

# Law Society success on key EEZ Bill submissions

**THE LOCAL GOVERNMENT** and Environment Committee's report back on the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill includes key changes that were recommended by the Law Society in its submission on the Bill at the beginning of this year.

The changes include the removal of provisions that would have enabled economic development to be weighed against environmental effects; and provision for a greater range of New Zealand's international obligations.

"The Law Society's submission was positively received at the hearing, and the committee's report confirms that key recommendations have been given effect," says Environmental lawyer Robert Makgill, who presented the Law Society's submission to the committee.

The Law Society had warned that allowing economy to override environment when making decisions on marine consent application would be contrary to the Law of the Sea Convention 1982 (LOSC) and the principle of sustainable development.

The Law Society submitted that to allow economy to override environment was contrary to the purpose of the Bill, which is to "achieve a balance between the protection of the environment and economic development". The submission pointed out that the requirement to balance environmental protection and economic development has been defined by the International Court of Justice in a number of major decisions as meaning sustainable development.

Mr Makgill says that "sustainable development is not about weighing environmental effects against economic outcomes and finding which one comes out on top. It is a much more complicated exercise, relying on science and other assessments to achieve a balance or equilibrium between environment and development.

"Of course, that does not mean that economic development will not outweigh environmental effects in certain situations. Often this comes down to a question of the scale of adverse environmental effect and the ability to mitigate.

"Provision under the Bill for a simplistic weighing exercise would, therefore, have been inconsistent with the LOSC and the principle of sustainable development under international law," Mr Makgill says.

The committee certainly appears to have heeded the Law Society's concern with the report, stating that "the policy intent behind [the Bill] was not to create an overriding economy-versus environment test or a cost-benefit analysis of the economic and environmental implications of an application."



**THIS IS GOOD NEWS  
FOR DECISION-  
MAKERS, APPLICANTS  
AND POTENTIAL  
SUBMITTERS, BECAUSE  
THE BILL IS MUCH MORE  
ALIGNED WITH EXISTING  
DOMESTIC LEGISLATION.**



**ROBERT MAKGILL**

While provision for the weighing exercise has been removed, the Law Society's submission that the purpose of the Bill should be defined as either sustainable development or sustainable management was not accepted.

However, Makgill says, "the purpose of the Bill is now clearly one of sustainable development. This is good news for decision-makers, applicants and potential submitters, because the Bill is much more aligned with existing domestic legislation. In particular, it enables integration of decision-making between the EEZ and our territorial waters, which are regulated by the Resource Management Act 1991."

The Environmental Protection Agency (EPA) is now directed to a number of matters that need to be taken into account when considering consent applications, including environmental and economic matters. This reflects the Law Society's recommendation that these matters should be provided for separately as matters to be considered by the EPA when considering a consent application.

Recommendations were also made to amend the Bill to refer more generally to New Zealand's international obligations, rather than solely LOSC. It now refers to "various international conventions" and expressly includes the "Convention on Biological Diversity". The report notes that there was some disagreement between the committee as to the final wording of the relevant clause.

"The recommended wording has been watered down, and there is no longer a requirement for decision-makers to act consistently with international law," Mr Makgill says. "Rather, the Act is to be interpreted under international law. This change seems reasonable, as it recognises that questions of whether decisions under the Bill are consistent with international law is a legal question and really a step too far for those who will be required to exercise powers and duties under the Bill on a day-to-day basis."

On 22 May, the Minister for the Environment released a discussion document on regulations under the Bill for public consultation entitled *Managing our oceans: A discussion document on the regulations proposed under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill*. Submissions close 20 June 2012.