) not finally determined before the commencement of the Hauraki Gulf Marine Park Amendment Act **2001**.

"(2) The continuation and completion of an application (including rights of appeal) must be in accordance with the Resource Management Act 1991 as if this Act had not been enacted.

"(3) **Subsection (4)** applies to—

Struck out (unanimous)

"(a) a requirement under section 92 of the Resource Management Act 1991 for further information relating to matters contained in sections 7 and 8 of this Act; and

"(b) an application that, under section 119(4) of the Resource Management Act 1991, has been referred back to the hearing committee or Environment Court for a recommendation or report on the matters contained in sections 7 and 8 of this Act.

Struck out (unanimous)

"(4) The consent authority or Minister (as the case may be) may consider the application as if the requirement or referral had not been made.

New (unanimous)

"(4) The Minister must consider the application as if the referral back had not been made.

"(5) For (*applications to which* ***subsection 3(b)*** *applies*) the purposes of **subsection (4)**, the time period under section 119(1) of the Resource Management Act 1991 begins again from the date of the commencement of the Hauraki Gulf Marine Park Amendment Act **2001**."

Legislative history

23 May 2001 Introduction, first reading and referral to the Local Government and Environment Committee (Bill 132–1)

Wellington, New Zealand: Published under the authority of the House of Representatives—2001

132bar2.pag
12-JUN-01

Price code: J