THE DE MINIMIS PRINCIPLE

AMANDA DOUGLAS, PARTNER

(January 2011)

De minimis is the shorthand way of expressing the Latin term "de minimis non curat lex", which is usually translated as "the law is not concerned with trifles".

In the resource management context, the meaning of de minimis is not the same as "minor", or even "less than minor". It describes an effect which is so small and trifling that the law should not be concerned with it. The test for whether an effect is de minimis is different from, and more stringent than, the test for whether an effect is minor or less than minor.

One of the cases which has considered the term "de minimis" is Rea v Wellington City Council¹. In that case, the Court, helpfully, said:

[10] The term “de minimis” has survived, though the use of Latin maxims is now out of fashion, since there is no equally convenient and pithy English alternative. It is a shorthand way of expressing the full Latin maxim “de minimis non curat lex”. That is usually translated as “the law is not concerned with trifles”. In the present context, it means that an adverse effect on a person can be disregarded, so that notice to that person will be unnecessary, only if it is so trifling that the law should regard it as of no consequence. That is a much more stringent test than whether the adverse effect is minor. A minor effect may well be more than de minimis, as the citation from Bayley confirms.

[11] I have felt it necessary to expand on this point at some length, since a reading of the Council’s decision suggests that the Council officers have regarded the terms “minor” and “de minimis” as synonymous or interchangeable. They are not.

So, before an effect could be disregarded on the ground that it is de minimis, it would have to be close to non-existent. Even an effect which is “less than minor” will not necessarily be de minimis.

The RMA does not use the term “de minimis”. It is always best to use the wording from the Act, where possible.

¹ Rea v Wellington City Council [2007] NZRMA 449.