



Cabinet Economic Growth and Infrastructure Committee

In Confidence

EGI Min (09) 1/3

Copy Number:

Minute of Decision

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Resource Management (Simplifying and Streamlining) Amendment Bill

Portfolio: Environment

On 18 February 2009, the Cabinet Economic Growth and Infrastructure Committee, having been authorised by Cabinet with Power to Act [CAB Min (09) 4/14]:

Background

- 1 **noted** that the Resource Management (Simplifying and Streamlining) Amendment Bill (the Bill) will provide for improvements in the plan making, resource consent, enforcement, and other provisions of the Resource Management Act 1991 (RMA);
- 2 **noted** that:
 - 2.1 on 2 February 2009, Cabinet made a number of policy decisions that form the basis of the Bill [CAB Min (09) 3/7];
 - 2.2 on 9 February 2009, Cabinet made decisions relating to appeals from a board of inquiry [CAB Min (09) 4/11];

Further changes

Plan changes

- 3 **noted** that Cabinet has agreed that applicants for resource consents, plan changes and notices of requirement are able to request that their applications be directly referred to the Environment Court for a decision, provided that the permission of the local authority that would otherwise have made the decision has been obtained [CAB Min (09) 3/7 (paragraph 89)];
- 4 **agreed** that plan changes should not be able to be directly referred to the Environment Court;

Call in

- 5 **agreed** to remove the Minister of Conservation's role as final decision maker in relation to any other matter wholly within the coastal marine area that is called in, except in relation to plan changes;

Appeals

6 **noted** that on 9 February 2009, Cabinet agreed that, for appeals from a board of inquiry for proposals of national significance:

6.1 there is a right of appeal on a question of law to the High Court;

6.2 no appeal be allowed to the Court of Appeal from the High Court decision;

6.3 a party may appeal from the High Court to the Supreme Court only if the Supreme Court finds there is exceptional circumstances to hear the matter;

6.4 there is a requirement for an application for leave to be sought from the Supreme court, to be filed within 10 days of the High Court decision; and

6.5 the Supreme Court shall give priority to the determination of leave and to any appeal it decides to hear;

[CAB Min (09) 4/11]

7 7.1 **agreed to rescind** paragraph 6.2 above; and instead

7.2 **agreed** that any appeal on a decision of the High Court on a proposal of national significance must be made to the Supreme Court, and that:

7.2.1 the Supreme Court will determine whether the Supreme Court or the Court of Appeal is to hear the matter;

7.2.2 if the Supreme Court determines that the Court of Appeal is to hear the matter, the Court of Appeal is to hear the matter under urgency and there is no further opportunity for appeal to the Supreme Court;

8 **agreed** that the decision of the Environment Court on a matter that has been called in will have the same appeal rights as those set out in paragraphs 6 and 7 above;

Hearing of applications

9 **noted** that Cabinet has agreed that:

9.1 applicants or submitters to a notified resource consent are able to choose whether the application is heard before one or more independent commissioners, or by elected representatives of the local authority;

9.2 any submitter requiring a notified consent application to be heard by an independent commissioner, or panel of commissioners, must pay for the additional costs of the hearing;

[CAB Min (09) 3/7 (paragraphs 86 and 87)]

10 **agreed** that an applicant for, or a submitter to, a notice of requirement is also able to choose whether the application or submission is heard before one or more independent commissioners selected from a pool of persons accredited under the Making Good Decisions programme, or by elected representatives of the local authority (or authorities in the event of a joint hearing), and that the applicant or submitter should pay for any additional costs of the hearing;

11 **agreed** that:

11.1 the ability of applicants or submitters to request independent commissioners or elected members, as referred to in paragraphs 9 and 10 above, be limited to the inclusion of at least one independent commissioner;

11.2 the consent authority retain overall discretion on the composition of who hears and decides on the application;

11.3 any extra costs of this are paid by the applicant or submitter who made the request;

Environment Protection Authority

12 **noted** that Cabinet has agreed to enable the Environment Protection Authority (EPA) to issue certificates of compliance [CAB Min (09) 3/7 (paragraph 28)];

13 **agreed** that the EPA can only issue certificates of compliance that relate to matters of national significance;

Tree protection rules

14 **noted** that Cabinet has agreed that provisions be inserted into the RMA that remove the ability for blanket tree protection rules to be imposed in urban areas [CAB Min (09) 3/7 (paragraph 61)];

15 **agreed** that removing blanket tree protection rules in urban areas extends to the removal of the relevant rules in existing district plans;

16 **agreed** that a transitional period of 24 months be provided for councils to develop a schedule of trees of high value for protection;

Reviews

17 **noted** that Cabinet has agreed that the requirement for district plans prepared by territorial authorities to be reviewed every 10 years, be replaced with a requirement that such plans be changed or reviewed as and when considered necessary [CAB Min (09) 3/7 (paragraph 51)];

18 **agreed** that:

18.1 the Minister for the Environment have the power to direct a review of the whole or part of a district or regional plan;

18.2 the Minister of Conservation have the power to direct a review of the whole or part of a regional coastal plan;

Trade competitors

- 19 **noted** that Cabinet has agreed that the ability of trade competitors to take part in appeals as third parties be removed from the RMA [CAB Min (09) 3/7 (paragraph 10)];
- 20 **agreed** that trade competitor participation in proceedings as a third party be excluded, unless they are directly affected and the effect concerned does not relate to trade competition;
- 21 **noted** that Cabinet has agreed that the RMA be amended to state that a submission in opposition to a resource consent or private plan change application by a trade competitor can be made by any person, provided that person is directly affected and the effect concerned does not relate to trade competition [CAB Min (09) 3/7 (paragraph 7)];
- 22 **agreed** that the limitations on trade competitors making submissions in opposition to resource consent or private plan change applications as outlined in paragraph 21 above also apply to notices of requirement for designations;
- 23 **noted** that Cabinet has agreed that all current provisions of the RMA that prohibit consideration of trade competition be amended to also prohibit consideration of the effects of trade competition [CAB Min (09) 3/7 (paragraph 5)];
- 24 **agreed** that the RMA include provisions that prohibit consideration of trade competition and the effects of trade competition for designations;
- 25 **noted** that Cabinet has agreed to amend Schedule One of the RMA (plan making and changing processes) to state that a submission on a proposed policy statement, plan or plan change that concerns the activity of a trade competitor can be made by any person, provided that person is directly affected and the effect concerned does not relate to trade competition [CAB Min (09) 3/7 (paragraph 8)];
- 26 **agreed** to remove the reference to plan changes in the amendment to Schedule One of the RMA;

Incorporation by reference

- 27 **agreed** that regulations made under section 360 of the RMA should be able to incorporate material by reference;

Introduction of Bill

- 28 **approved** for introduction the Resource Management (Simplifying and Streamlining) Amendment Bill [PCO 13548/9.0];
- 29 **agreed** that the Bill be introduced on 19 February 2009 and have its first reading the same day;
- 30 **agreed** that the government propose that:
- 30.1 the Bill be referred to the Local Government and Environment Committee;

- 30.2 the Local Government and Environment Committee have authority to meet at any time while the House is sitting except during oral questions, and during any evening on a day on which there has been a sitting of the House, and to meet outside the Wellington region during a sitting of the House and on a Friday in a week in which there has been a sitting of the House, despite Standing Orders 187, 189, and 190(1)(b) and (c);
- 30.3 the Local Government and Environment Committee be required to finally report the Bill back to the House by 19 June 2009;
- 30.4 the Bill be enacted, if possible, by 1 July 2009;

Publicity

- 31 **agreed** that the Minister for the Environment provide a copy of the Bill to Members of Parties at a briefing at 5pm on 18 February 2009, prior to the introduction of the Bill into the House;
- 32 **noted** that the Minister for the Environment intends to release all Cabinet papers, Cabinet minutes, the RMA technical advisory group report, and advice from officials to Ministers, subject to any appropriate withholdings that may be required in accordance with the Official Information Act 1982.

Secretary

Reference: EGI (09) 3

Present:

Bill English (Chair)
Hon Simon Power
Hon Dr Nick Smith
Hon Anne Tolley
Hon Steven Joyce
Hon Phil Heatley
Hon Kate Wilkinson
Hon Maurice Williamson
Hon Rodney Hide
Hon Dr Pita Sharples
Hon Peter Dunne

Officials present from:

Department of the Prime Minister and Cabinet
Treasury
Ministry of Economic Development
Ministry of Agriculture and Forestry