



**THE RESOURCE MANAGEMENT (TRANSITIONAL PROVISIONS)
REGULATIONS (NO. 2) 1992**

THOMAS EICHELBAUM, Administrator of the Government

ORDER IN COUNCIL

At Wellington this 18th day of May 1992

Present:

HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL
PURSUANT to the Resource Management Act 1991, His Excellency the
Administrator of the Government, acting by and with the advice and
consent of the Executive Council, hereby makes the following regulations.

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Resource Management (Transitional Provisions) Regulations (No. 2) 1992.

(2) Regulations 5, 6, and 13 of these regulations shall come into force on the 28th day after the date of their notification in the *Gazette*.

(3) Except as provided in subclause (2) of this regulation, these regulations shall come into force on the 7th day after the date of their notification in the *Gazette*.

2. Period during which regulations apply—(1) Regulations 5, 6, and 13 of these regulations shall apply during the period commencing on the date of commencement of those regulations and ending with the 30th day of September 1994.

(2) Regulations 3 and 4 and 7 to 12 of these regulations shall apply during the period commencing on the date of commencement of those regulations and ending with the 30th day of September 1994.

PART I

TRANSITIONAL PROVISIONS RELATING TO HARBOUR WORKS, ETC.

3. Certain applications for Orders in Council to reclaim land and approval for harbour works not to be notified—(1) Section 393 (1) of the Resource Management Act 1991 shall be read as if paragraph (e) of that subsection was replaced by the following paragraph:

“(e) In the case of an application for approval to carry out harbour works in respect of which—

“(i) An Order in Council under section 175 (2) or section 175 (3) of the Harbours Act 1950 has been made; or

“(ii) Before the date of commencement of this Act, under section 33 or section 102A or section 110 of the Town and Country Planning Act 1977, a consent relating to the harbour works the subject of the application has been granted or has been sought but has not been determined at that date; or

“(iii) The harbour works the subject of the application are, at the date of commencement of this Act, a permitted use under the provisions of any operative maritime planning scheme under the Town and Country Planning Act 1977 or under any proposed variation, change, or review of any operative maritime planning scheme under that Act which, at the date of commencement of this Act, has been publicly notified—

the application shall not be notified in accordance with section 93 of this Act:

“Provided that where the harbour works the subject of any such application are a restricted coastal activity (including a restricted coastal activity the subject of a direction in accordance with section 372 of this Act), notice of the application in the form required by section 93 (2) of this

Act shall be served on the Minister of Conservation and, notwithstanding section 96 of this Act, the Minister shall be the only person who may make a submission on the application, and the application shall then be determined by the consent authority in accordance with the provisions of this Act.”

(2) Section 393 of the Resource Management Act 1991 shall be read as if the following subsection was inserted after subsection (1):

“(1A) Where—

“(a) After the date of commencement of this Act and before the 31st day of December 1992, an application for a coastal permit is made to authorise any harbour works that would, if this Act had not been enacted, have been the subject of an application for approval under section 178 (1) (b) of the Harbours Act 1950; and

“(b) Any of the circumstances described in paragraph (e) (i) to (iii) of subsection (1) apply—

the application shall not be notified in accordance with section 93 of this Act:

“Provided that where the harbour works the subject of any such application are a restricted coastal activity (including a restricted coastal activity the subject of a direction in accordance with section 372 of this Act), notice of the application in the form required by section 93 (2) of this Act shall be served on the Minister of Conservation and, notwithstanding section 96 of this Act, the Minister shall be the only person who may make a submission on the application and the application shall then be determined by the consent authority in accordance with the provisions of this Act.”

(3) Regulation 18 of the Resource Management (Transitional, Fees, Rents, and Royalties) Regulations 1991* is hereby revoked.

PART II

TRANSITIONAL PROVISIONS RELATING TO CLEAN AIR

4. Approval of fuel and fuel-burning equipment in clean air zones—Section 369 of the Resource Management Act 1991 shall be read as if the following subsection was inserted after subsection (6):

“(6A) Subject to subsection (7), where an order of the kind referred to in section 368 (2) (g) is deemed to constitute provisions of a regional plan under section 368 (1), the plan shall be deemed to include a rule to the effect that the regional council may by public notice—

“(a) Authorise or prohibit the use, in a clean air zone, of any class of fuel specified in the notice; and

“(b) Authorise or prohibit the installation or use, in a clean air zone, of any class of fuel-burning equipment specified in the notice.”

5. Changes to regional plan—Section 369 of the Resource Management Act 1991 shall be read as if subsection (7) was replaced by the following subsection:

“(7) A regional plan deemed to be constituted under section 368 may, at any time, in accordance with section 65, be changed so as to exclude or modify the application of any of subsections (3), (3A), (3B), (3C), (4), (5), (5A), (6), and (6A) to the plan.”

6. Existing clean air permissions—(1) Section 385 of the Resource Management Act 1991 shall be read as if subsection (2) was replaced by the following subsection:

“(2) Without limiting subsection (1), every permission to which subsection (1) applies shall be deemed to include, as conditions of the permission, sections 25 (7), 26 (8), and 31 of the Clean Air Act 1972.”

(2) Subsection (3) of section 385 shall be read as if every reference in that subsection to section 389 was a reference to section 391.

7. Applications for resource consents for discharging contaminants into the air following existing approval under Clean Air Act 1972—The Resource Management Act 1991 shall be read as if the following section was inserted after section 391:

“391A. (1) Where,—

“(a) Before the date of commencement of this Act, any person has obtained an approval under section 31 of the Clean Air Act 1972 in respect of any scheduled premises within the meaning of that Act; and

“(b) That person makes an application for a resource consent to discharge any contaminant into air from those premises,—
then the consent authority may grant a discharge permit to the approval holder under the provisions of subsection (2) if the consent authority is satisfied that—

“(c) The plant and equipment has been installed within the scheduled premises in a manner consistent with the approval; and

“(d) The conditions proposed in the approval as to the construction of the plant and equipment have all been met by the applicant; and

“(e) The approval is subject to conditions for operation; and

“(f) Every local authority affected by an application to which subsection (2) applies has received at least 10 working days’ opportunity to comment on or seek variation to any of these conditions, and that such local authorities have not sought any variation to the conditions of approval within that time; and

“(g) The conditions of operation contained in the approval are appropriate and adequate.

“(2) Where the provisions of subsection (1) are satisfied the consent authority shall determine the application in accordance with the following provisions:

“(a) The application shall not be notified in accordance with section 93; and

“(b) The consent authority shall not hold a hearing in terms of section 100 to determine the application; and

“(c) Any discharge permit granted under this section shall expire 1 year after the date on which it commences; and

“(d) In all other respects the application shall be determined by the consent authority in accordance with the provisions of this Act.”

PART III

OTHER TRANSITIONAL PROVISIONS

8. Deeming of dams—Section 369 of the Resource Management Act 1991 shall be read as if subsection (4) was replaced by the following subsection:

“(4) Where provisions of an authorisation of the kind referred to in section 368 (2) (d) are deemed to constitute provisions of a regional plan under section 368 (1) and the authorisation authorises the damming of a river or stream, or rivers or streams within any specified area, the plan shall be deemed to include a regional rule to the effect that such an activity is a permitted activity, but no person shall exercise the rights conferred by any such authorisation so as to adversely affect any land owned or occupied by another person, without that other person’s consent.”

9. Deemed proposed plans—Section 373 of the Resource Management Act 1991 shall be read as if subsection (2) was replaced by the following subsection:

“(2) Where any proposed district scheme, combined scheme, or maritime planning scheme, or any change, review, or variation under the Town and Country Planning Act 1977 in respect of the whole or part of a district has been publicly notified before the date of commencement of this Act, a proposed plan shall be deemed to be constituted for that district, except for the purposes of section 378.”

10. Proceedings in relation to district plans—Section 378 of the Resource Management Act 1991 shall be read as if subsection (1) was replaced by the following subsections:

“(1) Subject to subsection (3), all proposed district schemes, combined schemes, and maritime planning schemes, and all changes, reviews, and variations under the Town and Country Planning Act 1977 that were publicly notified but not operative prior to the date of commencement of this Act, may be continued and completed in all respects, including the public notification and consideration of variations, as if that Act continued in force, and, when completed, shall have effect under this Part after they have been completed as if they had been completed and made operative before the date of commencement of this Act.

“(1A) Any variation publicly notified after the commencement of this Act, as provided for in subsection (1), shall take into account the provisions of this Act.”

11. Development not a permitted activity—Section 409 of the Resource Management Act 1991 shall be read as if the following subsection was added:

“(4) Where a district plan or proposed district plan has been deemed to be constituted by section 373 and a provision, expressly or by implication and whether or not subject to conditions, of that plan or proposed plan authorised a development without further consent or approval from the former consent authority being required, then, notwithstanding section 374 (3) (a), such a development is deemed to be a controlled activity for the purposes of subsections (1) and (2), but, in respect of the development—

“(a) Subsection (1) (b) shall not apply; and

“(b) Subsection (1) (a) and subsection (2) shall be read as if the references to sections 289, 291, 292, 321A, and 322 of the Local Government Act 1974 were omitted—

and any application under this subsection shall not be notified pursuant to section 93.”

12. Dealing with existing financial contributions—Section 411 of the Resource Management Act 1991 shall be read as if the following subsection was added:

“(2) Where financial contributions under Parts XX and XXI of the Local Government Act 1974 (including reserves contributions and development levies) have been fixed and have been paid, or are paid or payable in respect of an activity, the consent authority shall deal with the money in accordance with the requirement of section 223F of the Local Government Act 1974 and in reasonable accordance with the purposes for which the money was received.”

13. Transfer of bylaws—Section 424 of the Resource Management Act 1991 shall be read as if the following subsection was added:

“(9) A local authority that has functions, powers, or duties under any bylaw referred to in subsection (2) or subsection (3) or subsection (4) may, while the bylaw is in existence, transfer any one or more of those functions, powers, or duties to another public authority in accordance with section 33 (relating to transfer of powers).”

PART IV

EXPIRY OF REGULATIONS

14. Expiry—These regulations shall expire with the close of the 30th day of September 1994, and on the 1st day of October 1994 shall be deemed to have been revoked.

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

Regulation 2 specifies the periods during which the various provisions of the regulations are to apply.

Regulation 3 provides for when notification is not necessary for approval to carry out harbour works.

Regulation 4 allows regional councils to approve fuel or appliances for use in a clean air zone.

Regulation 5 provides that deemed provisions of a transitional regional plan may be changed.

Regulation 6 removes references to payment of fees as a condition of a permission, and corrects a wrong section reference.

Regulation 7 provides for when public notification is not necessary for discharges into air.

Regulation 8 provides that authorisations for damming shall be deemed to be permitted activities.

Regulation 9 limits the deeming of proposed schemes as proposed plans so it does not apply to the completion of the scheme.

Regulation 10 provides that variations under the Town and Country Planning Act 1977 can be publicly notified after the Resource Management Act commenced, provided the provisions of the Resource Management Act 1991 are taken into account.

Regulation 11 provides that where a development would otherwise be classified as a permitted activity it is, for the purposes of financial contributions, considered to be controlled.

Regulation 12 provides that where financial contributions have been collected they shall be used for the purpose they were received for.

Regulation 13 provides that functions, powers, and duties under bylaws made under the Harbours Act 1950 can be transferred under the Resource Management Act 1991.

Regulation 14 provides for the regulations to expire on 30 September 1994.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 21 May 1992.

These regulations are administered in the Ministry for the Environment.