

Technical Advisory Group Options Check Sheet/Meeting Minutes

8 & 9 January 2009

Streamlining consent processes (including dealing with trade competition)

#	Option	Initial View		Phase of reform		Comment
		Yes	No	I	II	
1	Reinstate the Environment Court's power to award security for costs.	√		√		
2	Provide for 'Priority Consenting' of major infrastructure projects by an EPA					
3	Requirements for the EPA to process consent applications for priority projects within 9 months.					
4	An independent complaints mechanism including a power to discount or waive consent-processing fees for late consents.					
5	Remove the (Conservation) ministerial veto on coastal consents.	√		√		Subject to consent category (ie. Streamlining plan making processes / Reducing Plan Complexity, page 3, number 11) – later consideration
6	Prohibiting objections with respect to trade competition.					
7	New powers to reject vexatious and frivolous objections.					

8	Establish a priority consenting process					
9	System of approved contractors to reduce the number of minor consents required	√		√		
10	Introduce provisions for 'licensed contractors'	√		√		
11	Enable web mail alternatives for service and notification (for consents)	√		√		
12	Introduce right for applicants and submitters to elect hearings before Commissioners (possibly could be nominated by objectors too?)	√		√		Subject to concern that in many places councils indisposed to meet further costs requested – further consideration required to address this Further discussion required on who appoints the commissioners Agreement that if independent commissioners requested, pay for the right.
13	Repeal provisions that allow appeals on notification decisions to go to the Environment Court [currently not in force – still requires Order in Council]					
14	Reverse [Remove?] presumption of notification					
15	Repeal definition of working day and rely on that contained in the Interpretation Act 1999					Action: Confirm what it says in the Interpretation Act, other Acts including Building Act, High Court, Environment Court etc – paper on consistency between these
16	Increase consent deadline for significant projects					
17	Introduce a review mechanism for financial contributions					
18	Introduce an “ombudsman” for complaints on Council's costs					
19	Allow the Environment Court to refer a consent back to the council if the Court has determined that there is sufficient information for the consent to continue to be processed.					Requires further discussion
20	Allow councils discretion to determine whether a hearing is necessary based on the content of submissions and outcome of any pre-hearing meetings.					

21	Limit the consideration of Part II matters to matters of control or discretion for Controlled Activities and Restricted Discretionary Activities.					
22	Allow the applicant's Assessment of Environmental Effects to be "adopted" by the consent authority to avoid the consent authority having to repeat material that it is in agreement with in subsequent reports.	√		√		Shall be no obligation
23	Establish a central processing authority to receive and process applications for priority projects.					
24	Set parameters around the use of s.37 (ability of councils to extend or waive compliance with timeframes) to limit its use to justifiable circumstances only.					
25	Strengthen s.88(3) (the ability to return incomplete resource consent applications to applicants) and amend and clarify s.92 (further information requests) to reduce reliance on, and use of, further information requests to rectify deficient applications or delay determination of resource consent applications.					
26	Allow local government to make decisions regarding notification according to their discretion					
27	New provisions that mean if a consent aligns with the plan and environmental effects on the environment and community are minor there is no need to notification [appears to remove need for written approvals].					
28	Restrict the need to obtain the written approval of affected parties to discretionary and non-complying activities.					
29	Appeals to planning commissioners for less significant appeals and disputes (with no further appeal rights). Full Environment Court limited to more significant appeals.					
30	Introduce a new 'simple applications' category of consent with reduced AEE and section 104 requirements.					

31	Restrict the need to service limited-notified applications to those persons who have not already provided written permission.					
32	Introduce overall time frames for consent processes rather than sets of 'individual step' timeframes.					
33	Use a 'producer statement' concept (as per the Building Act) as a way of licensing contractors to undertake common activities that would require a consent.					
34	Prohibit the use section 37 and 37A to extend consent processing timeframes					
35	Limited the consent classes to controlled (but with the ability to decline) OR restricted discretionary, and discretionary.					
36	Reduce the period in which submissions to notified consents can be lodged to 10 days for limited notified consents, and 15 days for notified consents.					
37	Specify that a resource consent application can be lodged on-line.					
38	Remove presumption that all discretionary activities should be notified.					
39	Separate quasi-judicial role of councils and councilors from the legislative (plan making) role and require decisions on prosecution and resource consents to be made by independent decision-makers.					
40	Make a clear distinction between affected and interested parties.					
41	Require inclusion of local decision-makers on boards of called-in applications.					
42	Introduce a new consent.					

43	Reduce section 104 assessment and remove formal reporting when approval of neighbours is given. Reduce reporting/decision requirements for non-notified applications.					
44	Enable limited notification when effects are more than minor but localized.					
45	Provide councils with discretion to approve minor (e.g. 10%) non-compliance with rules without needing to undertake formal assessment or report, or provide ability to waive a consent requirement for a technical/minimal breach.					
46	Legislate a presumption for non-notification on controlled/restricted discretionary activities.					
47	Limit the right of third party appeals to those directly affected.					
48	Introduce an overall consent timeframe rather than one broken into steps.					
49	Amend section 274 so that if a non-submitter wishes to get involved they have to establish that there is a direct environmental effect on them.					
50	Introduce a standardized set of steps for processing applications to “re-consent” activities for which existing consents are about to expire – for example limited or non-notification, reduced information requirements etc.					
51	Extend timeframe for a decision on non-notified applications to 30 working days.					
52	Amend section 104 to expressly preclude the consideration of alternatives in terms of efficiency or financial viability, and also matters related to the Electricity Act.					
53	Limit the right to make a submission to “all persons who, in the opinion of the consent authority, may be adversely affects by the activity.”					

54	Amend the RMA so that coastal occupancy permits for port companies are indefinite, for so long as the space continues to be used for port facilities or port operations.					
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Streamlining plan making processes / Reducing Plan Complexity

#	Option	Initial View		Phase of reform		Comment
		Yes	No	I	II	
1	Reducing the number of resource consent categories from five to three					
2	Encourage regional and district councils to develop a single / combined plan					
3	Encourage greater use of the Internet (for notification, lodgement of submissions, and exchanging notices and evidence for example)	√		√		
4	Enable web mail alternatives for service and notification (for plans and plan changes)	√		√		
5	Abolish the right of appeal on Plan matters					
6	Extend the period under which consultation is conducted under other enactments may be used for RMA plan purposes from 12 months to 36 months (cl.3 Schedule One).	√		√		
7	Remove the requirement for local authorities to summarise and notify a summary of submissions.					

8	Remove requirement to decisions on individual submission points					
9	Allow local authority initiated plan changes to be subject to full range of ministerial interventions	√		√		
10	Remove the ability to appeal against, and seek the withdrawal of, entire plans.	√		√		
11	Remove Restricted Coastal Activities as a separate class / process of resource consent and provide transitional provisions that make them Discretionary Activities until such time as plans are amended. This will require plans to be amended within 2 years.					
12	Regulations to standardise the structure, format and expression of plans and plan provisions.					
13	Regulations to introduce a set of 'national definitions' to be used across NPSs, NESs and RMA plans.					
14	Provide the Minister for the Environment with powers to produce Resource Management Orders (a form of Minister initiated plan change to deal with issues of national, regional or local significance that local authorities are struggling to resolve).					
15	Simplify s.32 evaluation requirements to reduce the repetitiveness of the process and focus on necessity and consequences of implementation (which may include financial consequences).					
16	Remove obligation to review plans every 10 years - leave to discretion of councils and 'rolling reviews'					
17	Replace the mandatory need to review a plan every 10 years with a requirement that every 5 years a council must assess (aligned with plan effectiveness reports under s.35) whether there is a need to review a plan.					

18	Allow councils to modify plan changes throughout their development (rather than having to modify them through decisions on submissions).					
19	Align Schedule 1 clause 16 with clause 20A to enable plan makers some discretion to correcting policy statements and plans					
20	Restrict further submissions to plan reviews only.					
21	A national lexicon of plan terminology					
22	Clarify that an electronic version of an RMA policy statement or plan can be the official version of the plan.					
23	Introduce an ability to 'link' private plan change applications with upcoming plan reviews (that is delay processing the application and have it considered alongside, or be incorporated into, a review of the plan instead)					
24	Restrict role of Environment Court to consideration of point of law, not policy, in regard to plan appeals.					
25	Restrict the ability for appeals to be heard <i>de novo</i> in relation to plans.					
26	Remove the requirement for the Minister of Conservation to approve regional coastal plans.					
27	Allow private plan changes, consents, and notices of requirement pertaining to the same project to be processed and heard together.					
28	Greater weight should be given to proposed regional policy statements					
29	Explicitly recognize forestry in all forms, including plantation forestry, as environmentally benign.					
30	Constrain use of full discretionary status.					

31	Create a standardized electronic format for all regional and district plans and maps, and make them accessible through a centralized portal.					
32	Provide councils with greater powers to reject applications for private plan changes – especially within a short time of notification of a new plan.					
33	Remove ability for de novo hearings on plans and policy statements – provide the Court with a review role and have the Court refer the outcome of appeals back to the Council for further work rather than make decisions on policy.					
34	Remove the Minister of Conservation's approval role of Regional Coastal Plans – conservancies that advise the Minister have difficulty in separating the approval role from their role as DOC officers.					

Improving and strengthening central government direction

#	Option	Initial View		Phase of reform		Comment
		Yes	No	I	II	
1	Enhance the weight given to matters of national interest in call-ins ,including the reasons for call-in (for both Board of Inquiry and Environment Court processes) from “have regard to” to “have particular regard to”.					
2	Provide that plans and plan changes have no immediate effect [as they do upon notification currently] unless certified by the Minister or the Environment Court..					
3	Repeal provisions relating to further submissions					
4	Remove impediamentia to exercise of call in powers					
5	Lift the statutory cap on Environment Court judges	√		√		
6	Allow councils to make their plans consistent with national policy statement (NPS) objectives and policies, and to develop rules to give effect to NPS without having to undergo the full public consultation process.					
7	Allow councils to modify their plans to be consistent with NES through a truncated plan change process.					

8	Clarify and improve linkages between NESs and other parts of the RMA (Part 3, certificates of compliance and enforcement provisions for example)					
9	Allow for minor amendments to NES where changes are within the original policy intent.					
10	Enable councils to issue Certificates of Compliance specifically for NES.					
11	Make it explicit that local authorities are responsible for monitoring and enforcing compliance with NES.					
12	Provide the Minister for the Environment with powers to withdraw a proposed NPS or NES at any time prior to it coming into effect.					
13	Develop a strategy and complementary review and monitoring programme to guide government intervention in RMA processes.					
14	Increase the weight decision makers are required to give to Whole of Government (Crown) submissions					
15	Clarification of the role of local authorities when consents that would otherwise be responsible for a called-in. Are they to be advocates on behalf of their community, advisers to the Minister, or administrators?					
16	Develop a NPS and NES to standardize treatment and permit routine forestry activities.					
17	Gazette areas where local roles will over-ride plantation forestry NES provisions (high risk erosion areas, outstanding natural landscapes etc).					
18	Develop nationally acceptable tools and methodologies for valuing and quantifying the costs and benefits of environmental services.					

19	Introduce clearer criteria for when intervention powers will be used.					
20	Require developers of larger new subdivisions to allocate space for wireless infrastructure.					
21	Allow wireless operators to put equipment on existing poles as of right.					
22	Develop a NES for mobile communications infrastructure					
23	Increase the height limit for telecommunication towers					
24	Introduce a set of nationally consistent standards including: <ul style="list-style-type: none"> - Definitions - Coastal erosion standards - Sediment control - Earthworks - Building in the flood plain - Soil contamination, assessment and mitigation - Noise control - Assessment and mitigation of effects on natural landscapes 					
25	Develop a NES for the effects of aquaculture.					
26	Develop a NES for aggregate supply.					
27	Develop NPS and NES for each form of major infrastructure that is of critical national importance.					
28	Central government agencies should provide adequate support and guidance to councils to promote high quality second generation plans.					
29	Amend section 104 to require consent authorities to have particular regard to whole-of-government submissions.					

30	Develop a NPS for promoting sustainable agriculture.					
31	Limit the number of zones that can be created nationally.					
32	Standardize format of regional plans and policy statements and district plan.					
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Improving the interface between the RMA and other legislation

#	Option	Initial View		Phase of reform		Comment
		Yes	No	I	II	
1	Consolidate all contributions into LGA (single regime in LGA policies).					
2	Introduce statutory timeframe for DOC decision making on concessions.					
3	Provide for integrated consent and concession process, where applications are lodged simultaneously					
4	Initiate wider review of RMA / LGA charging principles					
5	Improve the relationship and interface between the Hazardous Substances and New Organisms Act and the RMA.					
6	Improve the relationship and interface between the Building Act and the RMA.					
7	Improve the relationship and interface between the Forests Act and the RMA.					

8	Improve the relationship and interface between Historic Places and the RMA.					
9	Add the word "antenna" to the definition of "line" within the Telecommunications Act.					
10	Allow heritage registers to sit outside plans so that they can be updated without having to undergo full plan change processes.					
11	Remove the conflict between the Health Act and the RMA ("nuisance" v "noxious").					
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Complementary Measures (Enforcement, Court related matters, Compensation)

#	Option	Initial View		Phase of reform		Comment
		Yes	No	I	II	
1	Increase compensation payable for land acquisition					
2	Reduce the time s.274 parties have to notify their intention from 30 working days to 10 working days.	√		√		Recommend 15 days for parity can be a case for less
3	Enable web mail alternatives for service and notification (for appeals and Enforcement notices?)	√		√		

4	Enhance compensation payments.					
5	Enable enforcement action to be taken against Crown Organisations (as defined in the Crown Organisations (Criminal Liability) Act 2002).					
6	Raise the maximum level of penalties for RMA offences.					
7	Raise the penalties for infringement notices.					

8	Make contravention of a resource consent a specific offence.					
9	Enable local authorities to charge non-consent holders for monitoring and enforcement work undertaken to ensure compliance.					
10	Limiting appeals in the Environment Court (could include removing hearings being heard de novo or limiting some appeals to points of law and process only).					
11	Prevent appellants from presenting their cases via the media.					
12	Clarify which costs are eligible and ineligible for cost recovery from consent holders.					
13	Enable landowners/operators with a proven record of responsible management to move towards audited self management and reporting based on compliance with defensible industry codes of practice.					
14	Create a centralized and publicly accessible database on biodiversity, rivers, pests and weeds.					
15	Feed output of centralized monitoring programmes into state of the environment reporting.					
16	Clarify that council monitoring requirements are tagged to the effectiveness and not the efficiency of plans.					
17	Make Government/Crown land and buildings available for siting wireless communications infrastructure (including antennae).					
18	Give precedence status to decisions of the Environment Court for future cases.					
19	Enable regional and national infrastructure providers to recover the costs of the direct cumulative effects of third party activities on infrastructure performance.					

20	Allow search warrants to be excised in the presence of a JP if no constable is available					
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Part II Matters / Treaty of Waitangi / Definitions

#	Option	Initial View		Phase of reform		Comment
		Yes	No	I	II	
1	Replace Treaty principles with specific requirements for iwi consultation.					
2	Remove references to the Treaty					
3	Re-define "Environment"					
4	Amend section 6(b) to read: "The protection of outstanding natural features and landscapes <u>identified in a district plan or proposed plan</u> from inappropriate subdivision, use and development."					
5	Remove social and economic matters from the definition of environment and place them in sections 6 and 7. Matters of importance can be managed through NPSs.					
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Other matters from meeting

#	Option	Initial View		Phase of reform		Comment
		Yes	No	I	II	
1	Section 113 clarified so decisions under section 104 (that were notified). Delete words “of fact” replace with “principle issues that were in contention”	√		√		Action [Withheld under Section 9(a) of the Official Information Act]
2	Section 104 removal of the word “provisions”	√				
3	Enable councils to accept AEE without requiring peer review – no obligation of authority to seek peer review	√		√		
4	Introduce a standing requirement so that where a submitter or appellant is a trade competitor they re required to establish that they are directly adversely environmentally affected by the proposal in question.					
5	Limit the requirement to monitor plans to effectiveness only (i.e. remove the requirement to monitor efficiency)					
6	Increase the 5 year default lapsing period for designations to 10 years					
7	Increase the 5 year default lapsing period for designations to 15 years					

8	Increase the 5 year default lapsing period for designations to 20 years					
9	Further clarification of the roles of region and territorial authorities around the management of contaminated land					
10	'Generous' compensation of persons whose land is taken for infrastructure development					
11	Introduce a 'depositions hearing' stage in the Environment Court to screen out frivolous appeals and trade competition appeals					
12	Set Coastal Occupation charges under the LGA not the RMA.					
13	Require appellants to settle appeals within two years of lodgement - if they do not, the appeal lapses.					
14	Reduce the period in which appeals can be lodged to 10 working days					
15	Provide less weight to submissions where submitters are complainants in regard to reverse sensitivity issues					
16	Raising the maximum fine penalty to over \$300,000					
17	Allow enforcement orders to change or cancel a resource consent in cases of repeat non-compliance.					
18	A specific police power to arrest for repeat offenders					
19	Allow for the removal of non-complying structures where ownership can not be determined.					
20	Remove the requirement for exhibits in prosecutions to be held in police custody.					
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