IPENZ ENGINEERS NEW ZEALAND | INGENIUM ENGINEERS FOR PUBLIC ASSETS | water NEW ZEALAND The New Zealand Water & Wastes Association Waimāori Aotearoa

MARINE AND COASTAL AREA (TAKUTAI MOANA) BILL

SUBMISSION TO THE MAORI AFFAIRS COMMITTEE

19 NOVEMBER 2010

BACKGROUND TO IPENZ

The Institution of Professional Engineers New Zealand (IPENZ) is the lead national professional body representing the engineering profession in New Zealand. It has approximately 12,000 Members, including a cross-section from engineering students, to practising engineers, to senior Members in positions of responsibility in business. IPENZ is non-aligned and seeks to contribute to the community in matters of national interest giving a learned view on important issues, independent of any commercial interest.

BACKGROUND TO INGENIUM

INGENIUM is the brand name of the Association of Local Government Engineering New Zealand Incorporated. INGENIUM's 900 members comprise mainly engineers employed by local authorities, consultants and contractors who manage and operate the infrastructural assets of local authorities and are responsible for providing the following local authority services: roads, bridges, footpaths, water supply, sewerage, stormwater, land drainage, solid waste and flood protection.

BACKGROUND TO WATER NEW ZEALAND

A not for profit incorporated society, Water New Zealand promotes and enables the sustainable management and development of the water environment. With 1,450 members Water New Zealand's membership is diverse, including Regional Councils, Territorial Local Authorities, Council Controlled Organisations, water and waste services providers, the major consultancies involved in providing engineering, planning and research services to the industry, Crown and other research institutes involved in the water and wastes environment, academia, members of the legal fraternity and training providers.

EXECUTIVE SUMMARY

The regulatory provisions in this Bill relating to infrastructure are very important, because of the dependence of communities on infrastructure, its long life and its value. In particular, roads are not simply carriageways but include a range of associated structures, some of which, by their nature, extend into marine and coastal areas.

The protection of existing infrastructure, new infrastructure, and associated operations, by being designated "accommodated activities", is supported. However IPENZ, INGENIUM and Water New Zealand ("we") are concerned with the inconsistent references to infrastructure, and the attempts in the Bill to define existing and new infrastructure that is subject to the "accommodation" provisions.

Often infrastructure is not nationally or regionally significant, and the term “essential work” and ‘practicable alternatives” are poorly defined.

Regarding the provisions for minerals, it is not clear to us why some minerals in a customary marine title area remain in the ownership of the Crown, but other minerals that are important to the national economy, such as ironsands, would be in the ownership of a customary marine title group.

SUBMISSION

THE INFRASTRUCTURE INDUSTRY

Statutory compliance creates a significant amount of work for infrastructure businesses, which must plan for infrastructure that may be used for very long periods. For example it is not unusual for parts of reticulated networks to remain operational for 150 years or longer. Planning for the distant future to ensure both supply and demand side strategies are appropriately balanced is particularly important in the infrastructure industry.

Infrastructure is also very expensive. For example transport spending by central government exceeds $2.8 billion per annum[1]. Also an analysis of local authorities’ long term council community plans for the period 2009/2018[2] showed an investment of $28.46 billion over the period. This is made up of $17 billion of operating expenditure and $11.46 billion of capital expenditure for the “three waters” i.e. stormwater, wastewater and water supplies.

Infrastructure also operates in a complex and poorly understood statutory framework. For water, in particular, there are numerous Acts and Regulations applicable nationally and locally application which relate to public drinking water and sewerage networks. Many are outdated, conflicting and have different applications according to whether the service is provided by a local authority or other entity.

Given the above strands, the infrastructure industry places considerable importance on regulatory consistency and certainty.

ROADS

It is noted that under the provisions of clause 16 a road formed in the common marine and coastal area continues to be owned by the Crown, the local authority, or other person. This includes roads formed after the commencement of this Act (clause 16 (3)).

Clause 16 (3) also provides for structures that form part of the road (such as bridges and culverts). Roads are not simply carriageways, and also include such structures as streetlights, fences, safety barriers, stormwater pipes, sumps, stormwater outfalls and retaining walls. We recommend that these features be specifically referred to as road structures under Clause 16(3).

In a number of cases this might also include protective seawalls or revetments which are designed to protect the road from erosion and are integral to the road. Walls and stormwater outfalls often encroach into the marine and coastal areas and it is suggested that because of the possible extent of their encroachment, they be specifically referred to in the Bill.

Recommendation: Seawalls, revetments and stormwater outfalls be specifically referred to as road structures under Clause 16(3).

---

[1] National Infrastructure Plan, Treasury, March 2010

[2] Local Government Information Series, Information on Local Government Water Network Infrastructure, Dept of Internal Affairs, October 2009

INFRASTRUCTURE AN ACCOMMODATED ACTIVITY

The Bill allows for the continuation of present infrastructure operations within the proposed common marine and coastal area. Infrastructure is also allowed for (as deemed accommodated activities and associated operations) within customary marine title areas. Infrastructure will remain in the ownership of current operators.

New activity in areas subject to customary marine title may be permitted as deemed "accommodated activity", provided it is essential work, and nationally or regionally significant, as defined in the Bill. Schedule 1 of the Bill specifies quite a detailed process to determine if such activity is or is not deemed an accommodated activity. Schedule 1 also provides for the Minister of Land Information to have the final say on such classification.

Recommendation: We support the protection of existing infrastructure, new infrastructure, and associated operations being designated as accommodated activities.

CLARIFICATION OF TERMS RELATING TO INFRASTRUCTURE AND STRUCTURES

The definitions section of the Bill (Part 1 clauses 7, 8 and 9) define:

- accommodated activity - clause 8 (1)
- associated operations - clause 8 (2)
- nationally or regionally significant in relation to existing structures or infrastructure - clause 8 (2)
- deemed accommodated activity - clause 9 (1)
- essential work - clause 9 (1).

We are concerned at an apparent inconsistency in the definition of what is deemed "nationally or regionally significant" in different parts of the Bill. Any inconsistency in this regard has the potential to be subject to litigation. We think this is best avoided, since it is time consuming, expensive and may result in case law interpretation at odds with what was intended by Parliament.

Clause 8 (2) specifies "nationally or regionally significant" in relation to existing structure or infrastructure to be:

"a structure or infrastructure and its associated operations that are –

(a) not unlawful; and

(b) owned, operated, or carried out by 1 or more of –

(i) the Crown, including a Crown entity:

(ii) a local authority, including a council-controlled organisation:

(iii) a network utility operator (within the meaning of section 166 of the Resource Management Act 1991):

(iv) an electricity generator as defined in section 2(1) of the Electricity Act 1992:

(v) a port company as defined in the Port Companies Act 1988:

(vi) a port operator (as defined in section 650J (6) of the Local Government Act 1974):

(vii) Maritime New Zealand (within the meaning of section 429 of the Maritime Transport Act 1994):

(viii) the Auckland Regional Transport Authority (as established under section 7 of the Local Government (Auckland) Amendment Act 2004)."

This is quite clear. It becomes less clear when qualified by the definition of "essential work" which is defined in clause 9(1) as:

"a nationally or regionally significant structure or infrastructure that is essential –

(a) to the wellbeing of the region in which it is to be located; or

(b) to the national interest."

A local road servicing a small beachside community of baches might require a stormwater sump and pipes discharging into the marine and coastal environment. The aforementioned sump and pipes would hardly fit the definition of being nationally or regionally significant within the ordinary meaning of the words.

It would certainly be locally significant if such stormwater infrastructure were essential to the integrity of the road, and that road provided the only ingress to the aforementioned baches.

Schedule 1(3) also requires applicants (for certain new activities in customary marine title areas to become deemed accommodated areas) to supply justification as to why the structure or proposed structure is considered to be nationally or regionally significant (subclause (d)), why it is essential work (subclause (e)) and cannot be practically undertaken in other locations (Schedule 1 (9)).

Applying different tests, to existing structures and infrastructure, as opposed to proposed new structures and infrastructure, while at the same time using different definitions, is inconsistent. It could also result in expensive reticulated infrastructure being installed to move infrastructure away from areas subject to customary marine title.

The problem with these approaches is the attempt to set some threshold for new infrastructure.

- Is it nationally or regionally significant? In many cases infrastructure is local in nature.
- Is it essential work? When is infrastructure not essential? Is a sewerage pipe essential and a telecommunications cable not? This is an impossible distinction to make in legislation.
- Are there practicable alternatives? Engineers are always able to find practicable alternatives – but alternatives may have significantly different costs, environmental impacts and community impacts.

Recommendations:

(i) The words nationally or regionally significant be removed wherever they appear in this Bill.

(ii) Essential work be redefined to mean a structure or infrastructure that is essential to the local area or region in which it is located, or to the national interest.

(iii) Practicable alternatives be redefined as reasonably practicable having regard to costs, environmental impacts and impacts on communities.

Once these amendments are made the wording will be consistent with the Resource Management Act framework, which is applied at central, regional and local levels: these are clearly understood terms.

OWNERSHIP OF MINERALS

It is noted that under the provisions of clause 82 a customary marine title group may exercise ownership of minerals (other than petroleum, gold, silver, and uranium) that are within their customary marine title area. Clause 83 (2) entitles the group to receive any royalties due to the Crown. This is in contrast to the provisions of clause 17 (which clause 82 over-rides) that provides for every mineral (other than pounamu) in the common marine and coastal area to be reserved in favour of the Crown.

There are a number of other minerals in addition to petroleum, gold, silver, and uranium that are potentially of value to the Crown and in a customary marine title area. These minerals include ironsands which contain iron, vanadium and titanium.

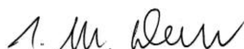
We are unclear as to why these minerals, that are important to the national economy, should be in the ownership of a customary marine title group rather than in the ownership of the Crown.

Recommendation: Clause 82 be amended to ensure that all minerals (not just petroleum, gold, silver and uranium) in customary marine title areas be under Crown ownership.

CONCLUSION

IPENZ, INGENIUM and Water New Zealand appreciate the opportunity to make this submission and is able to provide further clarification if required.

We do not wish to appear in person before the Select Committee to speak to our submission.



Tim Davin
Director - Policy
IPENZ

Ross Vincent
Chief Executive
INGENIUM

Murray Gibb
Chief Executive
Water New Zealand

Contact:

Tim Davin, Director – Policy, IPENZ
PO Box 12241, Wellington 6144
Email: dir-pp@ipenz.org.nz
Phone: 04 473 2027
Fax: 04 474 8933