

Executive Summary

Rugby World Cup (“RWC”) is the third largest event in the world. The 2011 tournament is expected to attract a television audience of close-to four billion, and to draw around 70,000 international visitors to New Zealand over a six week period. It will be the largest event ever staged in New Zealand.

The hosting requirements for an event of this scale will present significant infrastructural challenges. Time-critical RWC activities and facilities will require a wide range of consents, licences, regulatory approvals, and temporary waivers that existing approval processes are not suited to address. This is because of the long timeframes needed for some approval processes; the risk of capacity constraints arising within some consenting authorities, given the substantial increase in consent applications that is anticipated; and the likelihood that urgent approvals may be needed to resolve unforeseen circumstances. Because of the scale of the event, particular during its final stages, there will be a heavy reliance on temporary infrastructure that is unprecedented.

Several options for managing temporary consents for RWC-specific activities and facilities have been considered. Legislation to establish and empower a temporary, RWC-specific consenting authority (“the RWC Authority”) is considered the most appropriate approach. There are precedents for an event-specific statute of this nature in New Zealand and in other jurisdictions.¹ The RWC Authority will be empowered with all the rights, powers and privileges of the statutory person or body that would ordinarily consider applications for approvals. The legislation also includes sunset provisions that disempower and disestablish the RWC Authority following the conclusion of the RWC tournament.

The proposed legislation is expected to have a positive economic impact. It is intended to ensure the successful staging of the RWC by enabling consents for temporary activities and facilities to be considered in timeframes that align with the tournament schedule. This will generate additional economic activity by enabling appropriate stadium, hospitality, match-hosting, ‘live site’ and related activities to proceed, and will contribute longer-term economic benefits by underscoring New Zealand’s reputation as a destination for major events.

The fixed tournament timeframe requires that the legislation strikes a balance between participation principles and expediting processes to achieve the necessary outcomes. It proposes truncating existing timelines, procedures and appellate processes in general, and, in certain circumstances, limiting rights to public participation and appeals that are available under the legislation which would apply, but for the proposed legislation.

¹ New Zealand examples include the America’s Cup (Planning) Act 1989 and the Local Government (Millennium Events) Amendment Act 1999. Offshore examples include the Commonwealth Games Arrangements Act 2001 (Victoria, Australia) and the London Olympic Games and Paralympic Games Act 2006 (United Kingdom).

Community impacts are expected to be modest (e.g. increased noise), commensurate with the temporary nature of the event and the consents that will be considered by the RWC Authority. The main effects will be concentrated in the metropolitan areas that are hosting the majority of the tournament (Auckland City, Wellington City and Christchurch City) and the hours leading up to, and following, the matches. To ensure that such these effects are taken into account in the application of the proposed legislation, it will require that consideration be given to (a) the need to ensure the efficient, safe, and lawful conduct of the RWC and (b) the importance of ensuring the safety of individuals and the security of property.

Adequacy Statement

The Ministry of Economic Development confirms that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements, including the consultation RIA requirements, have been taken into account and complied with to the extent possible having regard to the tight timelines around the Bill's design and consultative processes.

A RIS was prepared and the Ministry of Economic Development considers it to be adequate. The final RIS was circulated with the Cabinet paper for departmental consultation.

Status Quo and Problem

A large amount of legislation requires consents and regulatory approvals to be sought for structures, facilities, activities and works that are needed for major events of the scale of RWC.² Approvals must be sought from a range of consenting authorities that differ in their objectives and consenting processes. Individual applications can take significant periods of time to resolve, and delay periods can be amplified substantially where many applications are sought.

The status quo is characterised by a localised approach to consenting issues that is ill-suited to dealing with a large number of applications for temporary activities within short, immovable timeframes. Current arrangements are not designed to facilitate certain activities that are required by the scale of, and circumstances (e.g., the need for urgency) imposed by, the tournament. A continuation of the status quo is considered likely to jeopardise the success of RWC and related activities.

² These include, for example, the Resource Management Act 1991, the Local Government Act 1974, the Building Act 2004, and the Sale of Liquor Act 1989.

Objectives

The principal objective of the proposed legislation is to enable application processes for approvals, consents, licences, waivers or exemptions (“approvals”) for temporary RWC activities and facilities to be expedited, where necessary, to ensure these activities and facilities can take place in accordance with the fixed timeframes of the tournament. It is likely that some approval applications will need to be heard, and decisions taken, at very short notice.³

The solution needs to be flexible enough to respond to unforeseen consenting requirements that RWC may present. However, it needs to avoid undermining the integrity of the underlying regime for activities that are not urgent, unforeseen or unrelated to the staging of RWC.

³ Existing processes are not designed to accommodate urgent consent requests. This may affect the insurance coverage of the tournament and have implications for New Zealand's reputation as a major event location.

Alternative Options

Two alternative options have been identified. These involve making amendments to district plans and the Major Events Management Act 2007, respectively.

Amending district plans

The Resource Management Act 1991 (RMA) provides for district plans to be amended through private plan change requests. This course of action could be used to seek more permissive or flexible rules for RWC-related activities by testing proposals through the RMA process.

This option is not suitable for RWC activities for the following reasons:

- The likely timeframe for pursuing this approach is too long to be of use for RWC preparations.
- A significant number of plans would require changes under this approach.
- In certain places, moratoria exist that prevent private plan changes.
- Private plan changes would not be of use for activities requiring regulatory approval under any legislation other than the RMA.

Amending the Major Events Management Act 2007

The Major Events Management Act 2007 (MEMA) is generic legislation, the provisions of which apply to any event declared a 'major event' by Order-in-Council. The primary purpose of the MEMA is to protect major events from ambush marketing and unauthorised commercial exploitation. It could be amended to address the consent and regulatory approval issues associated with RWC raised above.

This option is not considered to be appropriate for several reasons. First, as generic legislation the amendment would enable all deemed 'major events' to follow an expedited process for consents and regulatory approvals. Such a departure from ordinary requirements is unlikely to be appropriate or necessary for the majority of major events, and risks unforeseen and unintended consequences emerging in future.⁴ Second, such an amendment would be inconsistent with the primary purpose of the MEMA.

⁴ For example, the FIFA U-17 Women's World Cup 2008 and the FIBA U-19 Men's Basketball World Championship were both declared 'major events' under the MEMA, but were not of sufficient scale to justify departing from conventional consent processes.

Preferred Option

Summary

The preferred option is to draft new stand-alone, RWC-specific legislation. The legislation would establish and empower a RWC Authority to consider applications for activities and facilities that are necessary for the successful staging of RWC. It would be time-bound, and cease to have effect soon after the conclusion of the tournament. This would limit adverse impacts to those that are unavoidable for the successful hosting of RWC. This option has been used previously to accommodate America's Cup and millennium events.⁵

The RWC Authority should have four core functions:

- to consider applications for approvals necessary for the successful staging of RWC that cannot be obtained in time under the usual process, including approvals necessary for test events to trial facilities required for RWC;
- to consider and determine applications for temporary liquor licences required for RWC, under an alternative process to that under the Sale of Liquor Act 1991, having regard to the significance of the tournament and the scale of hospitality that is needed;
- to declare certain activities as 'RWC permitted activities', so overriding any requirement for an approval under other regulation and exempting those activities from further consent requirements; and
- during the RWC tournament, to recommend that the Minister for the RWC grant any approval necessary for urgent and unforeseen matters related to the conduct of the tournament.

The framework within which the RWC Authority would consider applications would, as far as practical, reflect existing processes – but within timeframes, procedures and appellate processes that align with the tournament's timeframes.

The proposed legislation would also provide for the making of regulations in the months leading up to the RWC tournament prescribing 'RWC permitted activities' so overriding any requirement for an approval, consent, licence, waiver or exemption imposed by other regulation and exempting those activities from further consent requirements. The Minister for the RWC would recommend the making of such regulations and before doing so must take advice from the RWC Authority and any other Minister with responsibility for activities or facilities relevant to the proposed regulations.

⁵ Resulting in the America's Cup (Planning) Act 1989 and the Local Government (Millennium Events) Amendment Act 1999, respectively.

Why preferred and impacts

The preferred option provides certainty of outcomes, expedience, consistency, and efficiency for all parties. Also relevant is the need for flexibility on the one hand, to handle unforeseen and inevitably-complex consent issues that RWC is bound to present, while being tight enough to restrict application of these provisions to those activities and facilities that are both temporary and RWC-specific. Only the proposed legislation satisfies these criteria.

The imposition of this legislation is likely to have a positive economic impact, by enabling certain activities to proceed – and so creating value – that would not have been possible otherwise. The flipside of this is the prospect that certain activities may impose temporary costs on some people and/or the environment. By-and-large, these would be temporary and in the form of elevated noise levels, diminished amenity values, or increased traffic congestion associated with permitted RWC activities.

In hearing applications for temporary approvals, the RWC Authority would be expected to weigh the costs and benefits of proposed actions according to the same principles as would be applied normally, though in a shortened timeframe, and having particular regard to the need to ensure the proper conduct of the RWC. In certain cases where urgent consent is required, however, appeal rights may need to be curtailed in order that urgent consents for critical tournament infrastructure can be granted. This could be perceived by some as a restriction of their right to be heard on consent issues. That concern is offset by the economic and national interest benefits of ensuring that hosting opportunities are maximised, and the international expectations of New Zealand are met, as well as preserving and enhancing our reputation as a major events destination.

Risk Assessment

Several key risks have been identified with the proposed solution. These are that it (a) limits rights to public participation, (b) limits rights to appeal, and (c) gives the RWC Authority the ability to override existing legislation. These risks will be mitigated by incorporating safeguard measures into the legislation.

The legislation will be limited in its application to facilities, activities, structures and works that are necessary for, or ancillary to, the successful staging of RWC.

The purpose of the legislation is not to supplant existing resource management, liquor licensing and other consenting processes, but to support the existing regime with additional measures that the unique circumstances of the RWC may call upon. The principles of equity and efficiency require that applicants seeking approvals under the legislation be required to demonstrate that they have taken reasonable measures to ensure the necessary consents could not be achieved through the ordinary process.

The legislation should define criteria to establish that a particular application should rightfully be heard by the RWC Authority. These criteria should establish that a consent or approval is critical for the successful staging of the tournament, that the need for such an application could not reasonably have been foreseen at an earlier

date, and that the application could not be considered and determined in time for RWC if progressed through existing processes.

The legislation will ensure that any and all powers conferred by it expire at the conclusion of the tournament. A transition period may be necessary to ensure that terms and conditions imposed on consent approvals through this mechanism are complied with.

Compliance Costs

The proposed legislation is very specific and will support, rather than supplant, existing consenting processes. The legislation will reduce compliance costs, streamline processes, and provide an increased level of national consistency. In accordance with the principles of equity and efficiency, applicants to this process would be expected to cover the cost of applications. Third parties will not have to fund the cost of this process, directly or indirectly, nor are expected to face significant compliance costs.

Impact on stock of regulation

The preferred option would not have a significant impact on the stock of regulation. The proposed legislation will support, rather than supplant, existing legislation imposing requirements for approvals. The legislation is intended to provide an alternative option to obtain approvals necessary for RWC where approval processes under existing legislation are not adequate, having regard to the exceptional scale of RWC. The proposed legislation will require the RWC Authority to consider whether proposals overlap and interact with existing rules, whether proposals make any existing rules redundant, and whether these rules are being removed or altered as part of the proposal. It also includes sunset provisions that disestablish the Authority once it has completed its functions after the conclusion of the tournament.

Implementation and Review

To implement the proposal, legislation will be required. The necessary provisions will be contained in the Rugby World Cup 2011 (Empowering) Bill, intended to be introduced to Parliament by the end of 2009.

The Minister for the RWC will be responsible for appointing members of the RWC Authority to be established under the proposed legislation. Responsibility for providing administrative support to the RWC Authority will be with the territorial authorities in districts where RWC activities are taking place.

The legislation proposed under the preferred option will support, rather than supplant, existing legislation imposing requirements for approvals. It will not provide an alternative process for applications for approvals that are available under existing legislation and will not therefore create new enforcement requirements.

Enforcement of approvals and declarations granted under the proposed legislation will be the responsibility of the statutory person or body that would ordinarily have responsibility for monitoring and enforcement under the enactment or statutory planning instrument that would apply but for the proposed legislation. The enforcement strategies adopted by those statutory persons or bodies will be the same as those adopted for approvals that are granted in the normal way.

The legislation proposed under the preferred option would enable test approvals to be given and test declarations of permitted activities to be made for test events. These include events that are not organised and held as part of the RWC, but which are used to test a particular activity or facility that is, or is likely to be necessary for the RWC. The scale of the event means that testing of RWC planning strategies is essential, and contributes significantly to tournament success and enhanced public safety.

The first test events are likely to occur in the second half of 2010. Applications made for test approvals and declarations will provide an opportunity to monitor and evaluate the preferred option in advance of the RWC tournament.

Consultation

Stakeholder Consultation

The primary stakeholder consultation to date has been with the Local Authorities in Auckland, Wellington and Christchurch and the tournament organiser, Rugby New Zealand 2011 Ltd. MED officials have met to discuss the preferred option with the personnel from the Councils with responsibility for resource consenting, liquor licensing, traffic management and other areas likely to be relevant to the proposed legislation. The Councils have also had the opportunity to comment on the draft Rugby World Cup 2011 (Empowering) Bill.

It is clear from consultation with Councils that the Auckland City Council sees the greatest need for the bill while the Wellington and Christchurch councils anticipate that there would only be limited need for applicants in their areas to resort to the proposed legislation. However, all the Councils consulted agree with the preferred option and were supportive of the intent of the draft Bill.

The Ministry of Economic Development has also consulted with the Legislation Design Committee (“LDC”) on a draft of the Rugby World Cup 2011 (Empowering) Bill. The LDC expressed a number of concerns with the preferred option including:

- that the need for the Bill has not been made out;
- that the scope of the powers to grant approvals under the bill should be limited to approvals under specific legislation and should not extend to approvals that involve public safety concerns;
- that the scope of the urgent powers for the Minister for the RWC to grant consents is too broad; and
- that the liquor licence provisions are inconsistent with the recommendations in the Law Commission’s review of liquor laws.

As a result of the comments received from the LDC the application of the bill has been limited so that it does not apply to the Health Act 1956, the Food Act 1981, and the Biosecurity Act 1993. The application of the Bill to the Building Act 1991 and the Gambling Act 2003 have also been limited so that approvals under those Acts could only be granted in urgent and unforeseen circumstances.

A requirement for consultation with relevant Ministers has also been introduced to the Ministers urgent approval power which we believe addresses concerns about public safety and the breadth of the Minister’s powers.

It is noted that the Law Commission’s review of liquor laws does not yet represent government policy on liquor. The Bill imports many of the provisions of the Sale of Liquor Act 1989 but provides for a faster and more consistent consideration of applications for liquor licences for the RWC. The bill also allows for more expeditious and effective enforcement of the conditions of RWC liquor licences having regard to the short term nature of such licences.

Government Departments/Agencies Consultation

In preparing the Cabinet paper, this RIS, and the draft Bill the Ministry for Economic Development consulted with the Ministry of Justice, the Ministry for the Environment, the New Zealand Police, the Ministry of Health, the Ministry of Transport, the New Zealand Transport Agency, the Department of Building and Housing, the Department of Internal Affairs. The Department of Prime Minister and Cabinet and the Treasury were informed.

The Departments consulted were generally supportive of the preferred option. Comment on the liquor licensing provisions of the Bill was received from the Ministry of Justice, Police and the Ministry of Health. The Police do not support the proposal for a RWC liquor licensing regime, and consider that liquor licensing requirements for RWC can be adequately met through the special licence provisions under the Sale of Liquor Act 1989.

Ministry of Justice does not agree that administrative support for the RWC Authority should be provided by territorial authorities and recommend that the Ministry of Justice would be best placed to provide this support in respect of alcohol related matters.

Some departments have expressed concern at the breadth of the approval powers under the bill and the need to ensure that public safety is not compromised. For example the Ministry of Transport has expressed the view that the bill should not apply to transport legislation and regulation, particularly those that contain safety and security frameworks.

To the extent possible, having regard to the purpose and policy intent of the bill the comments received from departments have been addressed in the draft Bill.