Q&A: Resource Legislation Amendment Bill 2015

1. **What are the four most significant changes in the Bill?**

The four most significant changes in the Resource Legislation Amendment Bill are:

- Requiring councils to follow national planning templates that will improve the consistency and reduce the complexity of plans. This will substantially reduce the volume of planning documents across the country because most provisions will be standardised;
- Faster and more flexible planning processes. The Bill provides three different tracks by which a council can produce a plan: the existing track that now has tighter timelines, a new collaborative track, and a streamlined track;
- Reduced requirements for consents. The Bill eliminates the need for thousands of minor consents by giving councils discretion to not require them, by introducing a new 10-day fast-track for simple consents and by removing requirements for consents where they are already required under other Acts; and
- Stronger national direction around requiring provision for growth like housing, and provision for national regulations to address issues like dairy stock in rivers and other regulations to limit extent of RMA application.

2. **How do these proposals vary from those proposed but not able to be introduced in August 2013?**

The proposals to change sections six and seven have been pulled back. The only change proceeding is that for managing significant risks from natural hazards.

- Changes have been made to the proposed plan making processes including:
    - Amending the standard planning process (Schedule 1) to enable limited notification of plan changes, and require the Minister's approval to go beyond the two-year timeframe to release decisions on plans and plan changes;
    - Broadening the freshwater collaborative process so that it can be applied to all plan-making processes;
    - Creating the new streamlined planning process which will allow councils to apply to the Minister for an alternative planning process for specific issues;
    - Removing the proposal for a new Joint Council Planning Process, the Joint Planning Agreement and Council Planning Agreement; and
    - Removing the requirement for a single amalgamated plan by district or other agreed area and replacing it with electronic delivery of the National Planning Template.

There are also a number of new proposals aimed at:

- Reducing duplication or aligning the RMA and other pieces of legislation;
- Making the costs for RMA processes more transparent for users by:
    - Requiring councils to fix the fees for processing certain consent applications
    - Set a fixed remuneration for hearing panels
    - Set a fixed fee for hearings
- Reducing the need for unnecessary consents by removing the requirement to get resource consent for boundary infringements with neighbour's approval;
- Specifying clearer rights and responsibilities in consent processes by e.g. limiting opportunistic and inappropriate appeals; and
- Allowing greater and wider use of electronic and web-based processes for public notices and servicing of documents.

The reforms also propose the creation of a new regulation making power that will enable the Minister for the Environment to make specific activities permitted and limit council rules which unreasonably restrict land use for residential use.

3. How will the RMA changes speed up the plan making process?

Current plan-making processes are cumbersome and expensive. The current Act provides for only one way to write a plan, which typically takes six years on average. In the case of the Auckland Unitary Plan and the Christchurch District Plan review the Government has to put in place special legislation to speed up the planning process.

The Bill improves the current plan making process in three ways:

- Councils will need to seek the approval of Minister for the Environment to extend the two-year time limit (from date of notification) in which they are required to make decisions on a proposed plan or plan change;
- When it is easy to identify who is directly affected by a plan change, councils will be able to limit notification to only those people who are directly affected;
- Provide clarification that councils can give effect to a proposed Regional Policy Statement when it is developed as part of a combined plan.

The Bill also provides two alternative plan making routes. First, a collaborative planning approach based on the Land and Water Forum where different interests are encouraged to work together on finding resource planning solutions. A second alternative is a streamlined planning process where the council and Government agree on a specially tailored approach to specific local conditions.

4. How will the reforms reduce costs and delays in resource consenting?

The Bill addresses frustrations over minor consents costing too much and taking too much time. A number of consenting proposals in the Bill will allow councils to scale consenting processes to better match the scale of the application. These proposals will:

- Treat boundary activities as permitted where they have been agreed to by the relevant neighbours;
- Allow councils to consider certain activities as permitted where the effects are no different than if there wasn't a rule breach and where the effects on any persons are considered no more than minor;
- Introduce a 10 working day time limit for simple applications.

The reforms will make the costs of resource consents more transparent. The Bill enables regulations to be made that require consent authorities to fix the fees for processing certain consent applications, and set a fixed remuneration for hearing panels and a fixed fee for hearings. This will give greater certainty to applicants.

5. Why do we need stronger national direction?

The RMA is highly devolved to local councils for its delivery. Variation between different council plans across the country can be confusing, so a key feature of this set of reforms is stronger national direction. More national direction will create greater consistency across plans and set clear guidance for councils.

It does not make sense for a small country of four and a half million people to have each of the councils reinventing the wheel. For example, we have over 50 different definitions of how to measure the height of a building.

6. **How will the management of natural hazards improve as a result of the reforms?**

Adding the management of significant risks from natural hazards to section six of the RMA will ensure that all decision-makers take a risk-based approach to managing natural hazards when making resource management decisions, and deliver on the recommendations of the Canterbury Earthquake Royal Commission.

7. **What will the national planning template do?**

The national planning template will reduce the complexity of plans. It will set out the structure and format of resource management plans and policy statements, and can include consistent content on matters that require national direction or national consistency. The structure and format of plans will be the same across the country. This will reduce confusion and make plans easier and cheaper to use and review. It will also significantly reduce the volume of plans that nationally amount to over 80,000 pages – or 10 metres high – of planning documents.

8. **What do the Minister's new regulation making powers do?**

The Bill enables national regulations for fencing stock out of water bodies.

It will enable regulations to be made that could:

- Permit specified land uses;
- Prohibit and require removal of council planning provisions that duplicate other legislation or impose unnecessary restrictions on land use for residential use. This will enable constraints to be placed on councils' telling home owners things like which way they must face their living areas or overriding the Building Act on insulation requirements.

9. **What do the reforms mean for the Environment Court and for people seeking to challenge decisions?**

The Bill introduces a number of improvements to Environmental Court processes to support efficient and speedy resolution of appeals. This will mean that the Court can require people to participate in alternative dispute resolution activities and judicial conferences first, rather than go straight an Environment Court hearing. The matters that an Environment Court judge and Environment Commissioner sitting alone are able to consider are also being increased to better utilise the Court resources.

The Bill provides the Environment Court with a new ability to allow councils to acquire land that has been rendered incapable of reasonable use by planning provisions, where those provisions are deemed to have placed an unfair and unreasonable burden on the landowner. Currently, councils have to amend planning provisions when this problem occurs. This alternative solution will encourage councils to consider the true cost of proposals, and give them the ability to pursue plan changes that are supported by the community (even if this imposes a significant cost on affected landowners).

10. **How will the reforms cut down on litigation?**

One of the key themes of the reforms is to encourage resolution of disputes as early as possible in resource management planning and consenting processes. There are two aspects to this:

- Encouraging more engagement in plan-making processes generally, rather than engagement on individual consents;
- Providing avenues for resolving disputes as early as possible, avoiding a full appeal to the Environment Court.

The reforms also ensure that consent processes are focused on the reasons resource consent is required, and that public engagement in these processes is relevant. The reforms refine the notification regime by precluding some applications from public notification and specifying who can be involved in limited notified resource consent applications.

11. How will the RMA reforms reduce duplication between the RMA and other Acts?

Some activities under the RMA also require permissions under other Acts. Getting multiple approvals can be time consuming and complex, and sometimes applicants have to provide the same information several times to different decision makers for the same activity.

The Bill addresses areas of legislative duplication in the areas of:

1. *Hazardous substances management*
   - Removing the explicit function of regional councils and territorial authorities to manage hazardous substances under the RMA, as this is already covered by the Hazardous Substances and New Organisms Act 1996 (there is no change in respect of new organisms like GMOs)

2. *The notified concession process under the Conservation Act*
   - Aligning the notified concession process under the Conservation Act 1987 with notified resource consents under the RMA at key steps

3. *Recreation reserve exchanges under the Reserves Act*
   - Creating an optional joint process of public notification, hearings and decisions for proposals that involve private plan changes and/or resource consents under the RMA and recreation reserve exchanges under the Reserves Act 1977

4. *Financial and development contributions under the Local Government Act*
   - There is currently considerable variation and overlap between how different councils charge financial and development contributions. The Bill will remove the ability for a council to charge a financial contribution under the RMA. This will make it clear that the costs of servicing new growth should be met through development contributions under the Local Government Act 2002. Consent conditions will still be able to include contributions to offset environmental effects.

The Bill also aligns processing of certain notified discretionary marine consents under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 Act (EEZ Act) with the Board of Inquiry process for Nationally Significant Proposals under the RMA. This will enable the Environmental Protection Authority (EPA) to standardise their processes.

12. What changes are proposed for the Environmental Protection Authority and Boards of Inquiry?

The RM changes will reduce Board of Inquiry costs and complexity, by providing electronic information, requiring Boards to pay attention to cost effectiveness, and changing the Board composition requirements to enable greater efficiency. The Bill also enables the EPA to provide secretarial and support services to decision-makers appointed under any Act that amends or overrides RMA processes where major hearings are held.

The Bill will also establish joint processing and decision-making under the RMA and the EEZ Act, to simplify application processes for activities which would affect both the coastal marine area and the EEZ, and reduce overall costs for all interested parties.

13. How will the RMA reforms impact New Zealand's coastal and marine space?

The Bill introduces provisions in the EEZ Act to explicitly provide for decommissioning structures once they reach the end of their productive life. This includes a requirement that owners or operators must prepare a decommissioning plan, in accordance with requirements set out in regulations.

The Bill makes a number of other changes to the EEZ Act to ensure that it can be implemented effectively and efficiently, including amendments to transitional provisions and enforcement provisions.

The Bill aligns decision making processes under the RMA and EEZ Act to provide for consistent environmental management of activities which span across the 12 nautical mile limit.

14. Will the changes to the EEZ Act so that decisions on notified marine consents are made by a Board of Inquiry compromise the independence of the decision-making process?

This change will not compromise the integrity of the environmental management regime that this Government has put in place. This proposal will improve the efficiency of the resource management system by aligning processes under the EEZ Act and the RMA. This will enable the EPA to standardise its business processes.

The Bill contains a number of criteria that will ensure that Boards have relevant expertise to help them make good decisions. These criteria are generally the same as those for nationally significant proposals under the RMA.

The current law allows decisions on a consent in the marine environment within the territorial sea to be made by an appointed Board of Inquiry (as occurred in the King Salmon case in the Marlborough Sounds). It is difficult to argue that it is quite appropriate for a decision on an oil platform in the territorial sea to be determined by a Board of Inquiry but not for the same platform in the EEZ.

15. What changes will be made to the Public Works Act?

Changes to the Public Works Act will provide easier and fairer compensation for property owners whose land is required for important infrastructure. The Public Works Act 1981 (PWA) allows the Crown to acquire land for public works, either by agreement with the owner or by compulsory purchase. It also outlines what compensation can be paid to the landowner. Landowners can receive compensation for the:

1. Market value of the property acquired under the PWA;
2. Disruption, interference and other inconveniences (known as a solatium), when it is the landowner's main residence being acquired.

The solatium has not been increased from $2000 since it was introduced in 1975. The reforms will increase the solatium, up to a maximum of $50,000. The new provisions also provide an incentive for such cases to be settled more quickly.

16. How will the reforms modernise RMA processes?

There have been significant advances in technology since the RMA was introduced in 1991. The way councils notify proposals and service documents for resource management processes (in lengthy newspaper ads and by sending copies in the post) is not aligned with current technology.

The reforms will bring the RMA into line with how New Zealanders work now, by:

- Introducing electronic public notification and servicing of documents;
- Providing for all plans to be made easily accessible and searchable online; and
- Requiring all RMA public notices to be clear and concise and made available on publicly accessible websites. Only summaries of public notices and a link to the full notification will be required to be published in newspapers.

17. How will the RMA reforms impact iwi engagement in plan making?

Meaningful engagement with Maori is an important aspect of resource management. Currently iwi engagement isn't consistent across the country. Low levels of engagement between councils and iwi early in the planning process can lead to disagreements and litigation later on.

The reforms will require councils to increase consultation with iwi overall and to do this earlier in plan making processes, including inviting iwi to form an Iwi Participation Arrangement. This arrangement will set out how a council will engage and consult with iwi when developing or changing plans, and will include provision for any existing engagement processes set out under specific treaty settlement legislation.

These proposals will encourage positive working relationships between councils and Māori, and encourage councils to engage with tāngata whenua early in the plan making process.

18. What changes will be made to Heritage Protection Authorities?

Under the RMA, Heritage Protection Authorities (HPA) protect a place or structure that has special heritage qualities. HPAs are generally either a Minister of the Crown, a local authority, or Heritage New Zealand Pouhere Taonga (Heritage New Zealand). However, any group can become a body corporate and then apply to be an HPA if there is a place that they want to protect, including places that may be on private land.

The Bill amends the RMA so that body corporate HPAs are not able to put heritage orders over privately owned land. They could still do this for publicly owned (including council) land.

19. How will the RMA reforms impact freshwater management?

This reforms will:

- Create new regulation making powers to exclude stock from water bodies (as stated in the Government’s 2014 election manifesto);
- Provide for equality of treatment for those who take water for stock drinking purposes;
- Remove redundant provisions on water quality classes from the RMA, as this has been superseded by ‘national objectives framework’ in the 2014 National Policy Statement for Freshwater Management; and
- Facilitate community decision making for freshwater management through collaborative planning processes.

20. How do these reforms sit with the broader review of the Productivity Commission?

These reforms are the second phase of changes that National committed to in 2008 when first elected. They are necessary and will help make the current system work better for the short to medium term.

The Productivity Commission work is a higher level review looking at urban planning, including infrastructure, local government and environmental law. This review goes beyond the RMA and may have input into wider legislative reform. It is focused on the longer term direction of how New Zealand manages the growth of our major cities.