



Cabinet

Minute of Decision

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Reform of the Resource Management Act 1991: Phase One Proposals

Portfolio: Environment

On 2 February 2009, Cabinet:

Background

1 **noted** that the National – ACT confidence and supply agreement states:

“National and ACT agree to promote investment, jobs, wages, employment and prosperity, as well as environmental improvement, through amendments to the RMA. The National-led government will establish a high quality advisory group to recommend short-term amendments to the RMA, including but not confined to those which National has put forward, as a basis for select committee consideration early in 2009. The membership of the group and its terms of reference will be agreed between National and ACT.

Beyond the short term, consideration will be given to further improvements, including better mechanisms for water allocation and compensation for regulatory takings of property rights. High quality advisory groups will be established for such tasks.”

2 **noted** that:

2.1 in accordance with the National – ACT confidence and supply agreement referred to in paragraph 1, the Resource Management Act (RMA) review is being carried out in two phases;

2.2 the changes to the RMA proposed in paragraphs 4 to 104 below are phase one amendments that simplify and streamline RMA processes;

3 **noted** that the process for phase one of the RMA review has included:

3.1 consultation and discussion of options amongst officials through a cross-departmental officials group;

3.2 the establishment and operation of the RMA technical advisory group to provide independent advice and consideration of options to amend the RMA;

- 3.3 an opportunity for local government, the public and businesses to provide comment, and make suggestions, on ways in which the RMA can be improved (76 letters and 45 email comments were received);

Frivolous, vexatious and anti-competitive objections

- 4 **agreed** that the Environment Court's ability to require security for costs be reinstated;
- 5 **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;
- 6 **agreed** that the effects of trade competition be excluded from consideration when forming an opinion as to whether the effects on the environment require a resource consent application to be notified or not;
- 7 **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;
- 8 **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;
- 9 **agreed** that an obligation be imposed on third parties supported, funded, or encouraged by a trade competitor to an applicant to disclose that information;
- 10 **agreed** that the ability of trade competitors to take part in appeals as third parties be removed from the RMA;
- 11 **agreed** that sanctions be imposed by the Court for non-disclosure of trade competitor backing, funding or support of a third party when that third party lodges an appeal under the RMA;
- 12 **agreed** the sanctions for non-disclosure of trade competitor backing, funding or support will take the form of a costs award against the third party for all the costs and expenses incurred by the party whose application was the subject of the appeal;
- 13 **agreed** that the Courts be provided with an explicit power under the RMA to award indemnity costs to a party whose position, in the opinion of the Courts, was adversely affected by an appeal motivated by trade competition;
- 14 **agreed** that:
- 14.1 the RMA be amended to incorporate a punitive regime for proceedings brought by a person against a trade competitor;
- 14.2 this new provision should indicate that if an appeal is brought, financed or encouraged by trade competition motives, then the party whose position was adversely affected by the appeal may seek to recover all the damages associated with the appeal;

Proposals of national significance

- 15 **agreed** to amend the process for decisions on proposals of national significance (section 140 to 150AA of the RMA) by allowing applications for a resource consent, a request for a private plan change or regional plan, or a notice of requirement for a designation or a heritage protection order, to be directly applied to a proposed Environmental Protection Agency (EPA) established in accordance with paragraphs 35-40 below;
- 16 **agreed** that works concerning the operational infrastructure of a nationwide network utility operator be included in the factors the relevant Minister may have regard to in deciding whether an application is nationally significant for a resource consent, plan change or notice of requirement;
- 17 **agreed** that the call-in provisions be amended to allow the relevant Minister to refer a call-in application to the EPA for processing;
- 18 **agreed** that the relevant Minister has the authority to send applications that found not to be proposals of national significance to the relevant local authority for consideration and determination under the appropriate RMA processes;
- 19 **noted** that a board of inquiry will continue to consider and decide on the proposals of national significance;
- 20 **agreed** that additional criteria be added to the appointment process for a board of inquiry that requires the relevant Minister to seek nominations from local authorities within whose jurisdiction the proposal relates, and to appoint a person with local knowledge;
- 21 **noted** that the Attorney-General, Minister for Treaty of Waitangi Negotiations and the Minister for the Environment have agreed that this review of the RMA will not compromise any obligations made under an existing Foreshore and Seabed Deed of Agreement or Historical Treaty settlement;
- 22 **agreed** to increase the number of Environment Court judges that may hold office at any one time from 8 to 10;
- 23 **noted** that any increase in the number of Environment Court judges shall not be at the expense of the number of District Court judges;
- 24 **invited** the Minister for the Environment, in consultation with the Minister for Courts, to report to the Cabinet Economic Growth and Infrastructure Committee by the end of March 2009, with proposals on how to address the financial implications of increasing the number of Environment Court judges;
- 25 **agreed** that a time limit of nine months be placed on the decisions of boards of inquiry, commencing with the date of notification, and ending with the release of final decision;
- 26 **agreed** that the nine month time limit can only be extended by application to, and agreement from, the relevant Minister;
- 27 **agreed** that supplementary resource consents associated with a proposal that have not been applied for at the time the original application was lodged with the EPA, can be forwarded to the EPA, and the relevant Minister will decide how it should be processed;

- 28 **agreed** to enable the EPA to issue certificates of compliance;
- 29 **invited** the Minister for the Environment and the Attorney-General, in consultation with the Leader of the House, the Minister of Justice, the Minister of Transport and the Minister for Courts, to consider:
- 29.1 options to streamline and fast-track court procedures for hearing and determining appeals from decisions made by a board of inquiry,
- 29.2 whether measures are required to reduce delays caused by applications for judicial review or declaratory judgments;
- and to report back to Cabinet on these matters as soon as possible;
- 30 **agreed** that amendments be made that clarify that a board of inquiry can request further information, or commission independent reports, on matters raised by an application, and can circulate this information to all parties attending hearings;
- 31 **agreed** that comments on a draft decision of a board of inquiry may include comments on proposed conditions and minor or technical issues, but cannot challenge the decision of the board of inquiry as to whether or not an application should be granted;
- 32 **agreed** that board of inquiry members be given legal protection against actions arising out of any acts or omissions made in good faith;
- 33 **agreed** that the provisions of the RMA relating to call-in powers be amended to clarify that the relevant Minister can call-in a private plan change request:
- 33.1 after the plan change request has been lodged with the local authority but before that authority has made a decision as to whether to accept, adopt, or decline the request; or
- 33.2 after a decision has been made by the local authority with whom it was lodged to accept, adopt or decline the plan change request;
- 34 **noted** that the Minister for the Environment intends to direct officials to prepare public guidance on the Minister for the Environment's powers of intervention under the RMA, including call-in powers;

Environmental Protection Authority

- 35 **agreed** to the creation of the Environmental Protection Authority as a Statutory Office;
- 36 **noted** that creation of a Statutory Office of the Environmental Protection Authority is intended to be a transitional measure, pending consideration of options for the creation of an Environmental Protection Authority with a broader range of functions in the near future;
- 37 **agreed** that the Environmental Protection Authority will have roles, functions and powers as set out for receiving and processing proposals of national significance;
- 38 **noted** that the Environmental Protection Authority will also provide secretariat and support services to a board of inquiry;

- 39 **agreed** that the Secretary for the Environment will hold the office, and exercise the powers, functions and duties of the Environmental Protection Authority;
- 40 **agreed** that the Secretary for the Environment may delegate some or all of his or her powers, functions and duties as the Statutory Officer for the Environmental Protection Authority to his or her employees;

Improving plan development and plan change processes

- 41 **agreed** that the ability for appellants to make general challenges, or seek the withdrawal of entire proposed policy statements and plans, be removed;
- 42 **agreed** the provisions of the RMA be amended to enable and clarify that proposed plans and plan changes can be notified via the internet, and that notice can be served on affected parties by email in addition to service through existing means;
- 43 **agreed** that local authority initiated plan changes be subject to the same range of Ministerial intervention powers as private plan changes (including the power to call-in plan changes);
- 44 **agreed** to extend the period under which consultation carried out in fulfilment of other legislative requirements can be used for RMA plan preparation purposes, from 12 months to 36 months;
- 45 **agreed** that the requirement for local authorities to summarise submissions and call for further submissions on proposed policy statements and plans under Schedule One of the RMA be replaced by a requirement for local authorities to consult any person the local authority considers may be affected by matters raised in submissions, and that these matters must be taken into account in the council's hearing and decision;
- 46 **agreed** that the non-complying activity class of activity be removed from the RMA within three years of the Amendment Act coming into force together with a deeming provision that these activities become classified as full discretionary activities after a transitional period of 36 months;
- 47 **agreed** that the RMA state that local authority decisions on submissions do not need to be made in respect of each individual submission, but are to be made according to the issues raised;
- 48 **agreed** to amend the RMA to clarify the requirements around when and how to notify decisions on submissions to plans, and what documentation is to provided (or made available);
- 49 **agreed** that the RMA be clarified to enable the regional council and all territorial authorities of a region to combine to produce a single RMA document that fulfils the joint purposes, functions and requirements of:
- 49.1 the regional policy statement for the region;
 - 49.2 the regional plans (including a regional coastal plan) for the region;
 - 49.3 district plans for all the constituent territorial authorities;

- 50 **agreed** that process for the development of combined regional policy/regional plan/district plan document be the same as existing requirements for when local authorities combine to prepare plans;
- 51 **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;
- 52 **agreed** that:
- 52.1 rules in proposed plans have no legal effect until such time as decisions made on submissions have been notified, except where such rules are required to protect a natural resource or historic heritage;
 - 52.2 a local authority may apply to the Environment Court to have particular rules take effect earlier if they do not meet the above criteria;
- 53 **agreed** that rules in plan changes that provide for an aquaculture management area have immediate legal effect from the time they are notified;
- 54 **agreed** that appeals on proposed policy statements and plans be limited to questions of law, except in cases where the appellant has sought the leave of the Environment Court on the basis that the proposed policy statement or plan would:
- 54.1 have a significant impact on existing property rights;
 - 54.2 fail to give effect to matters provided in Part II of the RMA; or
 - 54.3 are of unclear meaning and effect;

Improving resource consent processes

- 55 **agreed** to remove the current presumption in favour of notification of resource consent applications, as most applications are not notified;
- 56 **agreed** to amend the criteria for when public notification is required to projects with more than minor effects on the wider environment;
- 57 **agreed** that sections in the RMA that would have allowed the Environment Court to review notification decisions, but have not come into force, be repealed and the review function be left with the High Court;
- 58 **agreed** that the RMA be amended to enable and clarify that notified resource consent applications can be notified via the internet, and that documents can be served on parties by email (in addition to existing means);
- 59 **agreed** that local authorities be given an ability to adopt the assessment of environmental effects supplied an applicant, to remove the need for that material to be repeated or restated in subsequent hearing reports or decision reports;
- 60 **agreed** that the full reporting requirements under section 113 of the RMA need only apply to publicly notified resource consents, and that non-notified resource consent decisions need only record the decision itself and the principal reasons for that decision;

- 61 **agreed** that provisions be inserted into the RMA that remove the ability for blanket tree protection rules to be imposed in urban areas;
- 62 **agreed** that:
- 62.1 the ability for local authorities to ‘stop the processing clock’ during requests for further information from applicants be limited to the first request only;
 - 62.2 from the time the applicant either supplies the information, or refuses to supply it, there is no further ability for the local authority to ‘stop the clock’ in conjunction with further requests for information;
 - 62.3 the local authority must have regard to the adequacy of information supplied when making a decision on a resource consent;
- 63 **agreed** that the remaining provisions of section 92 and 92A of the RMA be simplified so that if the applicant refuses to supply the information requested, processing of the application is to continue, and decision makers are to be required to consider the adequacy of information provided in making their decision;
- 64 **agreed** to remove specific appeal and objection rights relating to further information requests;
- 65 **agreed** that if there are outstanding requests for further information on a resource consent application and the information has not been supplied, then the application lapses after 12 months from the date of the original request;
- 66 **agreed** that consideration of Part II matters for resource consents for controlled activities and restricted discretionary activities be limited in scope to those matters over which a council has expressly reserved control or discretion in its plan;
- 67 **agreed** that:
- 67.1 all councils be required to develop a discount policy in respect of late consent processing, within 12 months of enactment;
 - 67.2 councils must have a complaints process and, where the local authority is at fault, the applicant shall receive a discount on the application processing fees and charges;
- 68 68.1 **agreed** that resource consent hearings be required to be formally closed no later than 10 working days following completion of the last party’s presentation at the hearing;
- 68.2 **noted** that this will reduce the delays commonly faced by all parties in getting a decision on a resource consent application;

Improving national instruments

- 69 **agreed** that the Minister for the Environment (and Minister for Conservation in respect of the New Zealand Coastal Policy Statement) be given explicit powers to cancel, postpone and restart a national policy statement development process that has already commenced at any time before it is gazetted;

- 70 **agreed** that national policy statements can direct that a local authority must change the objectives and policies of policy statements and plans without further formality, regardless of the process used to develop the national policy statement;
- 71 **agreed** that appeals on changes to plans and regional policy statements that are implementing objectives and policies of a national policy statement be limited to points of law only;
- 72 **agreed** that consent authorities must have regard to the relevant provisions of a national environmental standard (NES) when making decisions on resource consents;
- 73 **agreed** that the provisions of the RMA that relate to restrictions and duties under the RMA explicitly recognise the effect of a national environmental standard in relation to those restrictions and duties;
- 74 **agreed** that consent authorities be given an explicit ability to issue certificates of compliance where activities comply with the provisions of a national environmental standard;
- 75 **agreed** that powers be introduced to the RMA to easily allow the Minister for the Environment to make minor amendments to, and correct errors in, a national environmental standard that is already in force;
- 76 **agreed** that provisions be incorporated into the RMA to allow local authorities to remove provisions from plans that directly conflict with a national environmental standard, or have been made redundant by a national environmental standard, without formality (ie without having to go through the plan change process set out in Schedule One of the RMA);
- 77 **agreed** that national environmental standards can be referred to in a plan without the requirement for formal plan change processes;
- 78 **agreed** that local authorities be responsible for ensuring compliance with a national environmental standard and carrying out enforcement to ensure compliance;
- 79 **agreed** that the RMA be amended to clarify the effect of a national environmental standard and existing resource consent applications;

Improving the effectiveness of compliance mechanisms

- 80 **agreed** that an enforcement officer can direct a person suspected of committing an offence under the RMA to provide their date of birth (in addition to their name and address) to assist in establishing the identity of the person;
- 81 **agreed** that the maximum fine for committing an offence under the RMA be raised from \$200,000 to \$600,000 for corporate offenders, and to \$300,000 for offenders who are private individuals, so as to provide a stronger disincentive to non-compliance and recognise that there is a likely difference in motives and ability to pay between businesses and individuals;
- 82 **agreed** that the Court be given the power to require a review of a resource consent held by an offender, if the offence relates to an act committed in specific breach of that consent or its conditions;

- 83 **agreed** that amendments be made to the RMA to enable enforcement action (enforcement orders, abatement notices, excessive noise directions, or prosecutions) to be taken against the Crown by local authorities, similar to the Crown liability under section 6 of the Building Act 2004;
- 84 **agreed** the provisions of the RMA be amended to enable and clarify that notices can be served on parties by email, and that the exchange of written evidence can also take place via email where parties consent;
- 85 **agreed** that the general duty to avoid, remedy or mitigate adverse effects be extended to cover adverse effects associated with the existing uses of land or buildings under section 10B;

Streamlining decision making

- 86 **agreed** that any applicant or submitter to a notified resource consent (and any private plan change where heard in tandem) be able to choose whether the application 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 joint hearing);
- 87 **agreed** that any submitter requiring a notified consent application to be heard by an independent commissioner or panel of commissioners must pay for the additional costs the hearing (being the difference between the costs of a hearing before elected representatives and the costs of a hearing before commissioners, in instances where the latter are greater);
- 88 **agreed** that local authorities be able to delegate the power to make decisions on plan variations and changes (excluding those made to regional coastal plans) to staff or other authorised persons such as hearings commissioners;
- 89 **agreed** that applicants for resource consents, plan changes and notices of requirement be able to request that their application 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;
- 90 **agreed** that the filing fee for appeals with the Environment Court be raised from \$55 to \$500 through separate amendment regulations made under the RMA;
- 91 **agreed** that the Minister of Conservation's powers to make the final decision on applications for restricted coastal activities under section 119 be removed from the RMA;
- 92 **noted** that further consideration will be given to the removal of restricted coastal activities from the RMA as part of the phase two RMA amendments, to allow further consideration of implications including those pertaining to the Foreshore and Seabed Act 2004 and the current review of the New Zealand Coastal Policy Statement;
- 93 **agreed** that the RMA provide protection for members of Boards or Special Tribunals appointed under the RMA against any legal action arising out of any acts or omissions made in good faith;
- 94 **agreed** to amend the RMA so that decisions on notices of requirements are made by the relevant territorial authority;

Other matters to improve workability

- 95 **noted** that as a result of previous RMA amendments, several changes need to be made to the calculation of time limits for processing resource consents;
- 96 **agreed** to consequential amendments to the RMA relating to timeframes for sending the hearing report to parties, clarifying timeframes that apply when waiting for the response to further information requests and when additional consents are required;
- 97 **agreed** that authentication of consent notices be contained wholly within section 221(2) of the RMA by replacing the out-of-date reference to the Local Government Act 1974 with authentication under the RMA (signified on the consent notice by way of affixing the signature of authorised persons);
- 98 **agreed** that section 224(f) of the RMA replace the reference to authentication under section 252 of the Local Government Act 1974 with a reference to the amended authentication process to be incorporated into section 221(2) as referred to above;
- 99 **agreed** that:
- 99.1 the timeframe within which third parties must lodge their notice to participate in appeals be shortened from 30 working days to 15 working days;
- 99.2 the timeframe be calculated from the last day for lodgement of appeals;
- 100 **agreed** that section 274(1)(d) of the RMA be limited to the Attorney-General only, so that other parties are not able to join an appeal only on the basis of representing a relevant aspect of the public interest;
- 101 **agreed** that the limited notification provisions that currently only apply to resource consents be extended to cover notification of notices of requirement;
- 102 **agreed** that the requirement for parties whose decisions are appealed against to lodge a reply with the Environment Court and serve copies of the reply on the appellant and other parties to the appeal, be removed;
- 103 **agreed** to include transitional provisions in the RMA as required to ensure the proposed amendments are given effect to in a manner, and over a timeframe, that ensures fairness of process and a practicable transition of functions, powers, duties and processes to comply with the amended provisions;
- 104 **agreed** that the minor and technical amendments set out in Attachment 1 of the paper under CAB (09) 28 be made to the RMA so as to improve its workability;

Phase two of the Resource Management review

- 105 **noted** that phase two the RMA review will cover:
- 105.1 improving infrastructure provisions;
- 105.2 consideration of better freshwater management;

- 105.3 exploring approaches to better urban design;
- 105.4 sustainable and cost effective aquaculture planning and development;
- 106 **noted** that the Minister for the Environment intends to address the establishment, role and functions of the new environmental protection authority (EPA) as part of phase two of the RMA review;
- 107 **invited** the Minister for the Environment to report to the Cabinet Economic Growth and Infrastructure Committee with proposed terms of references and timelines for each of the work streams of phase two of the RMA review, by the end of March 2009;
- 108 **noted** than a paper on the scope of a national policy statement on urban design will be submitted to the Cabinet Economic Growth and Infrastructure Committee by the end of March 2009;
- 109 **noted** that the Minister for the Environment and the Minister of Fisheries expect to report to the Cabinet Economic Growth and Infrastructure Committee on options for aquaculture reform, by the end of May 2009;

Legislation

- 110 **noted** that the legislative amendment arising out of the phase one RMA review, as proposed in the paper under CAB (09) 28, is to be called the “Resource Management (Simplify and Streamline) Amendment Bill 2009”;
- 111 **noted** that a place on the 2009 Legislation Programme will need to be sought for the Resource Management (Simplify and Streamline) Bill 2009;
- 112 **noted** that the Resource Management (Simplify and Streamline) Bill 2009 will bind the Crown;
- 113 **noted** that any outstanding policy issues will be addressed when the Resource Management (Simplify and Streamline) Bill is submitted to the Cabinet Legislation Committee on 12 February, or an appropriate policy committee in the week starting 9 February 2009;
- 114 **invited** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;

Publicity

- 115 **authorised** the Minister for the Environment to publicly release the paper under CAB (09) 28, subject to any relevant withholdings, at an appropriate time;

Regulatory Impact Statement

- 116 **authorised** the Minister for the Environment to make any minor and technical changes to the Regulatory Impact Statement for editing purposes prior to its publication;

117 **noted** that the Minister for the Environment intends to include an abbreviated version of the Regulatory Impact Statement as a preface to the Resource Management (Simplify and Streamline) Bill that will refer to the full Regulatory Impact Statement attached to the paper under CAB (09) 28.

Secretary of the Cabinet

Reference: CAB (09) 28

***Secretary's note:** The Minister for the Environment has subsequently indicated that the Resource Management (Simplify and Streamline) Bill will be submitted to the Cabinet Economic Growth and Infrastructure Committee for consideration at its meeting on 18 February 2009.*
