

# **RESOURCE MANAGEMENT STREAMLINE AND SIMPLIFY AMENDMENT ACT 2009**

## **POLICY PACKAGE – 10 JANUARY 2009**

### **A. MANAGING ANTI-COMPETITIVE BEHAVIOUR AND FRIVALOUS AND VEXATIONS OPPOSITION**

1. Reinststate security for costs
2. Amend sections 61(3), 66(3), 74(3) and 104(3) to make it clear that the prohibition on considering trade competition also encompasses its effects.
3. Limit standing so that parties are only able to participate via RMA processes in the activities of trade competitors if they are able to demonstrate that they are directly affected by a potential adverse effect of the activity on the physical environment.
4. Allow the Courts to award the full costs incurred in cases where a party has (a) acted upon motives of trade competition (b) acted frivolously or vexatiously (c) unnecessarily commenced or continued proceedings (d) acted upon motives of trade competition.
5. Introduce disclosure requirements and sanctions to prevent covert opposition of trade competitors through surrogates.

### **B. IMPROVING PROCESSES FOR SIGNIFICANT PROJECTS**

1. Insert new subheading '*Significant projects path*' between '*Certificates of compliance or existing use*' and '*Decisions on proposals of national significance*'.
2. Add new sections to give effect to the following:
  - i. Establish explicit thresholds in the legislation above which councils, applicants and/or requiring authorities are eligible to submit their resource consent application, private plan change, plan variation, plan change or notice of requirement for a designation directly to an Environmental Protection Authority (EPA). It is anticipated that those functions of the EPA will sit within the Ministry for the Environment as a transitional measure until such time the EPA is formally established with administration of the Significant Projects Path in the RMA as one of its functions.
  - ii. Set threshold criteria to make the following eligible:
    - (a) Infrastructure projects as defined in the Resource Management Act 1991 and public works as defined in the Public Works Act 1981 with construction and commissioning costs that exceed a capital expenditure of \$100 Million dollars. This will require consequential amendments to the definition of 'Infrastructure' to

make the components in sub-clause (d) disjunctive i.e. “facilities for the generation of electricity or lines used or intended to be used to convey electricity ...”.

- (b) Extractive or manufacturing industries that are critical to the construction of projects eligible under (a) and that have construction and commissioning costs that exceed a capital expenditure of \$100 Million dollars.
- iii. Applicants that choose to submit an application for resource consent or a notice of requirement to the Chief Executive of the EPA should include the conditions proposed to avoid, remedy or mitigate adverse environmental effects.
- iv. In some cases when a project is eligible for the Significant Projects Path a private plan change or a council initiated variation (where the council agrees to make such a variation) will also be required. In these instances, the private plan change or variation shall proceed down the Significant Projects Path with aligned procedural and decision-making timeframes.
- v. The EPA will assess the project against the thresholds, confirm its eligibility and either direct it down the significant project path or refer it back to the relevant consent authorities for processing and determination.
- vi. The EPA will complete or commission a report on information provided on any matter described in section 39(1) by the applicant and make it available to notified parties. This report will not make recommendations as to whether or not the project should be granted, but may comment on the conditions proposed by the applicant.
- vii. The EPA will then publicly notify the project which will trigger the beginning of a 9-month decision timeframe within which a final decision must be notified. Any extensions to this timeline must be sought in consultation with and approved by the Minister for the Environment.
- viii. The EPA will appoint a Board of Inquiry to hear the application. The Chair of the board shall be a current, former or retired Environment Court Judge or senior legal practitioner in the field of resource management.
- ix. The EPA will ensure that there is appropriate local experience on the board and that the board appointment process complies with any relevant treaty settlement agreements.
- x. The local authorities that would otherwise have acted as the consent authorities for projects that are eligible for the significant projects path are able to lodge a submission to the board of inquiry.
- xi. The conduct of the inquiry shall comply with the provisions of section 147 of the RMA (except 147(4)(b)) and any relevant treaty settlement.

- xii. Specific decision criteria shall be drafted for projects that are eligible for the significant projects path. These decision criteria shall be framed to underscore the regard that is required to be given to the national significance of the proposal *vis a vis* potential adverse effects on the local environment *without* undermining the importance of Part 2 of the Act and the relevant provisions of any National Policy Statement. Accordingly the decisions criteria will require that the board of inquiry must:
  - (a) have particular regard to the significance of the proposal to the nation; and
  - (b) have particular regard to the matters set out in section 104.
- xiii. The board shall be required to produce a draft report and final report in accordance with the provisions of sections 148 and 149 of the RMA.
- xiv. Appeals on decisions made by the board of inquiry will be limited to appeals to the High Court on a question of law only in accordance with section 149A of the RMA.
- xv. Any additional or supplementary resource consents associated with a significant project but not applied for in the substantive application shall be referred to the EPA. The Chief Executive of the EPA shall:
  - (a) decide the application may be processed as a variation to the original consent on a non-notified basis and refer it to a board of inquiry for decision [criteria for this will be established under regulations, which may require consequential amendments to section 360]; or
  - (b) notify the application and refer it to a board of inquiry for decision in accordance with the Significant Project Path provisions; or
  - (c) refer the application to the relevant local authorities for processing in accordance with notification directions and a timeline for decision.

### **C. IMPROVING PLAN PROCESSES**

1. Enable internet and e-mail alternatives for service and notification of plan changes, variations and associated proceedings.
2. Extend the period that consultation conducted under other enactments can be used for RMA plan purposes from 12 to 36 months.
3. Remove the need for local authorities to provide decisions and reasons on every submission point from every submitter. Decisions are to be grouped according to plan provision or topic where there is not corresponding provision. A single decision report outlining the changes made, including by way of annotations to the provisions to be changed, and the main reasons for decisions is to be produced and made available for public inspection.

4. Allow councils to amend errors in plan changes, private plan changes and policy statements without further formality.
5. Remove the ability of objectors to submit/appeal seeking withdrawal of the entire plan.
6. Limit appeals on plans to points of law but provide for appellants to seek leave from the Environment Court to lodge appeals on merit.
7. Make it explicit that all local authorities in a region may produce combined district and regional plans and policy statements.
8. **SPLIT RECOMMENDATION:** Remove the non-complying activity class [TAG Position] *or* defer consideration of this to Phase Two because of the potential significance of implications and difficulty that may arise out of any transitional provisions [MfE Position].
9. Remove mandatory obligation to review District Plans every 10-years; leave the review period to the discretion of councils and “rolling reviews”.
10. The date on which a proposed plan or plan change has effect is the date of notification of the council’s decisions on submissions – with the proviso that councils are able to seek leave from the Environment Court to have specific provisions relating to resource allocation or protection (e.g. heritage protection provisions) come into effect immediately.
11. Allow plan changes initiated by the local authority to be subject to the full range of ministerial intervention powers under section 141A(4).
12. Remove the need for local authorities to summarise submissions or call for further submissions with the proviso that, following receipt of submissions on a proposed plan or policy statements a local authority may consult anyone who, in the opinion of the local authority, may be affected by matters raised in submissions.

#### **D. IMPROVING RESOURCE CONSENT PROCESSES**

1. Enable internet and e-mail alternatives for service and notification of applications and associated procedures including exchanging submission and appeal notices and evidence.
2. Reduce the time section 274 parties have to notify their intention to join proceedings from 30 working days to 10 working days.
3. Prevent section 274 parties from continuing proceedings should the party to which they have joined settle their appeal.

4. Clarify section 113 so that it only applies to decisions under section 104 that were notified. Delete the words “of fact” and replace with “principles that were in contention”.
5. Remove the word “provisions of” from section 104(1)(b). Amend section 104(1)(b) so that decision-makers are required only to have regard to the objectives and policies of a NPS and RPA, and the issues, policies and rules of plans.
6. Enable councils to adopt the applicant’s AEE in reports produced under section 42A and section 113 without requiring peer-review. Make it clear that there is no obligation to seek a peer review.
7. Prohibit blanket tree protection provisions making it clear that this does not apply to scheduled trees. Bring this provision into effect one-year after enactment.
8. Remove the presumption of notification.
9. Repeal the provisions that would provide the ability to challenge notification decisions to the Environment Court.
10. If any request for further information remains outstanding for more than 12 months, that application should lapse unless an objection or an appeal is extant or the council approves otherwise.
11. Amend section 92 (and make consequential amendments to sections 37 and 88) of the RMA to:
  - i. Allow local authorities only one opportunity to request further information.
  - ii. Provide the applicant with the choice of declining or accepting the request. If the applicant declines the request the council must continue to process the application.
  - iii. Provide the applicant with the choice of whether or not to ‘stop the clock’ on processing time – i.e. remove the power of local authorities to waive or extend time limits in relation to requests for further information.

## **E. IMPROVING NATIONAL INSTRUMENTS**

1. Require that councils should insert objectives and policies from a national policy statement into their plans and policy statements without going through the schedule 1 process.
2. Replace the "give effect to" test in section 75(3) with the former "not be inconsistent with".
3. Provide the Minister for the Environment with explicit powers to cancel, postpone, and restart a national policy statement development process that has already commenced at any time before it has been gazetted.

4. Limit appeals to plan changes required by a national policy statement to questions of law only.
5. Require that consent authorities must have regard to the relevant provisions of national environmental standards when making decisions on resource consents under section 104.
6. Amend provisions in the RMA that set out restrictions on the use of land, the coastal marine area, beds of lakes and rivers, water and discharges (sections 9 and 11-14) to reflect that activities may be allowed if explicitly provided for in the provisions of a national environmental standard.
7. Provide consent authorities with an explicit power to issue certificates of compliance under section 139 where activities comply with the provisions of a national environmental standard.
8. Provide the Minister for the Environment with the power to make minor amendments and corrections to any national environmental standard that is already in force.
9. Clarify that councils can remove redundant provisions from plans following the promulgation of a national environmental standard without going through the schedule 1 process.
10. Improve call-in provisions as follows:
  - i. Amend section 145(4) to state the closing date for serving submissions must be no earlier than 20 working days.
  - ii. Add a new s147(1)(d) to enable the board of inquiry to commission an independent report on the matters that have been called in. This should be able to be considered at the hearing by the board and pre circulated to parties as would occur under section 42A(3).
  - iii. Amend section 147 to allow the Board of Inquiry to increase the time between the closing date of submissions and the start the hearing to up to 80 days.
  - iv. Amend section 148(4) to state that any comments must be of minor and technical nature and that there is no opportunity to challenge the key findings or rationale.
  - v. Provide limited liability for Board members as per Schedule One of the Waitaki Act or section 261(1) of the RMA.
  - vi. Change the appointment process to enable the Minister to make appointments to a board of inquiry from a pre-approved pool of candidates and to enable the Minister to make additional appointments of a member or members to represent the local interests in each instance.

- viii. Amend section 141B(1) to allow the Minister to call-in a matter and direct it down the Significant Projects Path.
- ix. Require that the board must have *particular regard* to the matters in section 147(4)(b) and add the new matters:
  - (iii) *the significance of the proposal to the nation; and*
  - (iv) *the matters set out in section 104.*
- x. Delete section 150AA(6)(a) and amend (b) and (c) to read:
  - (a) *have particular regard to the significance of the proposal to the nation; and*
  - (b) *have particular regard to the matters set out in section 104.*
- xii. Amend section 141A(2)(a) so the Minister is not required to consider the matters in section 141(3)(b) in relation to a decision to lodge a Crown Submission.

## **F. IMPROVING ENFORCMENT AND COMPLIANCE**

- 1. Enable and clarify that notices can be served via email as can the exchange of written evidence.
- 2. The information that an enforcement officer can direct a person suspected of committing an offence to supply is to include date of birth.
- 3. Extend the general duty to avoid, remedy or mitigate adverse effects under section 17 to cover existing buildings under section 10B (corrects a previous omission).
- 4. Raise the maximum fine for committing an offence from \$200,000 to \$600,000 for corporate offenders and \$300,000 for offenders who are private individuals.
- 5. Give Environment Court powers to review, cancel or amend a resource consent where it is connected to an offence be committed.
- 6. Remove the immunity of Crown organisations from enforcement action, and amend Crown Organisations (Criminal Liability) Act 2002 be amended to incorporate reference to offences committed under the RMA.

## **G. IMPROVING DECISION-MAKING PROCESSES**

- 1. Introduce the ability for applicants to elect hearings before independent commissioners.
- 2. Remove the Minister of Conservation's right of decision on coastal consents.

3. Increase the filing fee for lodging appeals with the Environment Court to \$500 and consider the introduction of hearing charges on appeals (for example daily hearing fees and costs recovery for transcripts).
4. Remove the automatic ability to appeal to the High Court – require applicants to seek leave from the Court to apply.

## **H. MEASURES TO IMPROVE WORKABILITY**

1. Extend limited notification provisions to designations.
2. Amend section 221(2) to allow authentication of consent notices within the RMA (currently refers to repealed LGA provision) by way of a signature of person or persons authorised by the consent authority.
3. Minor and Technical:
  - i. Definition of BOI in s.2 amended to remove reference to approval of resource consents (scope of powers much wider than that and defined in other parts of the RMA).
  - ii. Amend definition of 'public notice' to include publication via the internet.
  - iii. Remove redundant powers of the Minister for the Environment in section 24(g) in respect of the Hazards Control Commission (does not exist).
  - iv. Delete references to repealed Schedule 2 of RMA in sections 77(4) and 230(1).
  - v. Replace references throughout the RMA to District Land Registrar and Registrar of Deeds and with Registrar General of Lands.
  - vi. Remove references to repealed Survey Act 1986 and replace with Cadastral Survey Act 2002.
  - vii. Replace the word "local" with "territorial" in clause 4(4) and 5(1A) in Schedule One so that it correctly legally describes the type of authority intended to comply.
  - viii. Include reference to regional policy statements in clause 10(4) of Schedule One (decisions to amend plans).
  - ix. Replace references to Noxious Plants Act and Agricultural Pests Destruction Act with Biosecurity Act 1993 wherever they appear.