Resource Management (Simplifying and Streamlining) Amendment Bill

KEY CONTENTIOUS ISSUES (version 1)

1. REDUCING APPEAL RIGHTS ON PLANS

The Bill amends the RMA so that on a plan matter a party can only appeal a Council's decision on a point of law. This means that a party cannot contest the merits of a Council's decision on a plan matter in the Environment Court.

However, a party can apply to the Environment Court to extend the scope of any appeal on a plan matter if:

(a) the decision has a significant impact on existing property rights;
(b) fails to give effect to part II of the RMA; or
(c) is unclear in meaning or effect.

Refer to Clause 148 and 132 of the Bill and Section 280A and Clause 14 of Schedule 1 of the Act.

This amendment will reduce public participation in plan appeals. It will lead to poor decisions because there is no opportunity to test evidence put before the Council. It may lead to a demand for cross examination at Council hearings and a lot of interlocutory proceedings. Oppose and seek removal from Bill.

2. REMOVING NON COMPLYING ACTIVITY STATUS

The Bill removes the non complying activity classification from the RMA. It means each local authority will have to undertake a plan change or variation to remove non complying activity status from the plan and replace it with another activity status, with any associated changes in assessment criteria.

Three years after the commencement of the Act, activities still referred to as non-complying, will automatically be treated as references to a discretionary activities.

Refer to Clause 147 and 152 of the Bill.

It is not necessary to remove non complying activity status from the Bill. This will result in an enormous amount of time being spent on changes and variations to plans to remove non complying status. The costs of all the plan changes has not been calculated Oppose and seek removal from Bill.

3. PROVISIONS OF PROPOSED PLANS HAVING NO IMMEDIATE EFFECT

The Bill removes the requirement that rules in proposed plans have immediate effect by removing all references to proposed plans in sections 9, 11, 12, 13, 14 and 15. The Bill also states that a rule in a proposed plan will not have legal effect until:

(a) the Council has notified its decision on submissions;
(b) the time for making submissions or lodging appeals has expired and
    i. no submissions in opposition have been made or appeals have been lodged;
    ii. all submissions in opposition and appeals have been determined;
    iii. all submissions in opposition have been withdrawn and all appeals withdrawn or dismissed.
(c) the council makes a resolution before the plan is notified that it will be immediately operative.

A proposed rule will be immediately operative if:

(a) from the date it is publicly notified, the rule protects water, air, soil, SNA's or historic heritage.
(b) the Council applies to the Environment Court to have the rule exempt from not having legal effect and the Court grants the application.
(c) the Council rescinds its resolution above that a rule has legal effect immediately.

Until the time that rules have legal effect, applicants will be able to undertake activities that are contrary to the proposed rules.

Refer to Clauses 6, 9, 10, 11, 12, 13, 16, 86A and 86B of the Bill and Sections 9, 11, 12, 13, 14, 15, 19 and 20 of the Act.

It appears from these sections that rules in proposed plans will not have legal effect until the above provisions apply. This may lead to "gold rush" applications seeking to obtain consent before a proposed plan becomes operative. However, it is very difficult to understand the intention of the provisions as they are badly drafted and are full of conflicting provisions. Oppose and seek removal from Bill.

4. REMOVING THE ABILITY OF A PERSON REPRESENTING A RELEVANT ASPECT OF THE PUBLIC INTEREST TO JOIN PROCEEDINGS UNDER S 274

The Bill removes the ability of a person 'representing a relevant aspect of the public interest' to become a party to appeals. This would eliminate community groups who did not submit in the first instance from joining an appeal.

The Bill also shortens the timeframe for joining an appeal from 30 days to 15 working days.

Refer to Clause 131 of the Bill and Section 274 of the Act.

This amendment will reduce public participation. It will lead to community groups having to submit on more notified matters, and being excluded from proceedings if they don't. Oppose and seek removal from Bill.

5. REMOVAL OF BLANKET TREE PROTECTION

The Bill removes any rule in a plan that provides for the protection of any tree, or group of trees, unless they are listed in a schedule or part of a reserve. This comes into effect two years after the Bill becomes law.

The Bill also prohibits the creation of a rule in a plan that provides for the protection of any tree, or group of trees, in an urban environment, unless specifically identified, located within a reserve, or subject to a conservation management plan.

Refer to Clause 52 and 151 of the Bill and Section 76(4A) of the Act.

The scope of this amendment is not entirely clear. Does it only apply to urban trees? Does it apply to native forest remnant areas? What about the status of coastal pohutukawa trees? Further consideration should be given to the value of trees in urban environments and the impact of removing them.

6. SECURITY FOR COSTS

The Bill removes a prohibition on security of costs so that the Court can impose security of costs on parties to an appeal. This means that if the Court sees fit, it may require a party to an appeal to pay a certain amount of money first, as security for any future award of costs against that party.

Refer to Clause 133 of the Bill and Section 284A of the Act.

This amendment may result in less participation by the public in Court proceedings. However, an order for security of costs is not automatic and would only apply in some situations. There may be merit in this proposal but further review of case law on security of costs is necessary to ensure the criteria for security of costs is ok.

7. REVERSING THE PRESUMPTION ON NOTIFICATION

The Bill reverses the presumption on notification so that instead of there being a presumption in favour of notification, there is now a presumption in favour of non notification.

Refer to Clauses 93, 93A, 94, 94AA, 94AAB, 94AAC, 94AAD, 94AAE, 94A and 95 of the Bill and Sections 93 and 94 of the Act.

These amendments appear to represent a symbolic change to the Act. It is doubtful that these amendments will result in any practical difference to notification but further analysis is required.

8. REMOVING DOC'S DECISION MAKING POWER OVER RESTRICTED COASTAL ACTIVITIES

The Bill removes the ability for the Minister of Conservation to make decisions on applications for coastal permits in relation to restricted coastal activities.

The Regional Council will now make the decision.

Refer to Clause 20 of the Bill and Section 28 of the Act.

This amendment will give Regional Councils the ability to permanently alienate areas of the coastal marine environment. However, presently Regional Council's already make many of the decisions relating to coastal structures, e.g. wharves and jetties. The Minister's ability to make a decision is already very limited. Practically, this amendment may not have much effect. However it will be of concern to iwi who may end up as owners or co-managers of such areas after foreshore and seabed reform.

Note: this advice document is work in progress and may change as more analysis is done.