Cabinet Committee: Economic Growth and Infrastructure

Title of Paper: Resource Management (Simplification and Streamlining) Amendment Bill

MED Contact: [redacted], Senior Analyst, ECB, [redacted]

Issue

1 The paper seeks:

a approval to introduce the Resource Management (Simplification and Streamlining) Amendment Bill.

b minor policy decisions to resolve issues identified during the drafting of the Bill.

Ministry Comment

2 Cabinet earlier agreed to remove the Minister's powers with respect to restricted coastal activities [CAB Min (09)3/7]. The paper seeks to clarify the Minister of Conservation's role as final decision-maker for activities that occur in the coastal marine area (CMA). Currently, the Minister of Conservation is the final decision-maker for activities in the CMA that are called-in (not the Board of Inquiry or Environment Court). This clarification is consistent with Cabinet's earlier agreement.

3 The paper also seeks agreement to exclude trade competitor participation as a third party, unless they are directly affected and their involvement is not motivated by trade competition. MED's previous advice was that limiting trade competitor participation in plans or consents would remove the beneficial aspects of their participation (for example, Meridian Energy's support of Trustpower's Mahinerangi wind farm application). However, we have agreed to work further on this issue with the Ministry for the Environment during the Select Committee process.

Recommendation

4 Support the recommendations.

Cabinet Committee: **Cabinet**

Title of Paper: **Review of the Resource Management Act 1991: Phase One Proposals**

MED Contact: , Senior Analyst, ECB, 3

Issue

1 At the time of writing this briefing, we have not seen the final version of this paper because we understand it is to be submitted late. This briefing is based on our understanding of what will be in the paper.

2 The paper proposes to amend the Resource Management Act (RMA) to streamline and simplify it. The proposals would reduce the number of frivolous, vexatious and anti-competitive objections, amend the existing call-in provisions, set up an Environmental Protection Authority, and streamline the plan making and consenting process.

Ministry Comment

3 Our earlier briefing outlined concerns with some of the proposals for reducing anti-competitive behaviour, particularly those proposals that would reduce the ability for trade competitors to participate in council planning or join appeals as third parties.

a There are reasons other than trade competition for why companies participate in these processes (such as avoiding precedents being set for other areas), and their participation can be valued by rival companies. There are examples of this happening with electricity generators.

b While we still prefer that the recommendations that limit standing for trade competitors be rejected, we have agreed to work further on this issue with the Ministry for the Environment as part of the Select Committee process.

4 The paper now proposes to change the final decision-maker for notices of requirement (designations) from the requiring authority to the council. As it is the requiring authority that makes the application, there are perceptions of bias if it is also the final decision-maker.

a We consulted Telecom and Transpower, both requiring authorities, over whether the proposal could have any adverse implications. Both identified that the proposal could increase the likelihood of litigation – and consequently, delays in installing infrastructure. Councils can recommend impractical conditions on the notice of requirement, and that this happens reasonably often.

b Given the philosophy of designations was for the requiring authorities to be the decision-maker, and the potentially adverse implications of the change proposed we suggest that no change to made at this time and that

phase two includes a review of the designations process, including this proposal.

5 Our earlier concerns about infrastructure networks not been eligible for call-in have been resolved. The paper now explicitly recommends that the operational infrastructure a nationwide network utility operates be included in the factors that the Minister may have regard to when calling in an application.

Recommendation

6 Support the recommendations subject to the concerns noted above.

Cabinet Committee: **Cabinet Business Committee**

Title of Paper: **Review of the Resource Management Act 1991: Phase One Proposals**

MED Contact: [redacted] **Senior Analyst, ECB,** [redacted]

Issue

1 The paper proposes to amend the Resource Management Act (RMA) to streamline and simplify it. The proposals would reduce the number of frivolous, vexatious and anti-competitive objections, amend the existing call-in provisions, set up an Environmental Protection Authority, and streamline the plan making and consenting process.

Ministry Comment

2 Overall, we believe that the proposals will streamline and simplify the RMA. Some proposals may not be popular with particular parts of the community, but would result in potentially considerable time and cost savings for applicants and councils. We do have some specific concerns with the paper, outlined below.

Trade competition

3 The paper proposes to prohibit the consideration of trade competition effects. We consider that this would prevent councils from considering the *benefits* of trade competition. We recommend that **Recommendation 6** is rejected and that provisions regarding the consideration or non-consideration of the *effects* of trade competition under the RMA are considered in Phase 2 of the review.

4 MED still has concerns regarding the limiting of standing for trade competitors. MfE accepted MED's recommendation that trade competitors may not make a submission in opposition to a consent application or a private plan change, although it is still questionable whether it is fair to treat trade competitors differently from other submitters (**Recommendation 8**).

5 However, the ability for trade competitors to make submissions on proposal policy statements or plan changes is still limited. The paper proposes to prevent companies from making submissions on policy statements or plans if proposals in those documents affect a trade competitor, unless the company is directly affected *and* the issue on which they are submitting on does not relate to trade competition.

6 Companies often make submissions on plans to avoid precedents from being set in other areas or to preserve future opportunities (for example, Meridian Energy's interest in how the Waikato River's water is allocated). Consequently, we recommend that **Recommendation 9** is rejected.

7 We also recommend that the proposal to remove the ability for trade competitors to take part in appeals as third parties be rejected (**Recommendation 11**).

Companies can have legitimate reasons for being involved in appeals. For example, both Trustpower and Meridian joined as third parties in support of the other's windfarm proposal in Otago, again, for precedent reasons.

8 We consider that the proposals to reinstate security for costs (**Recommendation 5**) and impose punitive sanctions (**Recommendations 10 and 12 to 15**) will be a sufficient deterrent to anti-competitive behaviour. We do not consider **Recommendations 6 to 9 and 11** are necessary.

Proposals of national significance

9 The paper has changed considerably since we last briefed you. The 'significant projects path' is no longer being proposed, and instead the existing call-in provisions have been amended (**Recommendations 16-33**). The key difference is that there will no longer be a set of clear criteria on what projects would be accepted. This will not improve certainty for business.

10 While larger infrastructure projects (such as major generation proposals) would have greater confidence of having their application called-in, it is still uncertain how network infrastructure would be treated. As we advised you previously, individual components of a network may not be considered to be nationally significant, but the network as a whole would be. Examples include telecommunications networks or roading.

11 While we have no issue with the amendments to the call-in process, we preferred the threshold element of the previous 'significant projects path' proposal. We recommend that a threshold be reintroduced to the proposal, and that the threshold considers the underlying value of the project (or network) as a whole, so that extensions to existing significant projects would be included.

Improving plan development and plan change processes

12 The paper recommends that the non-complying consent category is removed within one year of enactment. MED considers that this could result in potentially significant implications, such as imposing higher costs on councils. We recommend that consideration of removing the non-complying category be delayed until Phase 2 (**Recommendation 46**).

13 We strongly support the proposal to require the Environment Court's leave to lodge appeals on merit for plans (**Recommendation 53**). Delays with plans mostly occur when they have been appealed and considerable cost savings could be achieved by adopting this recommendation.

Improving the effectiveness of compliance mechanisms

14 The paper proposes that the Crown no longer be immune from prosecution for RMA offences (**Recommendation 80**). We have not assessed our own exposure to risk. However, operational agencies would be particularly vulnerable. For example, a person may initiate prosecution against the Department of Conservation for 1080 poison operations. There could be quite significant financial implications arising from departments having to defend

themselves (including from persons with vexatious motives), and we recommend that Recommendation 80 instead be considered as part of Phase 2.

Streamlining decision-making

15 The paper proposes that the Minister of Conservation's decision-making powers for restricted coastal activities be removed (**Recommendation 87**). In our earlier briefing, we supported getting rid of restricted coastal activities, but this proposal would achieve the same result. Removing restricted coastal activities will be considered as part of Phase 2. We support Recommendation 87.

16 MED has no concerns with the other recommendations in the paper.

Recommendation

17 Support the recommendations, with the above amendments.

RMA review - process steps and timeline

Purpose

This briefing updates you on the proposed process for reviewing the Resource Management Act (RMA), with a particular focus on how the economic development view will be incorporated.

Date:	4 December 2008	**Priority:**	Medium
Security Level:	In Confidence	**File Number:**	P/013/PR004/003

Action Sought

	Action Sought	Deadline
Minister for Economic Development	Note the contents of this briefing	Cabinet meeting on 8 December

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Ministry of Economic Development
Manatū Ōhanga

File: P/013/PR004/003

4 December 2008

Minister for Economic Development

RMA review - process steps and timeline

Purpose of Report

1 This briefing updates you on the proposed process for reviewing the Resource Management Act (RMA), with a particular focus on how the economic development view will be incorporated.

Analysis

RMA review timeline

2 The RMA review is being progressed in two stages:

a The first stage, part of the Government's 100-day package, will focus on simplifying and streamlining the RMA. In particular, the focus will be on improving the process for developing or changing plans and for consenting projects.

b The second stage would follow, focusing on the more complex issues that cannot be resolved within 100-days.

3 The Minister for the Environment, Hon Dr Nick Smith, has instructed the Ministry for the Environment (MfE) to have a Bill ready for introduction on Thursday 26 February. We understand that Dr Smith wishes to announce the policy decisions in late January, which would require Cabinet's agreement to the policy on Tuesday 27 January. This Cabinet paper would need to be drafted by mid January.

4 On 8 December, Cabinet will consider a paper that outlines the timeline and process for the review ("RMA Amendments 2009 - outline of process"). The paper also seeks authorisation for the Parliamentary Counsel Office (PCO) to begin drafting the Bill.

5 We understand that Dr Smith has already established a technical advisory group. This advisory group would provide independent advice to the Minister on the

implementation of the first phase of the Government's RMA reforms. We also understand that the Minister has written to local government and iwi authorities, requesting their comments on the review by Saturday 20 December.

6 MfE will be running workshops for officials and the technical advisory group through December, and possibly early January, to discuss and agree the options for reform.

MED involvement in process

7 MED has already begun working with MfE and other agencies on both the nature of the possible reforms and the review process.

8 MED will be a member of the cross-departmental officials group that is being convened to progress the review. Other members include Treasury, the Ministry of Agriculture and Forestry (MAF), Te Puni Kokiri (TPK), the Department of Conservation (DoC) and the Department of Prime Minister and Cabinet (DPMC).

9 MED input will be led by the Energy and Environment Group, Energy and Communications Branch. A number of MED groups have an interest in the RMA, including Crown Minerals, the Economic Strategy Branch and the Ministry of Tourism. The Energy and Environment Group will ensure all of MED's interests are represented in the review process.

10 We propose to keep you informed of the review through your meetings with Energy Officials and through briefings, if required.

Ministerial involvement in the process

11 In addition to advice from a technical advisory group, we recommend that an ad hoc group of Ministers (e.g. yourself, and the Ministers of Agriculture and Forestry, Conservation, Environment, Infrastructure and Finance) meet prior to Christmas and then again in January to provide clear direction and guidance to officials. Such an ad hoc group ensures Ministers are engaged in the review before Cabinet considers the final suite of proposals in late January. You may wish to suggest this at the Cabinet meeting on Monday 8 December.

Recommended Action

For noting.

Caroline Ryder
Acting Manager, Energy and Environment Group
Energy and Communications Branch

RMA review - Likely suite of proposals

Purpose

This briefing outlines our understanding of the Resource Management Act (RMA) Phase 1 proposals that Cabinet is expected to consider on 26 January.

Date:	16 January 2009	**Priority:**	Medium
Security Level:	In Confidence	**File Number:**	P/013/PR004/003

Action Sought

	Action Sought	Deadline
Minister for Economic Development	Note contents	No deadline
Minister of Energy and Resources	Note contents	No deadline

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Ministry of Economic Development
Manatū Ōhanga

File: P/013/PR004/003

16 January 2009

Minister for Economic Development
Minister of Energy and Resources

RMA review - Likely suite of proposals

Executive Summary

This briefing updates you on our understanding of the content of the RMA (Streamlining and Simplifying) Amendment Bill. We understand that the Minister for the Enviornment will be considering a draft Cabinet Paper over the weekend in preparation for seeking policy decisions from Cabinet on 26 January.

Many RMA issues are common to network and infrastructure sectors, in particular, energy, telecommunications and transport. A similar brief to this will be provided by the Ministry's ICT Regulatory Policy Group to the Minister for Communications and IT. You may wish to consider sharing this brief with other Economic Development Ministers.

Overall, we believe that the suite of proposals will result in cost and time savings for both applicants and councils. Key features of the package include:

- Sanctions for objections motivated by trade competition
- A new 'significant projects path' for infrastructure or public works projects, or extractive industries critical for infrastructure or public works projects
- Merit appeals on plans must seek leave of the Environment Court before the consideration by the Court
- Increasing the fee for filing appeals in the Environment Court from $55 to $500.

There remain some areas of disagreement between officials and the Technical Advisory Group (TAG). Contentious issues are:

- Limiting the number of section 92 requests (requests for further information, which 'stops the clock' to one (supported by TAG)
- Increasing the maximum fine for non-compliance from $200,000 to $300,000 for individuals and $600,000 for corporate (we understand TAG have concerns)

- Deferring the removal of the Minister of Conservation's decision-making powers in the coastal marine area until Phase 2 (TAG and ourselves recommend that it be dealt with as part of Phase 1).

Good progress has been made on the policy development, and the Bill is on track to being introduced on 16 February.

RMA review - Likely suite of proposals

Purpose of Report

1 This briefing outlines our understanding of the Resource Management Act (RMA) Phase 1 proposals that Cabinet is expected to consider on 26 January.

Analysis

Progress to date

2 Since we last briefed you on the RMA, the proposals for Phase 1 of the RMA review have been extensively discussed. A draft Cabinet paper has been circulated to departments for comment, and is now being prepared for the Minister for the Environment to consider it prior to him lodging it with Cabinet Office.

Suite of proposals

3 The draft Cabinet paper is currently divided into nine parts:

a Frivolous, vexatious and anti-competitive objections

b A consent process for significant projects

c Environmental Protection Authority

d Improving plan development and change processes

e Improving resource consent processes

f Improving national instruments

g Improving the effectiveness of compliance mechanisms

h Improving decision-making processes

i Other matters to improve workability.

4 Overall, we believe that the proposals will streamline and simplify the RMA. Some proposals may not be popular with particular parts of the community, but would result in potentially considerable time and cost savings for applicants and councils (an example is increasing the cost of appeals).

5 There are a few proposals where we disagree with the Ministry for the Environment's (MfE's) recommendations. Our concerns have been passed to MfE to consider, and have been flagged in this briefing note. We will provide you with advice on the finalised Cabinet paper before it is considered by Cabinet, and we will raise any unresolved issues at that time. You may then wish to discuss those concerns with your colleagues.

Frivolous, vexatious and anti-competitive objections

6 As we have previously briefed you, reinstating security of costs would help discourage frivolous and vexatious objectives, and some trade competitors.

7 The paper also proposes to remove full standing for trade competitors in consent and plan hearings unless they are directly affected by a proposal. We have concerns about this proposal. Some trade competitors become engaged in an issue because they are concerned about precedents being set. The proposed change would prevent the likes of Meridian Energy from supporting Trustpower in the appeal against Trustpower's Mahinerangi Wind Farm. It would also have prevented Meridian from taking an interest in Waikato River water allocation, as although Meridian has no assets on that river, it might have set a precedent for how water is allocated in the Waitaki system (for example). We support removing trade competitors' ability to object to proposals unless they are directly affected.

8 The TAG recommended the ability for a judge to impose considerable (but as of yet, undefined) punitive sanctions where the judge found that a corporation had acted for reasons for trade competition. The draft Cabinet paper recommends that consideration of this proposal be deferred to Phase 2, as it may have potentially serious implications. We consider that the threat of considerable sanctions would be a strong deterrent to trade competitors, more so than other proposals in the paper.

9 MfE are aware of our concerns, and we will wait to see how they are considered. Our next briefing will update you on this issue.

A consents process for significant projects

10 The new 'significant project path' is what was previously called 'priority projects'. Eligible projects would be those that are either infrastructure or public works (this includes electricity generation and transmission, and telecommunications) or are an extractive industry that contributes to infrastructure (such as a mine, quarry or cement plant). Projects must have a capital value of at least $100 million NZD to qualify.

11 We have questioned whether the $100 million threshold would capture projects whose individual components would be unable to meet the threshold, but when considered as one project, would. Examples of infrastructure projects that could miss out, depending on how the threshold is defined, are networks such as telecommunications, radio communications, electricity transmission and roading. The Ministry of Transport has similar concerns. For example would a cellular telephone tower which costs $0.5M but is part of a national cellular network valued at $300M be a significant path project? The Bill should be clear to ensure that the interpretation is not left to the courts.

12 Eligible projects would be processed by an Environmental Protection Agency (MfE in the interim). The decisions would be made by a Board of Inquiry, which will be chaired by an Environment Court judge or a senior legal practitioner. You may recall in previous advice to you on the RMA, we advocated that a senior barrister be able to chair a Board of Inquiry.

13 Decisions would be made within nine months from when the project is notified. Appeals are restricted to points of law, and would be heard by the High Court.

Environmental Protection Authority

14 The establishment of an Environmental Protection Authority (EPA) will be largely deferred until Phase 2. However, as a transitional measure, the paper proposes to establish the EPA as a statutory office, but whose roles, functions and powers would be exercised by the Secretary for the Environment.

15 Merging the EPA and the Environmental Risk Management Authority (ERMA) will be considered as part of Phase 2.

Improving plan development and change processes

16 Most of the delays with developing and changing district and regional plans occur when the plan is appealed to the Environment Court. The Cabinet paper proposes to make appeals that seek the withdrawal of entire plans ultra vires. TAG recommended that this go further and require appellants to seek the Environment Court's leave to lodge an appeal on merit. However, the paper recommends that this proposal be considered as part of Phase 2, as officials had not had time to consider the implications.

17 Requiring the Court's leave to lodge appeals on merit would substantially cut down the number of appeals on plans. As appeals are where most of the delays on plans occur, the proposal could significantly speed up the plan-making process and reduce costs to councils and the community. However, we would expect that this proposal would be particularly controversial.

18 Other changes would help streamline the process and reduce costs for councils. For example, councils would no longer be required to summarise submissions, make decisions on every submission (but instead on themes raised by submitters) or hold a round of second submissions.

Improving resource consent processes

19 The presumption that all consents would be notified would be removed, so that only significant projects are notified. This would also reduce the number of challenges to not notify a consent application.

20 Other processes would help councils process the application more efficiently: by making greater use of the internet and email and by adopting an applicants' assessment of environmental effects report, instead of repeating work.

21 TAG recommends that councils would no longer be able to impose 'blanket tree protection rules'. We understand that this is an issue in the Auckland region. However, MfE's advice is that it is not a problem experienced in other areas. Other tools could achieve the same end – such as using the Ministerial plan change directive powers or national environmental standards – and would not require amending the RMA.

22 The most contentious issue in this section is the proposal by TAG that councils could only make one section 92 request – a request for further information that stops the clock. Officials wish to consider this issue as part of Phase 2, as many applications do not contain enough information for a council to make a decision. If the number of

section 92 requests were limited to one, the council's only alternative option might be to reject the application. We support the recommendation to defer this issue to Phase 2.

Improving national instruments

23 Changes are proposed to improve the workability of national policy statements (NPS), national environmental standards (NES) and the call-in power. The Minister for the Environment would be able to cancel, postpone or restart the development of any proposed NPS before it is gazetted. Appeals on plan changes made to 'give effect' to an NPS would be limited to points of law only. Changes would also be made to improve the linkages between NPS, NES and other RMA provisions.

Improving the effectiveness of compliance mechanisms

24 Along with measures to reduce delays in plan making and consent applications, there are measures intended to improve compliance with the RMA. The paper proposes to increase the maximum fine from $200,000 to $300,000 for individuals or to $600,000 for corporates. While this is still low by international standards, and New Zealand Courts have never imposed the full RMA fine on anybody, MfE understand that the TAG has concerns about the size of the maximum fine. This proposal may be amended in the final paper.

25 The Court would be given the power to cancel or amend consents that are held by repeat offenders.

26 The proposal that Crown organisations would no longer be immune from prosecution requires more consideration of implications, particularly for departments with operational arms. Further consideration is recommended as part of Phase 2.

Improving decision-making

27 One of the pre-Election RMA policy announcements was that the Minister of Conservation's decision-making powers for restricted coastal activities would be removed. You may recall that the Whangamata marina was a restricted coastal activity, for which the Minister of Conservation's decision was judicially reviewed.

28 TAG recommend that restricted coastal activities (the activities over which the Minister of Conservation is the decision-maker) are removed as part of Phase 1.

29 The draft paper, however, recommends that removing the Minister's powers be considered as part of Phase 2. The New Zealand Coastal Policy Statement is currently being reviewed by a Board of Inquiry, and delaying the removing of powers would allow the Board's recommendations to be considered.

30 MED and the Ministry of Tourism supports TAG's recommendation. We do not consider that MfE's argument is compelling enough to justify delaying removing the Minister's powers. We do not foresee any significant transitional issues that might result, and we are of the view that considerable time and cost savings could be made to coastal consents if the Minister's powers are removed.

31 This may be a matter that you wish to discuss with your colleagues when the paper is considered at Cabinet. We will provide you further advice on this issue when we brief you on the final Cabinet paper.

32 Despite this, the other proposals in this section are positive:

- The cost to file appeals in the Environment Court would increase from $55 to $500, which we expect would reduce the number of appeals.
- Applicants could elect to have their consent application heard by independent commissioners, instead of councillors.
- Appeals on Environment Court decisions would only be granted with the leave of the High Court.
- It would be clarified that councils can delegate decisions on plan changes to staff or any other person.

Other matters to improve workability

33 The section on 'other matters' largely deals with technical amendments. However, the time available for section 274 parties (third parties) to join in appeals would be reduced from 30 working days (six weeks) after the last day an appeal is lodged to 15 working days. Reducing the timeframe brings it into line with the time for lodging an appeal, and reduces the uncertainty amongst all participants as to who is participating in an appeal.

Next steps

34 The Cabinet paper is still on track to being considered at the 26 January Cabinet meeting. If policy decisions are not made at this meeting, it is still possible to meet the 16 February deadline for introducing the Bill if decisions are made at the following Cabinet meeting. However, it is preferable for drafting purposes if policy decisions can be made by Cabinet on 26 January.

35 We will provide you a full briefing on the Cabinet paper once it has been lodged with Cabinet Office, highlighting any areas of concern.

36 Assuming policy decisions are made in January, a LEG paper will be submitted for approval, probably with a draft Bill, with Cabinet Office on Monday 12 February. A final Bill will be considered by LEG, with final Cabinet approval on Monday 16 February. The Bill would then be available to be introduced.

Recommended Action

We recommend you:

1 **Note** that the RMA (Streamlining and Simplifying) Amendment Bill is on track for being available to be introduced the week starting 16 February 2009.

2 **Note** that we will provide you further advice on the RMA Cabinet paper, prior to it being discussed at Cabinet.

3 **Note** that a similar brief to this will be provided by the Ministry's ICT Regulatory Policy Group to the Minister for Communications and IT.

4 **Note** that you may wish to forward this briefing note to other MED Ministers and Associate Ministers for their information.

Richard Hawke
Manager, Energy and Environment Group
Energy and Communications Branch

26/01/09

Hon Gerry Brownlee
Minister for Economic Development

Department of
Building and Housing
Te Tari Kaupapa Whare

DBH Briefing note number: 072 08/09

Review of the Resource Management Act 1991

Purpose
To provide you with information on the progress of the review of the Resource Management Act 1991 and comment on the Cabinet paper proposing amendments for "phase 1" of the review.

Date:	20 January 2009		**File Plan number:**	
Security level:	In Confidence			
	Red	Urgent	Needs action today	

Action sought

To	Action sought	Timeframe
Minister for Building and Construction	Discuss the impacts the review of the Resource Management Act will have on the building sector with the Minister for the Environment; and/or Sign the attached letter to the Minister for the Environment commenting on the proposed amendments to the Resource Management Act 1991.	20 January 2009

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Responsible manager ☑ Suggested first contact

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Department of
Building and Housing
Te Tari Kaupapa Whare

20 January 2009

072 08/09

Minister for Building and Construction

Briefing note – Review of the Resource Management Act 1991

Purpose

1 To provide you with information on the progress of the review of the Resource Management Act 1991 and comment on the Cabinet paper proposing amendments for "phase 1" of the review.

Background

2 In December 2008 the Department briefed you on critical issues for the building sector with the Resource Management Act 1991 (refer briefing 049 08/09). The key issues are:

- Delays in issuing resource consents
- Different or inconsistent requirements in each council area
- No certainty of a consent being issued at the end of the process

3 These issues all create costs for participants in the building sector: holding costs, preparation costs, third party costs. Steps taken by developers to reduce these costs have the effect of curtailing development, including constraining housing supply.

4 The Department is represented on the officials working group on the Resource Management Act review. However, the time constraints under which the review has progressed mean there has been very limited opportunity for robust discussion of proposed amendments for phase 1.

Urgency

5 The Minister for the Environment proposes to lodge a paper recommending amendments for phase 1 of the review on Wednesday 21 January for consideration at the Cabinet Business Committee meeting on Monday 26 January. If agreed, a Resource Management Amendment Bill would be introduced to Parliament on 16 February.

6 The Department received a draft of the Cabinet paper on Friday 16 January (copy attached). Accordingly, the only opportunity you will have to discuss the proposals with the Minister for the Environment before the Cabinet paper is lodged is on Tuesday 20 January.

Proposals for amendments

7 Most of the phase 1 amendments relate to the consent and plan preparation processes under the Act and attempt to achieve time and cost savings in those processes. Generally the Department supports these proposals and agrees they will deliver benefits to the building sector. However, due to the time constraints under which the proposed amendments have been developed, the usual level of analysis and consideration of the proposals has not been able to be done by Ministry for the Environment. The result of this is that it is difficult to understand how the proposals will impact overall and the extent to which they will achieve the overarching objective of "reducing costs and improving timeliness of processes under the Act".

Key concerns about proposed amendments

8 The Department has two key concerns with the proposed amendments. The relevant proposals are likely to have a significant, and possibly negative, impact on the building sector.

First key concern - consent processes for significant projects

(Recommendations 11 – 22 in the draft Cabinet paper)

9 The Department supports the proposed new Significant Project Path, however in order for the new Path to deliver benefits to the building sector, some of the detail of how the new Path will work needs to be changed from the current proposal:

- The criteria for applications eligible to use the new Path (recommendation 12) should be set in regulations, not in the Act. Setting the criteria in the Act will be too rigid and it is not possible in the time available to be sure the criteria are right. The current proposed criteria set a very high threshold for what is to be considered a "significant project". Time needs to be taken to decide whether this threshold is set at the right level and whether additional projects should be included in the criteria. For example, large scale urban developments (subdivisions) should be able to use the Significant Project Path (the recommendations in the Cabinet paper would preclude this) and there are projects in other sectors (e.g: aquaculture) the new process is appropriate for. Accordingly, a regulations development process will allow for full consideration of what projects should be able to use the process and also give flexibility for the future - particularly if a dollar amount is to be part of the criteria, it will "age" quickly.
- The process of using a Board to decide applications (recommendation 15(b) and (d)) is unnecessary and will not deliver the time and cost savings desired. The Department believes it would be appropriate to have the decision making power vested in the Chief Executive of the (proposed) Environmental Protection Authority. The process in this regard can be based on the precedent of the national multiple use approval process that is proposed to be added to the Building Act 2004 (by the Building Amendment Bill currently before Parliament).

10 The Department recommends you advocate to the Minister for the Environment that these details of the proposed Significant Project Path be changed.

Second key concern – removal of non-complying activity status
(Recommendation 35 in the draft Cabinet paper)

11 This recommendation is a split recommendation. The Minister for the Environment's Technical Advisory Group prefers the option that will remove the "non-complying" activity status from the Act. Paragraphs 99 and 100 of the draft Cabinet paper set out the reasons why officials do not support the Advisory Group's option. Removing the non-complying activity class is likely to have a negative impact on the building sector and the idea should therefore be subject to full consideration and consultation in phase 2.

12 The Department therefore recommends you advocate for the option "supported by officials" to the Minister for the Environment.

Other amendments with impact on the building sector

13 The table below sets out the Department's views on other proposed amendments, in particular the impact they will have on the building sector. The table follows the order in which the amendments are described in the Cabinet paper

Frivolous, vexatious and anti-competitive objections Recommendations 4 – 10
These proposals will provide some benefit to the building sector by reducing the opportunities for trade competitors to use the public participation process in the Act to "game" and delay development. The Department agrees with these recommendations.
Environmental Protection Authority Recommendations 23 – 29
The Department is concerned some of the recommendations, if agreed, will pre-empt detailed decisions on establishment of such an Authority that should be considered in phase 2. In particular the degree of government control over the Authority and how it operates should be considered in light of the recent experiences of the operation of the former Building Industry Authority under the Building Act 1991. The experiences were negative in many aspects and led directly to decisions to place the functions of the former Authority into a government department under the Building Act 2004. While a temporary or transitional establishment of an Office within the Ministry for the Environment is achievable in phase 1 and supported by the Department (see recommendations 23 and 28), other details of the operation of the Authority should be developed in phase 2.
Improving plan development and plan change processes Recommendations 30 – 42
The benefits from these proposals will largely flow to local authorities, though in the long term a more efficient plan development process will have benefits for all parties who are affected by the Act.

The Department has concerns, however, about recommendation 40 – removing the requirement for councils to review their plan provisions every 10 years. It appears the 10 year review requirement has been interpreted as meaning the entire plan has to be reviewed on every 10 year anniversary. However, the Department understands that was not the original intention of the requirement. Rather, the requirement is to ensure that every plan provision is reviewed at least every 10 years to ensure (for example, as occurred under the former Town and Country Planning Act) 20 year old provisions that are no longer relevant or require unnecessary compliance etc are removed or updated.

This amendment should therefore clarify the intent of the review requirement rather than replacing it with a discretion about whether to review or not.

In addition, there are two split recommendations in this section (other than recommendation 35 already commented on in "key concerns" above). The Department's views on the options are:

- Recommendation 41 – the Department is neutral on the subject of when rules in plans should "take effect", but the proposal appears to seek to change long standing practice and case law, therefore, on balance it would be better to consider the idea in detail in phase 2 ("option supported by officials").
- Recommendation 42 – agree with option "supported by other officials". This proposal will have a major impact on the public participation, democratic and decision making process in the Act. The proposal therefore affects one of the core or fundamental principles on which the Act is based. Major changes to the decision-making processes in the Act should be considered as a whole, rather than piecemeal, and subject to consultation and robust consideration that can only appropriately be done in phase 2.

Improving resource consent processes

Recommendations 43 – 51

The proposed amendments are likely to speed up the consent process significantly and therefore provide benefits for the building sector.

The Department agrees with the "supported by officials" option in the split recommendation (recommendation 47). Making provision for "minor" projects to either proceed without a resource consent or be processed more simply will provide significant benefits to the building sector. The concept is larger than just the "blanket tree provisions" referred to and would require major changes to the legislation. It should be considered in phase 2.

There is one further idea that could result in cost and time savings in the consent process: change the definition of working day to align with the Interpretation Act 1999 definition. This would reduce the "Christmas/New Year break" in the calculation of working days by 5 working days (1 week). A week can make a major difference to the scheduling and commencement of works on a building project, particularly works that are weather-dependent. The Department will advocate for this change in phase 2, but it could easily be included in phase 1.

Improving national instruments Recommendations 52 – 73
Better use of national instruments under the Act should result in improvements in the implementation and administration of the Act overall. For this reason, the "supported by officials" option in split recommendation 63 is preferred by the Department. The alternative option would reduce the impact and influence national documents have and exacerbate existing issues of inconsistency between local authorities. The Department is concerned that recommendations 65 and 67 provide for the time period for parts of the call-in process (whereby consent decisions on projects of "national importance" are decided by the Minister for the Environment) to be longer. These proposals are inconsistent with the intent of call-in (to have shorter timeframes) and also inconsistent with the stated objectives of the phase 1 amendments. The Department disagrees with recommendation 71 – the Minister can direct a project that has been called-in to be dealt with in the Significant Project Path. The call-in process and Significant Project Path should be completely separate processes. One of the fundamental aspects of the new Path is that the applicant chooses to take that path, this will be eroded if the Minister can force applicants into the process. Allowing the Minister to call-in plan changes that are effectively completed (recommendation 73(2)) does not appear to have any benefits, it will make the time taken to complete a plan change longer.
Improving the effectiveness of compliance mechanisms Recommendations 74 – 79
These proposals will have no significant impact on the building sector. Recommendation 77 relates to the "existing use" rights of building work (authorised by a consent issued under the Building Act 2004) and is a consequential amendment that should have been made when the relevant section (10B) was inserted in the Resource Management Act. The amendment will not change the right to carry out building work that has been consented under the Building Act.
Improving decision making Recommendations 80 - 84
These proposals appear to have merit "on paper", but their impacts are uncertain. On balance the Department agrees with the "supported by officials" option in split recommendation 84 for the reasons stated in paragraph 219 of the paper.

Other proposals to improve workability Recommendations 85 – 91
Recommendation 90 relates to only one part of the process of dealing with notices of requirement. (Notices of requirement are the process by which land is designated for use for "public works".) The Department believes the proposal will have little benefit unless the whole requirement/designation section of the Act is reviewed at the same time. Recommendation 11 (insofar as it relates to notices of requirement) is similarly limited in application. The Department believes a full review of the requirement/designation provisions should be done in phase 2 and amendments in phase 1 should not pre-empt the full review. The Department has no particular views on the other recommendations in this section.
Phase two of the RMA review Recommendations 92 – 97
The Department believes a strategic and high level of analysis is needed to determine the appropriate balance between good environmental outcomes, public participation (democratic process) and certainty for developers. Further efficiency gains will only come from this higher level consideration of the Act and its purpose and implementation. This should be the main focus of phase 2 of the review, while still encompassing specific topics (e.g: resource allocation) already identified as needing attention. The recommendations should, therefore, not preclude or pre-empt a wide scope for phase 2. The focus should be on the March 2009 Cabinet paper (recommendation 96) providing detail on the topics to be covered in phase 2.

Recommendations

14 I recommend you:

a agree to support the proposals for "phase 1" amendments to the Resource Management Act 1991 with the exception of the proposals referred to in b and c below;

b agree to oppose the following proposals (recommendation numbering follows those in the draft Cabinet paper):

i. Key concerns:

- Recommendation 12 – eligibility criteria for new Significant Project Path should be set in regulations, not the Act
- Recommendation 15 – decisions made under the new Significant Project Path should be made by the Chief Executive of the (proposed) Environmental Protection Authority, not a Board
- Recommendation 35 – removing the non-complying activity status

(support option "supported by officials" to defer consideration of this matter to phase 2)

ii. Other concerns:

- Recommendation 40 – do not remove the requirement for councils to review their plan provisions every 10 years, but clarify the intent that all plan provisions should be reviewed at least once every 10 years
- Recommendations 65 and 67 – time period for parts of the call-in process should not be made longer
- Recommendation 71 – Minister should not be able to direct a project that has been called-in to be dealt with in the Significant Project Path
- Recommendation 73(2) – call-in of plan changes that are completed or near completed should not be provided for;

c agree to support the following proposals being considered in phase 2 of the review of the Resource Management Act 1991 (recommendation numbering follows those in the draft Cabinet paper):

- Options "supported by officials" in recommendations 41, 42, 47, 63 and 84
- Review of notice of requirement/designation provisions in the Act (and oppose recommendations 90 and 11 – the latter insofar as it relates to notices of requirement – accordingly)
- Details of the establishment and operations of a permanent Environmental Protection Authority (oppose recommendations 24 – 28 accordingly);

d agree to recommend to the Minister for the Environment that a further amendment be included in phase 1 to change the definition of "working day" in the Resource Management Act 1991 to align with the Interpretation Act 1999 definition;

e discuss the proposed amendments with the Minister for the Environment and/or sign the attached letter to the Minister for the Environment commenting on the draft Cabinet paper.

Suzanne Townsend
Deputy Chief Executive, Sector Policy

Hon Maurice Williamson
Minister for Building and Construction

Date:

Department of
Building and Housing
Te Tari Kaupapa Whare

DBH Briefing note number: 087 08/09

Review of Resource Management Act 1991 – final phase 1 Cabinet paper

Purpose
To provide you with information on the final version of the Cabinet paper recommending amendments for phase 1 of the review of the Resource Management Act 1991 and due to be considered by the Cabinet Business Committee on 26 January 2009.

Date:	23 January 2009		**File Plan number:**	
Security level:	In Confidence			
	Yellow	For Information	The Minister will read for meeting with Minister for the Environment	

Action sought

To	Action sought	Timeframe
Minister for Building and Construction	Note the final content of the cabinet paper "Review of the Resource Management Act 1991: Phase One Proposals"	26 January 2009

Department contacts

Responsible manager ☑ Suggested first contact

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Principal author or back-up contact

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Sian Smith	Senior Advisor, Regulatory Policy	494 5356	

Department of
Building and Housing
Te Tari Kaupapa Whare

23 January 2009

087 08/09

Minister for Building and Construction

Briefing note – Review of Resource Management Act 1991 – final phase 1 Cabinet paper

Purpose

1 To provide you with information on the final version of the Cabinet paper recommending amendments for phase 1 of the review of the Resource Management Act 1991 and due to be considered by the Cabinet Business Committee on 26 January 2009.

Background

2 On 20 January 2009 the Department briefed you (briefing 072 08/09) about proposed amendments to the Resource Management Act 1991 recommended as "phase 1" of the review of that Act. A Cabinet paper recommending the amendments is due to be considered by the Cabinet Business Committee on 26 January 2009.

3 You wrote to the Minister for the Environment on 20 January 2009 commenting on the proposed amendments, including expressing opposition to some of the proposals.

Analysis

4 On 22 January 2009 the Department received a copy of the final version of the Cabinet paper as signed by the Minister for the Environment. A copy of the paper is attached.

5 The proposed new "Significant Project Path", which had the potential to deliver benefits to the building sector, has been fundamentally changed from the earlier draft the Department briefed you on. Paragraphs 57 to 79 of the Cabinet paper now propose minor changes to the existing 'call-in' provisions in the Act as a means by which a limited number of projects can be 'fast-tracked". The Act sets a high threshold for use of the call-in process. It is unlikely any building projects, such as large scale urban developments, will meet this threshold. The proposal is therefore no longer of any benefit to the building sector. You may wish to signal to the Minister for the Environment your support for the previous proposal.

6 Other proposals the Department briefed you on, and you agreed to oppose in the letter you sent to the Minister for the Environment, are recommended to proceed. See in particular recommendations 45 (removing non-complying activities), 50 (removing requirements for review of plans every 10 years) and 59 (provision) for "minor" matters to not need a resource consent has been limited to tree protection rules).

7 The Department will continue to press for the outcomes previously recommended to you in phase 2 of the review and via the Select Committee process on the Amendment Bill.

Recommendations

8 I recommended that you:

a note the final content of the attached Cabinet paper "Review of the Resource Management Act 1991: Phase One Proposals"

Suzanne Townsend
Deputy Chief Executive

Hon Maurice Williamson
Minister for Building and Construction

Date:

MINISTRY OF JUSTICE
Tāhū o te Ture

Hon Simon Power, Minister of Justice
Hon Georgina te heuheu QSO, Minister for Courts

Ministry of Justice comment on RMA reforms

Date	23 January 2009	File reference	CRT 06-01

Action Sought	Timeframe/Deadline
Note the contents of this report.	

Contacts for telephone discussion (if required)

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[deleted]	[deleted]	[deleted]		

Minister's office to complete

☐ Noted ☑ Approved ☐ Overtaken by events
☐ Referred to: _____
☐ Seen ☑ Withdrawn ☐ Not seen by Minister

Minister's office comments

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MINISTRY OF JUSTICE
Tāhū o te Ture

23 January 2009

Hon Simon Power, Minister of Justice
Hon Georgina te heuheu QSO, Minister for Courts

Ministry of Justice comment on RMA reforms

Purpose

1. This paper provides you with a Ministry of Justice perspective on the proposed phase one package of reforms to the Resource Management Act. This proposed package will be discussed at the Cabinet Business Committee (CBC) meeting on Monday 26 January.

Executive summary

2. The Minister for the Environment will be bringing a package of reforms to the Resource Management Act to the Cabinet Business Committee on 26 January.

3. The Ministry of Justice has concerns with five of the recommendations contained in the package. The Ministry has proposed alternative recommendations which are attached as Appendix A.

4. The Ministry's key areas of concern are:

   - The paper proposes that appeals from the Board of Inquiry process should go to the Court of Appeal. We consider that the Board of Inquiry is analogous to the Environment Court, and thus the appropriate next appeal is to the High Court, with leave required for subsequent appeals to the Court of Appeal and Supreme Court. We cannot see a strong argument for varying the appeal path in this case.

   - In two places, the paper proposes limiting appeals on plan changes to the Environment Court to points of law only. The Ministry considers that while this may have merit there are risks that this will not only fail to improve the process it may actually reduce the effectiveness of plans causing more delay (an unintended consequence). The Ministry considers that these changes should be part of phase two to enable more consideration of the impacts.

   - The paper proposes raising filing fees from $55 to $500 to discourage vexatious litigants. The Ministry is strongly concerned about this proposal. While filing fees may be too low, they should be reviewed against well established principles. Further, it is inappropriate to use filing fees as a means of discouraging vexatious litigants. There is no evidence that high fees discourage vexatious litigants. As filing fees can be adjusted by regulation, the Ministry recommends that officials be directed to review the fees with a view to bringing in any changes as part of phase one. We also recommend that, as part of

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phase two, officials look at possible legislative provisions that would enable the Environment Court to declare litigants vexatious.

- The paper proposes limiting the time that third parties have to join appeals from 30 days to 15 days. While the Ministry doesn't have a problem with reducing the time, the way these time limits are calculated means that parties may have as little as 10 days. The Ministry therefore considers that 20 working days rather than 15 days would be a more appropriate number.

Background

5. Cabinet has considered papers relating to amendments to the RMA in December 2008. These papers set out the purpose of and process for the proposed amendments, including the establishment of a Technical Advisory Group (TAG). The Ministry for the Environment is leading the policy development work and, in consultation with an officials' working group, is reporting to the Minister for the Environment.

6. There are two phases to the proposed reform process. Phase one amendments are part of the government's 100 day policy programme. The aim of the phase one amendments is to streamline and simplify RMA processes. The Cabinet Business Committee is expected to consider the phase one policy proposals on 26 January 2009, and Cabinet consideration is set for 2 February. A bill is expected to be introduced into the House on 16 February 2009, with a first reading in early March.

7. Phase two will include more substantive issues including priority consenting, plan and consent process issues, interface with other legislation, alongside new water management, resource allocation and urban programmes.

Summary of the Cabinet Paper

8. The main aspects of phase one proposals to amend the RMA are to:

- introduce new measures aimed at reducing the incidence of vexatious and frivolous appeals, and appeals motivated or backed by trade competition
- amend and add to the current call-in powers of the Minister of the Environment
- create a new Environmental Protection Authority
- introduce measures to speed up and reduce costs in the plan preparation and change processes
- reduce costs in the resource consent process
- amend and clarify existing provisions related to national policy statements (NPS) and national environmental standards (NES)
- improve the effectiveness of compliance mechanisms
- streamline decision making
- introduce a range of technical and small amendments
- introduce other issues raised by TAG.

9. The final draft of the Cabinet paper is attached to this briefing as Appendix B.

Discussion

10. We draw your attention to five areas of interest to the Ministry of Justice. The Attorney-General (and Minister in charge of Treaty of Waitangi Negotiations) has been briefed separately on concerns from a foreshore and seabed perspective, and broader treaty of Waitangi considerations. This briefing focuses on concerns with existing court processes including public participation.

11. The format of this briefing note follows the format of the Cabinet paper. The headings used are headings from the Cabinet paper. We have also referenced the discussion to the recommendation number for ease of reference and discussion.

General Comments

Shifting the balance of public participation

12. The stated objective of the CBC paper is to simplify and streamline RMA processes, however underlying this objective is a resulting change in the level of public input into RMA plan and decision-making. The current RMA places significant importance on the ability of the public to participate in RMA decision-making processes. The RMA presumes that a wide degree of public participation is necessary to ensure that decisions on resource management achieve the best overall outcomes for the community. Accordingly, all citizens have the right to make submissions in council planning processes, while various levels of public involvement are provided for in resource consent processes.

13. The RMA also places particular importance on the participation of Maori, with specific consultation requirements for iwi authorities and groups with recognised customary activities and territorial customary rights findings, as well as a requirement for those exercising powers under the Act to take into account the principles of the Treaty of Waitangi (section 8).

14. There are a number of proposals in the CBC paper which result in a reduction in the amount of public input into RMA processes. These appear to be based on two key trade-offs:

- the right to object versus the need for an efficient process at a reasonable cost
- the need for an efficient process at a reasonable cost versus the increased quality of decisions.

15. Where the proposals focus participation and improve the quality of decision making we are supportive, however we have some concerns where participation appears to be reduced.

Timeframes

16. The policy for the CBC paper has been developed under urgency in line with the government's 100 day priority programme. As such, the analysis of proposals in the CBC paper is preliminary and the implications have not been fully explored. The detail of the proposals has not yet been developed and will need to be addressed as part of the drafting of the bill. The government aim is to introduce a bill within 100 days, this could still be achieved if the Bill was introduced one week later than currently timetabled, which is on 23 February. If the timeframe is not moved, Justice officials will

only have approximately 2 to 3 days to review the bill drafting. The Bill of Rights vetting would also have to be completed under extreme urgency – likely to be 1-2 days.

ROLE OF THE ENVIRONMENT COURT

17. As a general comment, the Ministry notes that the Cabinet paper does not take into account the positive role undertaken by the Environment Court. Significant work has been undertaken both judicially and administratively to streamline the Court's operation.

18. The Ministry also notes that the paper doesn't distinguish between "delay" and due process. In some cases the total duration of a project is cited as delay, whereas decisions on big, complex projects will always take time, even with these reforms.

19. For instance, at paragraph 61 the Te Mihi geothermal plant proposal that was called in was cited as an example of a fast process. The Ministry notes one of the reasons it was able to be progressed so quickly was because the Board were not concerned with many technical issues that had been dealt with in respect of Contact Energy's consents to extract geothermal fluid. These were determined in previous proceedings at the Environment Court.

Part B – Proposals of National Significance

20. The paper proposes adapting the Board of Inquiry process and proposes creating a new Environmental Protection Agency to administer the consenting process for projects of national significance.

21. In order to resource this it proposes increasing the cap on Environment Court Judges from 8 to 10. It also seeks a higher pay rate for appointments to boards of inquiry (recommendations 22-24). Further, it proposes that appeals from a Board of Inquiry be straight to the Court of Appeal and only on points of law (recommendation 28).

COMMENT

22. The Ministry notes that this proposal will increase the pressure on judicial resourcing in the Environment Court, and as such, the cap should be reviewed. However, it should be noted that any change to the cap for Environment Court judges will mean that the cap for District Court judges also needs to be reviewed (as Environment Court judges count towards the total District Court cap). At present, any additional appointment to the Environment Court cannot be made without an increase in the total District Court cap. This has financial implications, which are recognised by recommendation 23.

23. The Ministry also notes that irrespective of the judicial cap, by giving major proposals priority, it means that judges are being diverted from the day to day work of the Environment Court to major projects. Thus it could be argued that the proposals in Part B of the paper will simply shift any delay from larger projects on to any number of smaller proposals that the Environment Court is dealing with.

24. The Ministry is opposed to the proposal for appeals from a Board of Inquiry to go to the Court of Appeal. The Ministry considers that in this context a Board of Inquiry is analogous to the Environment Court and there should be a right of appeal to the High Court, with leave required for subsequent appeals (to the Court of Appeal and Supreme

Court). Only 6% of Environment Court decisions are appealed to the High Court, and to date the Supreme Court has only heard two cases on RMA issues. We also note that there has been no consultation with the Chief Justice.

25. Given this, the Ministry recommends that recommendation 28 which proposes that the appeal path from the Board of Inquiry should be to the Court of Appeal should be amended to ensure that officials undertake further analysis and consultation with the judiciary as part of phase two.

Part D - Improving plan development

26. The paper proposes limiting appeals on proposed policy statements and plans on points of law (recommendation 52).

COMMENT

27. The Ministry strongly recommends that this is looked at as part of phase two and not phase one. There are some significant issues underlying this decision, and the Ministry is concerned that these changes may actually reduce the effectiveness of plans, causing more uncertainty and delay (an unintended consequence). More time would enable these risks to be addressed.

28. For example, disallowing appeals on points of fact, and only on law, is effectively saying that the local authority making the decision has the expertise to make these factual findings in all situations. This may not always be the case where a local authority may lack the resources and expertise, (in contrast to a board of inquiry where an expert panel has been purposely chosen to make these decisions). In these circumstances it may be in appropriate to assume that you are getting sound decisions of fact in all cases.

29. There is also a natural justice consideration. There is a right to be heard and a requirement that a decision maker must be impartial. That is, the decision-maker should be disinterested and unbiased. Many local authorities are very small and many applicants may personally know decision makers or councillors. In these circumstances there are more opportunities for game-playing, and influence being exerted over local authorities. It is important, if not only for the appearance of justice, that the right to appeal decisions to the courts are preserved.

30. The Ministry also notes that at present approximately 90% of plan appeals do not involve a formal Court hearing, but instead are resolved by the court, local authorities and other interested parties working together. Thus, the Environment Court is playing a role in brokering between the parties, often resolving issues over misunderstandings and lack of clarity in proposals. This role also means that the Environment Court plays a role in improving the quality and consistency of plans. This would be lost if its role was limited to points of law. This has the potential to actually reduce the effectiveness of plans, and to create more uncertainty and delay which would be an unintended consequence of these reforms. Phase two is the appropriate place to consider arguments like this, which will reduce these risks.

31. The Ministry recommends that you propose amending recommendation 52 which (that appeals on plans should be on points of law only) and instead propose that limiting appeals to points of law should be considered as part of phase two of the reforms.

Further time to consider it will avoid the risk that without the Environment Court oversight the quality and consistency of plans may diminish, with negative imapacts on the environment and economy.

Part F - Improving National Instruments

32. The paper proposes limiting appeals on plans on points of law (recommendation 66). As with the above argument, the Ministry is concerned that there may be unintended consequences. As above, phase two would give time to consider these issues in some depth.

COMMENT

33. The Ministry recommends that you propose amending recommendation 66 which proposes that the appeals on plans should be on points of law and instead propose that limiting appeals to points of law should be considered as part of phase two of the reforms.

Part H - Streamlining Decision Making

34. The paper has a proposal to increase filing fees from $55 to $500 (recommendation 84).

COMMENT

35. The Ministry is strongly opposed to this proposal. While filing fees at the Environment Court are likely to be too low, the Ministry considers that a review of the fee should be based on, and tested against well established principles, not an arbitrary figure.

36. Briefly these principles are:

- overall cost sharing between the public and users, with government determining the ratio with respect to specific jurisdictions and services
- variable ratios of public/user funding, based on an assessment of the public/private benefits
- fees should not prevent citizens from having access to appropriate dispute resolution
- fees shall be set to recover a proportion of the average cost of service provision
- fee structure should provide incentives for cost effective use of court services
- judiciary has discretion to reallocate costs

37. The Cabinet paper justifies the increase on the basis that it may deter vexatious litigants. The Ministry does not consider that court fees are the appropriate tool to do this. There is no evidence that higher fees will deter vexatious litigants, and generally vexatious litigants are more prepared to pay fees than other Court users. The High Court already has powers to declare litigants vexatious, and a legislative provision like this would be a more effective tool.

38. Filing fees have received significant attention from Parliament (via the Regulations Review Committee) in recent years. Parliament has expressed disquiet on the impact of increases of filing fees on access to justice.

39. As the fees could be amended by regulation, they do not need to be part of this package of reforms. The Ministry recommends that this recommendation be removed, and instead officials from the Ministry for the Environment and Justice be directed to review Environment Court fees according to established principles. This would still allow time for the revised fees to be brought in as part of the overall package.

40. The Ministry also recommends that as part of phase two, officials be directed to investigate providing the Environment Court with similar powers to those contained in s88B of the Judicature Act to declare a litigant vexatious. The combined effect of these initiatives would be to provide the Environment Court with another tool to deal with vexatious litigants while also ensuring that the fee structure for the Environment Court continues to be based on principles.

Other matters to improve workability

41. The paper proposes limiting the timeframe within which third parties must lodge their notice to participate in appeals from 30 days to 15 days (recommendation 92).

COMMENT

42. The Ministry notes that it is proposed that the time limit for filing notices of interest runs from the "last day for lodging an appeal". Technically this means that a potential interested party has less than 15 working days as an appellant is only required to serve a copy of their appeal on submitters within 5 working days of lodging the appeal with the Court (s.121(2)). So effectively the change to the Act would mean potential interested parties could have as little as 10 working days to lodge their notice.

43. The Ministry recommends that you suggest amending recommendation 92 which proposes limiting the timeframe within which third parties must lodge their notice to participate in appeals from 30 days to 15 days and instead propose that it be reduced from 30 days to 20 working days.

Operational Implications

44. The Ministry of Justice will continue to work with the Ministry for the Environment as a draft bill is developed, to ensure that all proposals relating to the Environment Court can be implemented.

45. The proposal to allow electronic notification and service of documents has the potential to impact on court costs and systems. For instance if documents can be served on the Court electronically then the Ministry of Justice will incur the costs of turning those notices into hard copies. This will be addressed by discussion between officials from the Environment Court and the Ministry for the Environment as more work is undertaken and more detail is provided.

46. Section 281A of the RMA gives the Registrar the power to waive a fee if the person responsible for paying the fee is unable to pay the fee in whole or in part; in the case of proceedings concerning a matter of public interest, the proceedings are unlikely to be commenced or continued if the powers are not exercised.

47. Due to a high level of public interest elements in Environment Court work, substantial fee increases may lead to a large number of fee waiver applications to the Registrar (and consequential reviews to Judge) and will increase the administrative function around accounts receivable and debtor maintenance activity. As half of the Court's work currently is plan appeal related, one could argue that all plan appeals have an element of public interest. This means Registrars could potentially be waiving a lot of fees.

Recommendations

48. It is recommended that you:

1. **Note** the Ministry of Justice has concerns with aspects of the package of RMA reforms proposed in phase one.

2. **Note** the Ministry of Justice has specific concerns that:

   2.1 recommendation 28 would mean appeals from the Board of Inquiry would go to the Court of Appeal. This is a reduction in appeal rights, and thus a reduction in access to justice.

   2.2 recommendation 52, through removing a role for the Environment Court has the potential to reduce the effectiveness of plans (an unintended consequence).

   2.3 recommendation 66, through removing a role for the Environment Court has the potential to reduce the effectiveness of plans and national policy statements (an unintended consequence).

   2.4 recommendation 84, proposes raises filing fees in a way that is not based on established principles for setting court fees. It is also proposes to use this as a means of discouraging vexatious litigants. Court fees are an inappropriate tool for this.

   2.5 recommendation 92 proposes limiting the timeframe for third parties to lodge a notice of appeal. Because of the way this section operates, the 15 days could actually be as little as 10 days.

3. Agree, subject to any changes you propose, to propose amending recommendations 28, 52, 66, 84 and 92 and using the revised recommendations attached as an appendix two. **YES / NO**

Benesia Smith
Acting General Manager
Public Law

APPROVED / SEEN / NOT AGREED

APPROVED / SEEN / NOT AGREED

Hon Simon Power
Minister of Justice
Date:

Hon Georgina te heuheu QSO
Minister for Courts
Date:

Attachments

Attachment A: Proposed Revised Recommendations

Attachment B: Final Draft of Cabinet Paper: "Review of the Resource Management Act 1991: Phase One Proposals

Appendix A – Proposed revised recommendations

The following text sets out five recommendations as they are currently drafted with revised drafting underneath in italics that seek to resolve concerns with the recommendations.

Modify recommendation 28 which states:

> **agree** that appeals on decisions made by the Board of Inquiry can only be made to the Court of Appeal and are restricted to questions of law as per the current call in procedures.

to state:

> **agree** that appeals on decisions made by the Board of Inquiry should be further considered as part of phase two, after consultation with the Chief Justice.

Modify recommendation 52 which states:

> **agree** 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.

to state:

> **agree** that limiting appeals on proposed policy statements and plans be considered as part of phase two of the reforms.

Modify recommendation 66 which states:

> **agree** that appeals on changes to plans and regional policy statements that are implementing objectives and policies of a national policy statement shall be limited to points of law only.

to state:

> agree that limiting appeals on changes to plans and regional policy statements that are implementing objectives and policies of a national policy statement be considered as part of phase two of the reforms.

Modify recommendation 84 which states:

agree that the filing fee for appeals with the Environment Court be raised from $55 to $500 through separate amendment regulations made under the RMA.

to state:

Direct officials from the Ministry of Environment and Justice to review filing fees in the Environment Court, with a view to introducing a revised fee, through regulations as part of phase one of the reforms.

Direct officials from the Ministry of Environment and Justice to investigate legislative provisions to enable the Environment Court to declare litigants vexatious as part of phase two of the reforms.

Modify recommendation 92 which states:

agree that the timeframe within which third parties must lodge their notice to participate in appeals be shortened from 30 working days to 15 working days. The timeframe shall be calculated from the last day for lodgement of appeals.

to state:

agree that the timeframe within which third parties must lodge their notice to participate in appeals be shortened from 30 working days to 20 working days. The timeframe shall be calculated from the last day for lodgement of appeals.

Appendix A – Proposed revised recommendations

The following text sets out four recommendations as they are currently drafted with revised drafting underneath in italics that seek to resolve concerns with the recommendations.

Modify recommendation 27 which states:

agree that appeals on decisions made by the Board of Inquiry can only be made to the Court of Appeal and are restricted to questions of law as per the current call in procedures.

to state:

agree that appeals on decisions made by the Board of Inquiry *should be further considered as part of phase two, after consultation with the Chief Justice.*

Modify recommendation 51 which states:

agree 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.

to state:

agree that *limiting* appeals on proposed policy statements and plans *be considered as part of phase two of the reforms.*

Modify recommendation 65 which states:

agree that appeals on changes to plans and regional policy statements that are implementing objectives and policies of a national policy statement shall be limited to points of law only.

to state:

agree that *limiting* appeals on changes to plans and regional policy statements that are implementing objectives and policies of a national policy statement *be considered as part of phase two of the reforms.*

Modify recommendation 83 which states:

agree that the filing fee for appeals with the Environment Court be raised from $55 to $500 through separate amendment regulations made under the RMA.

to state:

***direct** officials from the Ministry of Environment and Justice to review filing fees in the Environment Court, with a view to introducing a revised fee through regulations as part of phase one of the reforms.*

***direct** officials from the Ministry of Environment and Justice to investigate legislative provisions to enable the Environment Court to declare litigants vexatious as part of phase two of the reforms.*

Proposed Talking Points for teleconference with Alan Dormer & Paul Marjurey

APPEAL PATH FROM BOARD OF INQUIRY

PROPOSAL IN PAPER

The RMA currently includes a current call-in power to allow for national significant projects to be "called in". An Environment Court judge (current, former or retired) must be appointed as chair. The paper seeks to impose timeframes for consideration and limit the appeal path.

PROPOSED TALKING POINTS

- Understand that the Technical Advisory group has proposed that the appeal path from a board of inquiry be straight to the Court of Appeal and that this is analogous to Employment Court procedures.

- That proposal undermines the place of the High Court. The High Court has general jurisdiction and responsibility, under the Judicature Act 1908, for the administration of justice throughout New Zealand. Jurisdiction extends over both criminal and civil matters. It deals with cases at first instance or on appeal from other courts and certain tribunals. It is the only court in New Zealand that has an inherent jurisdiction. The High Court is the superior court of general jurisdiction in New Zealand.

- Very few cases actually make it to the Higher Courts. Only 15-20% of Environment Court proceedings actually have a full hearing. Of those only 6% result in an appeal to the High Court.

- There is pressure on fixtures in the Court of Appeal. I am advised that the Supreme Court has only heard two appeals under the RMA.

- My proposal is:

  - That the appeal pathway from a Board of Inquiry be to the High Court

  - To streamline the appeal pathway from the High Court by putting in place rigorous controls with leave to be granted in limited circumstances. Leave to appeal would need to be given within five days of the decision given.

  - A mechanism to control appeals on points of law to the Court of Appeal could be to impose a test, for example, *that the issue involves a matter of general or public importance fundamental to the operation of the RMA or a matter of general commercial importance that outweighs the cost and delay of a further appeal*

Background notes:

1. Currently approximately 15-20 percent of Environment Court proceedings undergo a full Court hearing. Most matters are resolved without a formal Court hearing. Of those proceedings which are subject to a judgment of the Court following a formal hearing, only approximately 6 percent result in an appeal to the High Court.

2. The High Court is the principal court in New Zealand's court system, and it this Court which determines most appeals under the Resource Management Act 1991. The High Court has well established case management procedures for addressing appeals. The procedure has recently been restated in a comprehensible form in the new High Court Rules, which commenced on 1 February 2009.

3. Few matters proceed beyond the High Court to the Court of Appeal. Any further appeal on the High Court appeal decision to the Court of Appeal requires a grant of leave to appeal. The Court of Appeal has well established principles which it applies, and requires that the appeal must raise a seriously arguable question of law involving some public or private interest of sufficient importance to outweigh the cost and delay of a further appeal.

4. Although there is the prospect of a further appeal to the Supreme Court, any appeal can only be made if the Supreme Court grants leave to appeal. The Supreme Court must not give leave to appeal unless it is satisfied that it is necessary in the interests of justice to hear and determine the proposed appeal. The interests of justice test includes consideration of matters of general or public importance (including a matter concerning the Treaty of Waitangi), or a matter of general commercial importance. We understand that in five years since its commencement, the Supreme Court has heard 2 appeals under the Resource Management Act 1991.

Proposed recommendations

* Recommendation numbers outlined below are based on CBC (09) 19 recommendation numbers.

ISSUE ONE: APPEAL PATH FROM THE BOARD OF INQUIRY

Propose that the Minster for the Environment's paper include the following recommendation (new text in bold italics):

27. EITHER [Supported by Attorney-General, Minister of Justice and Minister of Courts]

27.1 agree that appeals on decisions made by the Board of Inquiry can only be made to the High Court, and that any further appeal to a higher court shall only be made with the leave of that court

OR [Supported by Minister for the Environment and Technical Advisory Group]

27.2 agree that appeals on decisions made by the Board of Inquiry can only be made to the Court of Appeal and are restricted to questions of law

ISSUE TWO: DAMAGES AND COSTS REGIME

Propose that the Minster for the Environment's paper include the following recommendations: (new text in bold italics)

13 agree 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, ***by incorporating the High Court Rules (46-48)***

14A agree that the punitive regime outlined in recommendation 14 be based around damages that both compensate for the loss suffered, with the ability for the Court to also make an example of the offending party in exceptional cases

ISSUE THREE: APPEALS ON PROPOSED PLANS AND POLICY STATEMENTS

Propose that the Minster for the Environment's paper include the following recommendation: (new text in bold italics)

51 **agree** that appeals on proposed policy statements and plans can be made to the Environment Court ~~be limited to questions of law~~, ***and that any further appeal to a higher court shall only be made with the leave of that court***

ISSUE FOUR: PROTECTING EXISTING TREATY SETTLEMENTS & FORESHORE AND SEABED AGREEMENTS

Propose that the Minster for the Environment's paper include the following recommendation: (new text in bold italics)

20A note 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 the integrity of any obligations made under an existing Foreshore and Seabed Deed of Agreement or Historical Treaty settlement.

ISSUE FIVE: NUMBERS OF ENVIRONMENT COURT JUDGES

Propose that the Minster for the Environment's paper include the following recommendation: (new text in bold italics)

21A note that any increase in the number of Environment Court judges will not be at the expense of the number of District Court judges

MINISTRY OF JUSTICE
Tāhū o te Ture

Hon Simon Power, Minister of Justice
Hon Christopher Finlayson, Attorney-General
Hon Georgina te Heuheu, QSO, Minister for Courts

Resource Management Act Cabinet Paper

Date	30 January 2009	File reference	

Action Sought	**Timeframe/Deadline**
Note the contents of this briefing.	

Contacts for telephone discussion (if required)

Name	Position	Telephone (work)	(a/h)	1st contact
Benesia Smith	Acting General Manager, Public Law	[deleted]	[deleted]	✓
[deleted]	[deleted]	[deleted]	[deleted]	
[deleted]	[deleted]	[deleted]	[deleted]	
[deleted]	[deleted]	[deleted]		

Minister's office to complete

☐ Noted ☐ Approved ☐ Overtaken by events
☐ Referred to: _____
☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office comments

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MINISTRY OF JUSTICE
Tāhū o te Ture

30 January 2009

Hon Simon Power, Minister of Justice
Hon Chris Finlayson, Attorney-General
Hon Georgina te Heuheu, QSO, Minister for Courts

RESOURCE MANAGEMENT ACT CABINET PAPER

Purpose

1. This paper briefs you on the significant areas of disagreement (including a split recommendation) between Ministry of Justice and Ministry for the Environment officials in the paper to be considered by Cabinet on Monday 2 February: 'Reform of the Resource Management Act 1991: Phase One Proposals'. Talking points for use at the Cabinet meeting are also included.

Background

2. Last week we briefed you on a small number of significant areas of disagreement with the paper:

   - Appeal path from the Board of Inquiry
   - Filing Fees
   - Damages and costs regime
   - Appeals on proposed plans and policy statements
   - Numbers of Environment Court Judges, which could impact on the judicial cap for the District Court.

3. As a result of discussions between Ministers (primarily the Minister for the Environment, the Attorney-General, and the Minister for Courts) many of these issues have now been resolved, as outlined in the following table.

Appeal path from the Board of Inquiry	Not resolved – split recommendation is included in the paper
Damages and costs regime	Resolved in terms of Cabinet paper, but Officials will continue to work with Ministry for the Environment to ensure the Bill can be implemented
Filing fees	Resolved - Ministers have agreed the fee will rise from $55 to $500
Appeals on proposed plans and policy statements	Resolved
Numbers of Environment Court Judges	Resolved

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4. The main outstanding issue is the appeal path from the Board of Inquiry. A split recommendation is included in the paper.

Discussion

Appeal Path from the Board of Inquiry

5. Recommendation 29 in the current version of the Cabinet Paper is a split recommendation. Recommendation 29.1 proposes that appeals on decisions by Boards of Inquiry on projects of national significance be directed to the Court of Appeal. As an alternative, the Attorney-General, in recommendation 29.2, recommends that these appeals be directed to the High Court, and that further appeals require leave. This is the current position in the Resource Management Act. All agree that these appeals be restricted to questions of law.

Comment

6. The Ministry of Justice agrees with the Attorney-General's recommendation that appeals be directed to the High Court, and require leave to progress beyond that Court This is primarily because:

   - In the Ministry's view, the proposal to direct appeals to the Court of Appeal undermines the place of the High Court. The High Court has general jurisdiction and responsibility, under the Judicature Act 1908, for the administration of justice throughout New Zealand. Jurisdiction extends over both criminal and civil matters. It deals with cases at first instance or on appeal from other courts and certain tribunals. The High Court is the superior court of general jurisdiction in New Zealand.

   - The proposal would in effect place the Board of Inquiry above the hierarchical level of the Environment Court – although both are headed by Environment Court Judges, and both consider legal issues of a similar degree of complexity. Of note, in 2003, the Law Commission examined and rejected the suggestion that the Environment Court be elevated in the New Zealand Court system.

   - Direct appeals to the Court of Appeal from a body other than another court are rare in the New Zealand Court system. The Court of Appeal already has a significant workload and the proposal may result in unnecessary delays for appellants.

   - The Court of Appeal has well established principles which it applies when considering leave to appeal a decision of the High Court. It requires that the appeal must raise a seriously arguable question of law involving some public or private interest of sufficient importance to outweigh the cost and delay of a further appeal. This provides a natural limit to the number of cases that can be appealed further than the High Court, and these numbers are currently very low.

   - **[deleted]**

7. The Ministry of Justice supports the new Board of Inquiry process for projects of national significance, which meet specific criteria. We note this is a parallel process to the Environment Court and existing Boards of Inquiry, and already bypasses the Consent Authority stage. Normally, appeals from the Environment Court and existing Boards of Inquiry are directed to the High Court. The Ministry considers that this appeal path works well, and resolves most issues.

8. We also note that where there are exceptional circumstances, and it is in the interests of justice for the Supreme Court to hear and determine an appeal on a decision of the High Court, the Supreme Court may grant leave to appeal directly to it. In other words, a party may seek to "leapfrog" the Court of Appeal.

9. Although decisions of the Employment Court, and the District Court on indictable criminal offences, may be appealed directly to the Court of Appeal, we note that in 2003 the Law Commission recommended that all these appeals should be directed to the High Court, with subsequent appeals requiring leave.

10. The status of the Employment Court reflects its historical origins, when the predecessor Court was headed by the most junior Judge of the Supreme Court (as the High Court was then known). There have been a number of proposals to change the status of the Court to one equivalent to the District Court. Moreover, in recent years, much of the workload that previously commenced in the Employment Court is now resolved at mediation or before the Employment Relations Authority.

Damages and costs regime

11. This issue is resolved. Paragraphs 56-59 and recommendation 12-14 discuss the introduction of a punitive regime of costs and damages.

Comment

12. The Ministry of Justice agrees with these recommendations, but notes that officials will continue to work with the Ministry for the Environment to ensure that the Bill is drafted to best give effect to the government's reforms. In particular that the question of whether to award indemnity costs should be left at the discretion of the Court rather than a mandatory provision.

Filing Fees

13. This issue is resolved. Recommendation 90 proposes increasing the filing fee from $55 to $500.

Comment

14. The Ministry notes that it has been agreed by Ministers that filing fees will be raised from $55 to $500 for the Environment Court.

15. This compares to the District Court which as a more complex fee structure: essentially the filing fee is $140, with additional hearing fees of $750 per day. The High Court has a concession rate of $400, otherwise the filing fee is $1100, with a hearing fee of either $500 per day at the concession rate, or $1300 per day at the usual rate.

16. Environment Court fees were reviewed in 2004, and with the policy objective of recovering 25% of the cost, it was determined that the filing fee should be set at $300 with a hearing fee of $1200 per day. At the time, the fees could not be introduced because the RMA lacked a fee waiver clause (an essential tool for preserving access to justice). In a subsequent amendment to the RMA a fee waiver clause was introduced, but fees were never increased.

17. The Ministry of Justice agrees that the filing fee should be raised, and notes that a $500 filing fee and no hearing fee could be argued as an alternative to the 2004 proposal.

Appeals on proposed plans and policy statements

18. This issue is resolved. Paragraph 286 notes Ministry of Justice concerns about the removal of the ability of the Environment Court to hear plan appeals on fact as well as law, and the result that the Court will lose the ability to improve the quality of plans, and to broker agreement between parties. This issue has been discussed by Ministers, who have agreed on the approach which is included in the paper.

Numbers of Environment Court Judges

19. Currently there are eight Judges and four Alternate Judges. Recommendation 22 proposes an increase, from eight to ten, in the number of Judges of the Environmental Court who may hold office. Following discussions with Ministers, recommendation 23 now notes that this increase is not at the expense of the number of District Court Judges. Recommendation 24 invites the Ministers of Environment and Courts to report, by 31 March 2009, on the financial implications of this increase.

Comment

20. The Ministry of Justice supports these recommendations. Recommendation 22 requires an amendment to Section 250 (3)(a) of the Resource Management Act. The Ministry will report on the financial implications later.

21. Environment Court Judges are also District Court Judges, and as such are included in the overall cap on the number of District Court Judges who may be appointed. Section 5(2) of the District Courts Act 1947 sets the maximum number at 140, and current total appointments are close to that limit. The Ministry of Justice will report soon shortly to Ministers (Justice, Courts and Attorney-General) on the need to review this limit.

Recommendation

22. It is recommended that you **note** the issues raised in this paper and use the attached talking points for the Cabinet meeting on 2 February.

Benesia Smith
Acting General Manager
Public Law

APPROVED / SEEN / NOT AGREED

APPROVED / SEEN / NOT AGREED

Hon Simon Power
Minister of Justice
Date:

Hon Georgina te Heuheu
Minister for Courts
Date:

APPROVED / SEEN / NOT AGREED

Hon Christopher Finlayson
Attorney-General
Date:

TALKING POINTS FOR CABINET MEETING 2 FEBRUARY 2009

Reform of the Resource Management Act 1991: Phase One Proposals

Appeal path from the Board of Inquiry

Support the alternative recommendation 29.2, because the High Court has general jurisdiction and responsibility for the administration of justice, and because

- The Board of Inquiry should not be placed hierarchically above the Environment Court
- Delays are likely to be experienced by appellants, as the Court of Appeal is not well placed to schedule and hear these cases quickly
- Under the existing regime, there are already principles the Court of Appeal applies to determine whether it hears appeals – these significantly limit the number of appeals that progress from the High Court
- The Chief Justice has also previously opposed proposals to by-pass the High Court.

Damages and Costs Regime

Support the recommendations in the paper (12-14) and note that Justice officials will work with Environment officials on the detail of the legislation.

Filing Fees

Support the recommendation in the paper and note that the $500 filing fee is not inconsistent with existing principles for setting court fees.

Appeals on Proposed Plans and Policy Statements

Note Ministry of Justice concerns about the removal of the ability of the Environment Court to hear plan appeals on fact as well as law, and the result that the Court will lose the ability to improve the quality of plans, and to broker agreement between parties.

Numbers of Environment Court Judges

Support the recommendations (22 – 24) which would increase the number of Environment Court Judges to 10, but which acknowledge that this increase will not be at the expense of the number of District Court Judges, and that financial implications will be dealt with later.

RESOURCE MANAGEMENT ACT – COURT APPEALS

Environment Court

In 2007/08 (ended 30 June 2008) the Environment Court received 1,140 new matters and disposed of 1,051. The Court's current caseload stands at 1,552.

In 2007/08 the new matters and disposals were as follows:

- 401 plan appeals filed, with the Court determining 361 matters (including some older matters).
- 739 resource consent appeals and other matters filed (e.g. declaratory, enforcement and other miscellaneous applications), with the Court determining 739 matters (including some older matters).

The Environment Court's 2007/08 Annual report records that the Principal Judge considers the Court has a manageable caseload.

High Court – RMA appeals

In 2006 calendar year the Environment Court issued 451 decisions. The High Court received 26 appeals (6%)
In 2007 the Environment Court issued 384 decisions with 29 appeals made to the High Court (7.5%)
In 2008 the Environment Court issued 371 decisions with 25 appeals. (7%)

Court of Appeal

Leave is required for any appeal to the Court of Appeal on a decision of the High Court on a decision of the Environment Court.

Preliminary information reveals there were only five cases dealing with the RMA for the calendar year 2008. There were a further 14 cases that are either Regional Council consent cases, or else mentioning the RMA in some comparative or illustrative way.

On a more general level the Court of Appeal is facing an increased workload. The increase is principally in its criminal jurisdiction, however, the Court is also facing more complex civil appeal hearings. The Court has nine permanent Judges, and the equivalent of two full-time High Court Judges available.

In the 2008 calendar year, the Court of Appeal received 493 appeals or applications for leave to appeal on criminal matters (451 in 2007, 495 in 2006). In 2008 it heard 404 criminal appeals (413 in 2007, 438 in 2006).

In the 2008 calendar year, the Court of Appeal, received 310 motions on civil matters (208 in 2007, and 285 in 2006). In 2008, it heard 136 appeals (124 in 2007, and 151 in 2006). In 2008, the civil appeals were more complex, resulting in hearings of several days, unlike the experience in previous years.

In 2009, the Court commenced hearing appeals in January, the first time in the Court's history.

Supreme Court

Since it commenced in 2004, the Supreme Court has heard five appeals involving the Resource Management Act 1991. Three appeals were allowed (and one cross-appeal dismissed); one appeal was dismissed; and one decision is reserved.

In addition, the Supreme Court has dismissed one application for leave to appeal. As well, the Supreme Court has declined one application for leave to appeal a judicial review of a decision involving the Resource Management Act.

ATTORNEY-GENERAL

RESOURCE MANAGEMENT ACT – APPEALS

Introduction

You have requested three pieces of information, as follows:

A Appeal Criteria
B Supreme Court decisions involving RMA matters
C Australian Environmental appeals

A APPEAL CRITERIA

Background

Current Appeals from Boards of Inquiry

Section 141B of the Resource Management Act 1991 empowers the Minister for the Environment to call in matters that are or are part of proposals of national significance, and direct the matter either to a Board of Inquiry (chaired by a current, former, or retired Environment Judge), or to the Environment Court, for a decision. The new process, announced by the Prime Minister and the Minister, will follow the first path – the Board of Inquiry.

Currently, appeals from decisions of a Board of Inquiry may be made to the High Court on questions of law only. Since the Boards of Inquiry are a parallel process to the Environment Court, the provisions of the RMA concerning appeals (ss300-308) apply.

Appeals to the Court of Appeal

Section 308 of the RMA enables the possibility of a further appeal to the Court of Appeal from a decision of the High Court on an appeal from a decision of the Environment Court. It provides that "section 144 of the Summary Proceedings Act 1957 applies in respect of a decision of the High Court under section 299 of this [Resource Management] Act as if the decision has been made under section 107 of the Summary Proceedings Act 1957."

Under section 144 of the Summary Proceedings Act the High Court may grant leave to appeal to the Court of Appeal or, if the High Court refuses leave, then the Court of Appeal may grant special leave. Applications to the Court of Appeal must be made within 21 days or such additional time as the Court may allow.

The general approach of the Court of Appeal in assessing s.144 applications for special leave, was set out by Richardson J (as he then was) in *Autocrat Sanyo Ltd v Collector of Customs* [1985] 2 NZLR 707 at 723

> "Appeals to this Court [of Appeal] under s 144 are closely limited. They are by leave only and not as of right. There is no appeal on questions of fact, such questions being subject to consideration by way of general appeal from the District Court to the High Court. And s 144 does not allow the automatic consideration in this Court of points of law arising in summary proceedings. Again the parties have had the opportunity to have all points of law considered by the High Court on the general appeal. Before leave can be given it is necessary that there be a question involved which in

the opinion of the Court "by reason of its general or public importance or for any other reason" ought to be submitted to this Court for decision.

"The legislative policy underlying s 144 is clear. It complements the provisions governing appeals from the District Court to the High Court. It proceeds on the premise that there is no further general appeal on questions of fact from the High Court to the Court of Appeal and appeals on questions of law are ordinarily confined to those which are of general or public importance. But the legislation recognises that there may be special cases where there is a question of law which while not of general or public importance is nevertheless one which ought "for any other reason" to be considered by the Court. It allows the Court to consider the question of law posed if it considers it right to do so in the particular case."

The Court of Appeal continues to apply these principles to RMA appeals, and holds that the appeal must raise a seriously arguable question of law involving some public or private interest of sufficient importance to outweigh the cost and delay of a further appeal.

The Supreme Court

The Supreme Court is generally able to supervise the decisions of any of the Courts of New Zealand through orderly appellate pathways. Sections 12-16 of the Supreme Court Act 2003 contain the provisions for leave to appeal to the Supreme Court, normally after a decision of the Court of Appeal. Appeals to the Supreme Court can only be heard with the Court's leave (s.12).

Section 13 – Criteria for leave to appeal

(1) The Supreme Court must not give leave to appeal to it unless it is satisfied that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal.

(2) It is necessary in the interests of justice for the Supreme Court to hear and determine a proposed appeal if—
(a) the appeal involves a matter of general or public importance; or
(b) a substantial miscarriage of justice may have occurred, or may occur unless the appeal is heard; or
(c) the appeal involves a matter of general commercial significance.

(3) For the purposes of subsection (2), a significant issue relating to the Treaty of Waitangi is a matter of general or public importance.

(4) The Supreme Court must not give leave to appeal to it against an order made by the Court of Appeal on an interlocutory application unless satisfied that it is necessary in the interests of justice for the Supreme Court to hear and determine the proposed appeal before the proceeding concerned is concluded.

(5) Subsection (2) does not limit the generality of subsection (1); and subsection (3) does not limit the generality of subsection (2)(a).

Section 14 provides that the Supreme Court must not grant leave for a direct appeal from a Court, other than the Court of Appeal, unless there are exceptional circumstances. Any leave application for a "leapfrog" appeal must also satisfy the standard criteria of section 12.

To date the Supreme Court has had a small number of leave applications for a "leapfrog" appeal, and has granted leave only once – *Taylor v Jones* [2006] NZSC 113. There is a jurisdictional bar preventing a further

appeal to the Supreme Court, where the Court of Appeal has refused leave to appeal. The Supreme Court has held that, save in extraordinary circumstances, any attempt to bring a direct appeal under s.14 following the decline of a leave application by the Court of Appeal will be regarded as an abuse of process.

Reviewing the leave criteria for projects of national significance

Any further appeal on a decision of the High Court on a RMA matter, whether the original decision was made by the Environment Court or a Board of Inquiry, requires a grant of leave. Two issues arise:

(1) which Court determines leave; and
(2) the relevant criteria.

(1) determining leave
For an appeal to the Court of Appeal, leave may be granted by the High Court, and, where the High Court refuses leave, special leave may be granted by the Court of Appeal.

An alternative option for determining leave, would be to require that all decisions on leave be made by the Court of Appeal. This may ensure a greater degree of consistency in leave decisions, especially for projects of national significance.

(2) leave criteria
The statutory criteria for leave to appeal to the Supreme Court – "the interests of justice" identifies key several elements including "a matter of general or public importance (including the Treaty of Waitangi)", and "a matter of general commercial importance."

The case law criteria for leave to appeal to the Court of Appeal requires "a seriously arguable question of law involving some public or private interest of sufficient importance to outweigh the cost and delay of a further appeal."

These criteria provide alternative criteria which could be adopted for RMA appeals on decisions of the High Court. Given the nature of RMA decisions, the RMA could be amended to adopt the established criteria used by the Court of Appeal when considering applications for leave. This would make explicit to all parties that an application to make a second or subsequent appeal following an initial appeal to the High Court, must meet a high threshold.

Supreme Court decisions on RMA appeals

A set of summary notes on Supreme Court decisions on applications involving the RMA is appended. These decisions reveal that, where leave is granted, the judgment of the Supreme Court is made within twelve months of an application for leave being lodged.

Since 2004, the Supreme Court has heard five appeals involving RMA matters – one of which was a judicial review appeal. As well, the Court has dismissed two further applications for leave to appeal – one of which was a judicial review appeal.

Australia – Environmental appeals

Under the Victorian Environmental Protection Act 1970, decisions of the Environmental Protection Authority may be reviewed by the Victorian Civil and Administrative Tribunal (VCAT) Planning and Environmental List. Decisions of VCAT may be appealed, on a question of law, following a grant of leave to appeal. Where the President (a Supreme Court Judge) or a Vice-President (a County Court Judge) of VCAT was a member of the Tribunal, the application for leave to appeal is made to the Court of

Appeal. In any other case, the application for leave is made to the Trial Court of the Supreme Court of Victoria.

In its 2003 report, *Delivering Justice for All – a Vision for New Zealand Courts and Tribunals*, the New Zealand Law Commission examined suggestions that the Environment Court be elevated in status, due to the public importance and complexity of a significant proportion of the work that comes before it. While acknowledging the importance of the Court's workload, the Law Commission did not favour elevating the Court's status.

The Commission noted that, while New South Wales Land and Environment Court sits at the same level as the State Supreme Court, in the other main states – Queensland, Victoria, South Australia, and Tasmania – environmental courts sit at a lower level to the State Supreme Courts.

Public Law Group
Ministry of Justice
3 February 2009

RMA – SUPREME COURT DECISIONS

Case Number SC 48/2008

Case Name: Michael Spackman v The Queenstown Lakes District Council and others

Summary: Civil resource management applicant sought judicial review of Councils decision to grant resource consent for neighbouring subdivision into four lots error conceded at trial relief granted in the form of revoked approval for one lot and restriction on consent notice for another applicant appealed form of relief Whether the Court of Appeal erred in making allegedly contradictory findings and relying on those findings when deciding whether to grant relief in favour of the applicant whether the Court of Appeal erred when deciding that various discretionary factors overcame the applicant's right to be heard again in respect of the whole subdivision application for leave to appeal out of time

Dates: [2008] NZCA 234 CA 193/07 11 July 2008

Application for leave to appeal dismissed.

Costs of $2000 to both the first and second respondents.

24 October 2008

Case Number SC15/2008

Case Name: Ngai Tahu Properties Limited v Central Plains Water Trust and Canterbury Regional Council

Summary: Civil – Resource Management Act 1991 (RMA) – competing resource consent applications to take (and use) water from a finite natural resource – whether the Court of Appeal majority assessed the priority of claims correctly – whether the "ready for notification" test should apply in such cases – how a consent authority decision not to proceed with notification under s 91 RMA should affect priority of claims.

Dates: [2008] NZCA 71 CA69/07 19 March 2008

Application for leave to appeal granted. 24 June 2008.

Hearing: 13 and 14 October 2008

Case Number SC94 /2007

Case Name Greenpeace New Zealand Incorporated v Genesis Power Limited

Summary

Summary Civil – interpretation of ss 70A and 104E of the Resource Management Act 1991 – under those sections, consent authorities are prohibited from having regard to the effects of greenhouse gas discharges on climate change, except to the extent that the use and development of renewable energy enables a reduction in the discharge into air of greenhouse gases, either in absolute terms or relative to non-renewable energy – whether Court of Appeal was wrong to hold that the exception only applies to renewable energy applications – whether the Court of Appeal erred in its decision to exercise its jurisdiction to grant declaratory relief.

[2007] NZCA 569 CA 372/07 11 December 2007

Dates

Application for leave to appeal granted.

11 February 2008

Hearing

28 May 2008
Elias CJ, Blanchard, Tipping, McGrath, Wilson JJ

Decision

Appeal dismissed.

19 December 2008

Case Number SC91 /2007

Case Name: Geoffrey Charles Dury and others v Palmerston North City Council and others

Summary: Civil appeal – Resource Management Act 1991 – application by third respondent (an orthodontist) for consent to use a dwelling in a residential area for a non-residential purpose – proposal failed to comply with conditions of District Plan and required a restricted discretionary resource consent, which Council granted without requiring notification – High Court quashed Council's consent – Court of Appeal overturned High Court decision and restored resource consent – in the meantime, third respondent had applied for and been granted a second resource consent, subject to more restrictive conditions than the first – whether second consent replaced first consent in toto in accordance with Sutton v Moule (1992) 2 NZRMA 41 – whether third respondent may be deemed to have abandoned first consent by making and proceeding with second application and complying with its conditions – alternatively, whether the two consents coexist and third respondent must comply with the conditions of both – whether the consent that is later in time should prevail – whether the Court of Appeal was correct in holding that it had no discretion as to the available remedy – whether the Court of Appeal correctly applied the principles of the Discount Brands case ([2005] 2 NZLR 597) in relation to dispensing with public notification – application for stay of execution of Court of Appeal's costs orders.

[2007] NZCA 521 CA 198/06 CA 211/06 20 November 2007

The application for leave to appeal is dismissed with costs of $1,000 to the first respondent and $1,000 jointly to the second and third respondents.

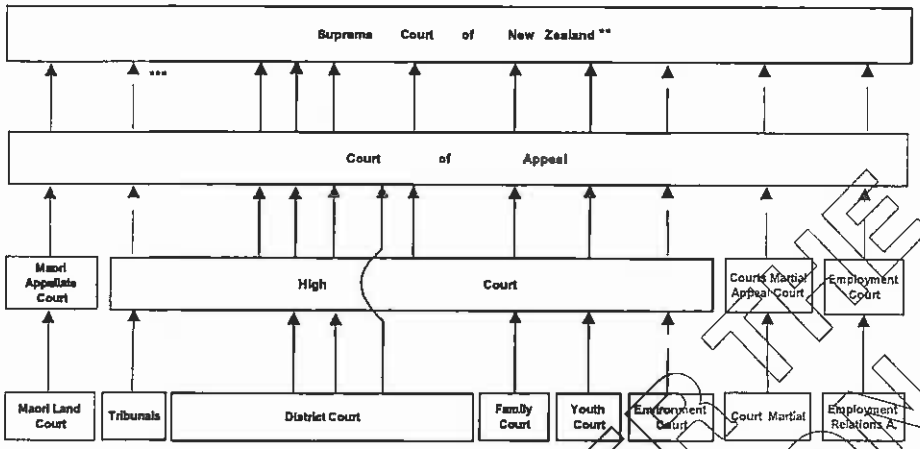
Dates: 1 April 2008

Case Number	**SC 73/2005**
Case Name	Waitakere City Council v Estate Homes Limited
Summary	Resource management - whether Court of Appeal erred in answering four questions of law - whether a subdivision consent application can be altered by the local authority, and granted subject to the alterations, as long as no prejudice arises to the applicant, other parties, or public - whether a consent can be granted subject to conditions more favourable than those applied for - whether Court of Appeal erred in finding that construction of road fell within s108(2)(c) RMA - whether Court of Appeal erred in finding that acquisition of centre part of road fell within s322(2)(a) Local Government Act 1974 - whether Court of Appeal erred in sending proceedings back to Environment Court.
	CA 210/04 11 November 2005
Dates	Leave to appeal granted. 4 April 2006
Appeal Hearing Date	11 and 12 July 2006
Decision	The appeal is allowed. The judgment of the Court of Appeal is set aside. The appeal is referred back to the Environment Court to be determined in accordance with this judgment. Estate Homes must pay the Council costs in the sum of $10,000 plus reasonable disbursements. Costs in the other Courts are to be fixed by those Courts.
	19 December 2006.

Case Number	**SC 68/2005**
Case Name	Roger Wilson Steele and Christine Lynne Roberts v Eleftarious Serepisos
Summary	Civil appeal – whether the vendor subdivider was entitled to bring the contract to an end or treat it as at an end because the provisions of s 225 of the Resource Management Act 1991 had not been fulfilled within a reasonable time - whether the vendor was obliged to give the purchaser notice of their intention to bring the contract to an end or allow the purchaser an opportunity fulfil the conditions of s 225 of the Act.
	CA 203/04 12 October 2005
Dates	Leave to appeal granted to appellant and respondent. 15 February 2006
	23 May 2006
Appeal Hearing Date	Decision reserved
Decision	The appeal is allowed. The cross-appeal is dismissed. The orders made by the Court of Appeal are set aside. In their place we make an order for the entry of judgment in the High Court in favour of the appellants. The appellants are to have costs in the High Court as fixed by that Court in the light of this judgment, and in the Court of Appeal the appellants are to have costs of $6,000 plus disbursements, to be fixed if necessary by the Registrar of that Court. The appellants are to have costs in this Court of $15,000 plus disbursements, to be fixed if necessary by the Registrar of this Court. 4 September 2006

Case Number	**CIV 4/2004**
Case Name	Westfield (New Zealand) Limited and Northcote Mainstreet Incorporated v North Shore City Council and Discount Brands Limited.
Summary	Civil appeal - resource management - application for consent for non-complying activity - whether a decision to proceed on a non-notified basis is extraordinary - whether the correct standard of review of such a decision is to be in accordance with traditional Wednesbury principles - whether the cautionary approach discussed in Bayley v Manukau City Council (1999) NZLR 568 should be adopted in non-notification decisions - whether there was sufficient material before the Commissioners to enable them to conclude that the effects of the application would be more than de minimis.
Dates	CA 30/04 14 June 2004 6 October 2004. Elias CJ; Tipping J Leave to appeal granted. 6 October 2004 PDF 0kb
Appeal Hearing Date	6-8 December 2004 Decision reserved
Decision	The appeal is allowed. The order of the High Court is restored. The decisions made by the North Shore City Council (a) on 25 July 2003 not to require notification of the second respondent's resource consent application and (b) on 21 August 2003 granting that application are set aside. Costs in favour of the appellants are to be fixed by the Court following receipt of written submissions. 19 April 2005 PDF 258kb

OVERVIEW OF NEW ZEALAND'S APPELLATE STRUCTURE*



* This Chart represents principal routes of appeal only. It does not reflect the present hierarchy of New Zealand Courts, nor is it a substitute to reference on relevant statutes
** All appeals to the Supreme Court are by leave of that Court according to statutory criteria. In exceptional circumstances, an appeal may be made directly to the Supreme Court from a decision of the Maori Appellate Court, High Court, Courts Martial Appeal Court, and Employment Court.
*** Only certain decisions of the Commerce Commission and Human Rights Review Tribunal.

Substantive Appeal →
Limited Appeal →
Leapfrog Appeal →
Civil Appeals →
Criminal Appeals →
Family Law Appeals →

Appendix B

Court of Appeal workload (Calendar year)

Criminal appeals

Year	Appeals or applications for leave filed	Oral Hearing	OTP	Allowed	Dismissed/abandoned/ no jurisdiction
2004	528	392	21	99	396
2005	521	384	17	143	339
2006	495	438	9	161	351
2007	451	407	6	153	343
2008	498	396	8	126	357

Civil appeals

	2004	2005	2006	2007	2008
Motions filed	273	288	285	208	310
Appeals set down	129	149	147	154	135
Appeals heard	113	125	151	124	136
Appeals allowed	34	53	57	43	51
Appeals dismissed	69	71	81	101	84

NOTE: the number of cases does not equal the number allowed and dismissed. Judgments in 16 cases were reserved at the end of the year, and 14 judgments came from cases heard in the previous year. Plus the matter adjourned sine die.

MINISTRY OF JUSTICE
Tāhū o te Ture

Hon Simon Power, Minister of Justice
Hon Christopher Finlayson, Attorney-General
Hon Georgina te Heuheu, QSO, Minister for Courts

RESOURCE MANAGEMENT ACT – APPEALS FROM BOARDS OF INQUIRY

Date	5 February 2009	File reference	CRT-06-01

Action Sought	Timeframe/Deadline
Ministers to review advice on appeals from Boards of Inquiry on projects of national significance	Before Cabinet on Monday 9 February 2009

Contacts for telephone discussion (if required)

Name	Position	Telephone (work)	(a/h)	1st contact
Helen Wyn	General Manager, Public Law	[deleted]	[deleted]	
Andrew Hampton	General Manager, Higher Courts	[deleted]	[deleted]	
Benesia Smith	[deleted]	[deleted]	[deleted]	✓
[deleted]	[deleted]	[deleted]	[deleted]	

Minister's office to complete

☐ Noted ☐ Approved ☐ Overtaken by events
☐ Referred to: _____
☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office comments

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MINISTRY OF JUSTICE
Tāhū o te Ture

5 February 2009

Hon Simon Power, Minister of Justice
Hon Christopher Finlayson, Attorney-General
Hon Georgina te Heuheu, QSO, Minister for Courts

RESOURCE MANAGEMENT ACT – APPEALS FROM BOARDS OF INQUIRY

Purpose

1. The Attorney-General has requested advice on how to provide for appeals from a High Court decision on a Board of Inquiry report on a project of national significance to bypass the Court of Appeal and be appealed directly to the Supreme Court. We understand this issue is to be raised as an oral item at Cabinet on Monday 9 February 2009. This memorandum provides that information.

Executive Summary

2. This memorandum identifies that an amendment would be required to the Supreme Court Act 2003 to enable these appeals to be made directly from the High Court to the Supreme Court, bypassing the Court of Appeal.

3. This memorandum identifies some alternative measures which could streamline the processing of these appeals, given their national significance. These are for the initial appeal to go to the Full Court of the High Court; and for the Court of Appeal to determine leave, subject to statutory criteria, and for consideration to be given to an amendment to the Court of Appeal (Civil Appeal) Rules to enable the Court to ensure the timely commencement of appeals when leave is granted.

4. The Ministry of Justice considers there are significant risks in bypassing the Court of Appeal, apart from the existing statutory provisions which allow the Supreme Court to grant leave in exceptional circumstances.

Background

Government's objective

5. The Government has announced measures to reform the Resource Management Act to "simplify and streamline" its processes. In particular, for projects of national significance, which meet statutory criteria, the initial decision will be made by a special Board of Inquiry, chaired by a current, former or retired Environment Judge. This extends the existing provisions of section 141B of the Act.

6. Currently, appeals from Boards of Inquiry are directed to the High Court. There is an opportunity for further appeals, subject to grants of leave, to the Court of Appeal and to the Supreme Court. There is a concern that this opportunity for

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second or subsequent appeals may cause undue delay in implementing projects of national significance.

RMA appeal statistics

7. For the period between 2006 and 2008, there were between 25 and 29 appeals to the High Court from decisions of the Environment Court. This is between 6 and 7.5 percent of the total judgments of the Environment Court. To date, there have been no appeals from Boards of Inquiry. A separate study for the 66-month period to June 2008, identified 83 substantive RMA appeals to the High Court.

8. The Court of Appeal hears between one and nine appeals on RMA decisions each year. In 2008, it heard six appeals. A separate study for the 66-month period to June 2008, identified 24 substantive RMA appeals to the Court of Appeal. Summary notes on recent RMA cases are appended.

9. The Supreme Court receives two applications for leave to appeal RMA cases each year. Since 2004, the Supreme Court has heard five RMA appeals.

Leave required to appeal High Court's decisions

10. Currently, any appeal on a High Court appellate decision on a RMA matter, whether to the Court of Appeal or to the Supreme Court, may only be made with leave.

11. Leave to appeal to the Court of Appeal is granted by the High Court, or when refused, special leave may be granted by the Court of Appeal. In determining whether to grant leave, the Court of Appeal requires that it must be satisfied the appeal raises a seriously arguable question of law involving some public or private interest of sufficient importance to outweigh the cost and delay of a further appeal.

12. Leave to appeal to the Supreme Court is determined by that Court. Currently the Supreme Court Act 2003 requires that there is no direct appeal from any court other than the Court of Appeal unless exceptional circumstances are established. (s.14, SCA). Any application for leave must fulfil the criteria for leave to appeal (s.13, SCA) which require that it is "in the interests of justice for the Court to hear and determine the proposed appeal."

Appeals

Bypassing the Court of Appeal

13. The Attorney-General has asked for advice on how to provide for appeals from a High Court decision on a Board of Inquiry report on a project of national significance to bypass the Court of Appeal and be appealed directly to the Supreme Court.

14. To bypass the Court of Appeal and direct all appeals from decisions of the High Court involving projects of national significance to the Supreme Court would require an amendment to either the Supreme Court Act or the Resource Management Act. This could be achieved by amending section 14 of the

Supreme Court Act by adding a second subsection which excludes this class of appeals from the current provision. Alternatively, section 308 of the RMA could be amended to make it clear that there was no opportunity to appeal these matters to the Court of Appeal. We would need to consult the Ministry for the Environment and the Parliamentary Counsel Office on the best method of achieving this change.

Comment

15. We note that the Supreme Court Act already enables an appellant party, who can establish that there were exceptional circumstances, to seek leave to appeal the High Court's decision directly to the Supreme Court.

16. We also note that in recent years there have been few appeals on RMA matters to the Court of Appeal and to the Supreme Court. Moreover, while they have clarified the RMA and thereby provided precedent for subsequent interpretation, they have not involved projects of national significance.

17. The Ministry of Justice considers there are significant risks in bypassing of the Court of Appeal to direct all RMA appeals on High Court appellate decisions on projects of national significance originating from Boards of Inquiry decisions to the Supreme Court.

18. The higher Courts – the Supreme Court, the Court of Appeal, and the High Court – have clear roles in ensuring an orderly appellate structure. These are based on established principles to provide sufficient rights of appeal and efficiency of process.

19. This appellate structure includes as a fundamental aspect the role of the Court of Appeal as the principal intermediate appellate Court. Each stage of the appeal process refines the matters under contention, such that an application for leave to appeal subsequent stages imposes a higher threshold.

20. The change could establish a precedent whereby other interests, believing their category of law was similarly important, could argue for similar special treatment. This includes other matters equally important for economic development, for example, Commerce Act matters; or for social cohesion, for example, appeals on Family Court matters.

An alternative option

21. The Ministry can identify several changes which might assist the Government's objective of streamlining the RMA appeal process for projects of national significance. These measures complement the other changes already announced by the Government.

Initial appeal to the High Court

22. One possibility for the initial appeal to the High Court from a final decision of the Board of Inquiry, on projects of national significance, is for the appeal to be considered by the Full Court of the High Court. The Full Court involves two Judges. A hearing by the Full Court would enable a broader legal consideration of the matters of law at issue; and is likely to lessen the incentive to appeal to the

Court of Appeal or the Supreme Court (and those Courts would probably attach more weight to such a decision).

23. As a consequential adjustment, the Court of Appeal would then determine applications for leave to appeal to that Court. We emphasize that we have not discussed this option with the Chief Justice, or with the Chief High Court Judge.

Appeals to the Court of Appeal

24. Any further appeal to the Court of Appeal on a decision of the High Court on a RMA matter, whether the original decision was made by the Environment Court or a Board of Inquiry, requires a grant of leave. For projects of national significance, three possible changes are:

- which Court determines leave;
- the relevant criteria; and
- Court of Appeal (Civil Appeal) Rules.

Determining leave

25. For an appeal to the Court of Appeal, leave may be granted by the High Court, and, where the High Court refuses leave, special leave may be granted by the Court of Appeal.

26. An alternative option for determining leave, would be to require that all decisions on leave to appeal involving projects of national significance, be made by the Court of Appeal. This may ensure a greater degree of consistency in leave decisions for projects of national significance.

Leave criteria

27. The statutory criteria for leave to appeal to the Supreme Court – "the interests of justice" identifies key several elements including "a matter of general or public importance (including the Treaty of Waitangi)", and "a matter of general commercial importance."

28. The case law criteria for leave to appeal to the Court of Appeal requires "a seriously arguable question of law involving some public or private interest of sufficient importance to outweigh the cost and delay of a further appeal."

29. These criteria provide alternative criteria which could be adopted for RMA appeals on decisions of the High Court. Given the nature of RMA decisions, the RMA could be amended to adopt the established criteria used either by the Court of Appeal or the Supreme Court. This would make explicit to all parties that an application to make a second or subsequent appeal following an initial appeal to the High Court, must meet a higher threshold.

Court of Appeal (Civil Appeals) Rules 2005

30. The Court of Appeal generally determines applications for leave to appeal within two months.

31. The appellant applies for a hearing date for the substantive appeal. Under the Court of Appeal (Civil Appeals) Rules, if the application is not made within six months, the appeal is considered to be abandoned. (The Court may grant an extension for a further three months.)

32. The Attorney-General may wish to invite the President of the Court of Appeal and the Chairman of the Rules Committee to examine the possibility of revising this Rule for RMA appeals involving projects of national significance.

33. If the Committee decided to amend the Rules, this change would be made by Order in Council and could commence at the same time as the changes proposed by the Resource Management Amendment Bill. The Rules Committee is independent of Government, and the outcome of the Committee's deliberation on this matter cannot be assumed.

Next Steps

34. [deleted]

35. [deleted]

36. The Ministry is available to discuss this report with Ministers, if required.

Recommendations

37. It is recommended that Ministers:

Background

1. Note the Attorney-General has requested information on how to enable appeals on High Court appellate decisions on decisions of Boards of Inquiry to be made directly to the Supreme Court.

2. Note the Supreme Court only hears appeals when it has granted leave to appeal; and that only in exceptional circumstances will it grant leave to appeal a decision of a Court other than the Court of Appeal.

Legislative Amendment

3. Note an amendment to either section 14 of the Supreme Court Act 2003 or section 308 of the Resource Management Act 1991 would be required to enable these appeals to bypass the Court of Appeal.

4. **Note** the Ministry considers there are significant risks if changes are made to the current appellate pathways to enable these appeals to bypass the Court of Appeal.

5. **Agree** that Ministry officials consult officials at the Ministry for the Environment and the Parliamentary Counsel Office to identify the more appropriate legislative change, if a decision is taken to bypass the Court of Appeal for these appeals. **YES / NO**

Alternative options

6. **Note** the Ministry has identified alternative options which could complement the Government's other measures designed to streamline RMA consent processes for projects of national significance.

    - these appeals be made to the Full Court of the High Court.
    - decisions on leave to appeal to the Court of Appeal on the High Court's appellate decisions on these matters be made by the Court of Appeal.
    - the statutory criteria options are:

(a) that the appeal must raise a seriously arguable question of law involving some public or private interest of sufficient importance to outweigh the cost and delay of a further appeal. *[current Court of Appeal test]*

OR

(b) that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal. *[current Supreme Court test]*

- the Attorney-General consult the Rules Committee on the possibility of an amendment to the Court of Appeal (Civil Appeal) Rules 2005 to ensure the appeals on projects of national significance are progressed in a timely manner.

7. **Indicate** whether you wish further work to be undertaken on these issues **YES / NO**

Consultation with the Chief Justice

8. **Agree** the Attorney-General consult the Chief Justice on the proposed changes. **YES / NO**

Helen Wyn
General Manager,
Public Law

APPROVED / SEEN / NOT AGREED

APPROVED / SEEN / NOT AGREED

Hon Simon Power
Minister of Justice
Date:

Hon Christopher Finlayson
Attorney-General
Date:

APPROVED / SEEN / NOT AGREED

Hon Georgina te Heuheu, QSO
Minister for Courts
Date:

Department of Conservation
Te Papa Atawhai

MSU reference 09 - C - 0025
(MSU use only)

Departmental Submission

Date:	16 February 2009	File reference:	LCV 01 12 90

Minister of Conservation

Subject:	**PAPER TO THE CABINET ECONOMIC GROWTH AND INFRASTRUCTURE COMMITTEE ON THE RESOURCE MANAGEMENT (SIMPLIFICATION AND STREAMLINING) AMENDMENT BILL**
Action Sought:	Note that the Minister of Conservation's call-in powers are based on Crown ownership of the foreshore and seabed and that the landowner (represented by the Minister) would ordinarily have greater powers over decision making than a general submitter would. No policy on that point was included in CAB Min (09) 3/7.
Deadline:	The Cabinet Economic Growth and Infrastructure Committee on 18 February.

Paper Type: (Cabinet, Statutory or Other)	Other	**Dept's Priority:** (Very High, High, Normal or Low)	High
Risk Assessment: (e.g. possible negative reactions/consequences)		**Level of Risk:** (High, Medium or Low)	

Contacts for telephone discussion (if required)

	Name	Position	Telephone	
1	Doris Johnston		04 471 3100 (wk)	0274 312 358
2	Guy Kerrison		04-494 1470 (wk)	027 447 8662
3	Yvonne Legarth		04 4713117 (wk)	021 049 3300

Executive Summary

1. On 2 February Cabinet agreed to the key policies that propose amendments to the Resource Management Act in nine main areas [CAB Min (09) 3/7 refers].
2. On 9 February Cabinet reached agreement on the only outstanding matter relating to restricting appeals beyond a board of inquiry for proposals of national significance [CAB Min (09) 4/11 refers].
3. On 9 February 2009, Cabinet gave the Cabinet Economic Growth and Infrastructure Committee (EGI) the power to act and make decisions when it considers a paper on the proposed amendments to streamline the Resource Management Act on 18 February 2009 [Cab Min (09) 3/7 and Cab Min (09) 4/14 refer].
4. The paper to EGI makes recommendations for amended and new policies that are intended to deal with matters of minor consequence, and that follow from issues found during the drafting process.
5. A recommendation is made to remove the Minister of Conservation's role as final decision maker in relation to restricted coastal activities and any other matter wholly in the coastal marine area that is called in.
6. While the Cabinet paper [CAB Min (09) 3/7] dealt with removal of the Minister of Conservation's power to make the final decision on Restricted Coastal Activities, the paper did not deal with changes to decision making associated with that Minister's call-in powers.
7. The primary reason for the Minister of Conservation's roles in relation to the coastal marine area under the RMA is based on Crown ownership of the foreshore and seabed. A landowner (represented in this case by the Minister) would ordinarily have greater powers over decision making than a general submitter would.
8. The Minister for the Environment exercises those functions in the national interest, on land, while the Minister of Conservation exercises the function both in the national interest, and as the owner on behalf of the Crown. A core component of an ownership function is the ability to make decisions about the alienation, use, development and allocation of land that the Crown owns. Local authorities, for example, exercise this function in respect of public land they administer through a lease and licence regime.
9. The department is particularly concerned that changes are now being proposed to the Minister of Conservation's call-in powers that have not been discussed with the department. Where there has been no policy developed or discussions about proposed changes to the policy expressed in the Cabinet Minute, the department's view is that those matters should be dealt with as part of Phase Two of the RMA.

Recommended Action

It is recommended that you –

(a)	Note that the Minister of Conservation's call-in powers are based on Crown ownership of the foreshore and seabed and that the landowner (represented by the Minister) would ordinarily have greater powers over decision making than a general submitter would. No policy on that point was included in CAB Min (09) 3/7.	**Yes / No**
(b)	Note that the department's view is that changes to the Minister of Conservation's powers to make decisions in respect of call-in should be dealt with as part of Phase Two of the RMA	**Yes / No**

.....
Doris Johnston
General Manager Policy Group
for Director-General

.... / ..... / .....
Hon Tim Groser
Minister of Conservation

Department of Conservation
Te Papa Atawhai

MSU reference 09 - C - 0012
(MSU use only)

Departmental Submission

Date:	23 January 2009	File reference:	DOCDM-391033

RECEIVED
26 JAN 2009
BY:

Minister of Conservation

Subject:	**REVIEW OF THE RESOURCE MANAGEMENT ACT 1991: PHASE ONE PROPOSALS**
Action Sought:	Seek appropriate decisions from Cabinet Business Committee (CBC), taking into account the concerns raised in this submission.
Deadline:	Before CBC on 26 January 09

Paper Type: (Cabinet, Statutory or Other)	Cabinet paper	**Dept's Priority:** (Very High, High, Normal or Low)	Very high
Risk Assessment: (e.g. possible negative reactions/consequences)	Changes to your functions and possible financial implications for the department	**Level of Risk:** (High, Medium or Low)	high

Contacts for telephone discussion (if required)

	Name	Position	Telephone	
1	Yvonne Legarth	Senior Planner	021 049 3300 (wk)	(ah)
2	Doris Johnston	GM Policy Group	0274 312 358 (wk)	(ah)
3	Guy Kerrison	Manager Planning Unit, Policy Group	027 447 8662 (wk)	(ah)

Executive Summary

The Minister for the Environment is proposing a package of changes to the Resource Management Act 1991 (RMA). The intention is to undertake amendments in a series of phases. Phase One will be considered at the Cabinet Business Committee meeting on Monday 26 January. We understand that after that meeting, changes will be made to the paper which will then go to Cabinet on 2 February. A number of the changes proposed have significant implications for your portfolio and these are analysed in this paper.

This paper recommends that you:

- seek agreement from CBC that any changes to the call-in powers will apply to both responsible Ministers (including the Minister of Conservation), not just the Minister for the Environment.
- oppose the proposal to remove the non-complying category of consents in Phase One, allowing the potential implications of that proposal to be fully analysed.
- support the new powers proposed for Ministers responsible for NPSs. The department supports these proposals which are essentially administrative in nature.
- note that the proposal to restrict the ability of the public to appeal plan changes that are designed to implement NPSs will be controversial, and affect foreshore and seabed management.
- note that the proposal to allow enforcement actions to be taken against the Crown are likely to have far wider financial implications for the department than are stated in the paper, and oppose the inclusion of that change in Phase One, allowing further analysis of the implications of such a change.
- note that the paper proposes a partial change to the provisions relating to restricted coastal activities, and seek deferral of all decisions on RCAs until Phase Two, to allow full consideration of the views of he Board of Inquiry into the NZCPS and analysis of the implications of changes to RCAs for foreshore and seabed management.

Recommended Action

It is recommended that you–

		Minister's decision
(a)	Note that a paper proposing Phase One changes to the RMA will be considered by CBC on 26 January.	(yes / no)
(b)	Note that some of the proposals in the paper have significant implications for your conservation portfolio.	(yes / no)
(c)	Seek agreement from CBC that any changes to the call-in powers will apply to both responsible Ministers (including the Minister of Conservation), not just the Minister for the Environment.	(yes / no)

(d)	Oppose the proposal to remove the non-complying category of consents in Phase One, allowing the potential implications of that proposal to be fully analysed.	(yes / no)
(e)	Support the new powers proposed for Ministers responsible for NPSs. The department supports these proposals which are essentially administrative in nature.	(yes / no)
(f)	Note that the proposal to restrict the public's ability to appeals on points of law for proposed policy statements and plan changes will be controversial, and have affect on foreshore and seabed management.	(yes / no)
(g)	Note that the proposal to allow enforcement actions to be taken against the Crown are likely to have far wider financial implications for the department than are stated in the paper.	(yes / no)
(h)	Oppose the inclusion of changes to enforcement actions against the Crown in Phase One, with further analysis as part of Phase Two.	(yes / no)
(i)	Note that the paper proposes a partial change to the provisions relating to restricted coastal activities, with other changes being considered after the Board of Inquiry into the NZCPS has reported, and after there has been analysis of the implications of changes to RCAs for foreshore and seabed management.	(yes / no)
(j)	Seek deferral of all decisions on RCAs until Phase Two, to allow full consideration of the issues relating to RCAs.	(yes / no)

D H Johnston

Doris Johnston
General Manager Policy Group
for Director-General

T Groser 26/01/09

Tim Groser
Minister of Conservation

Discussion amongst Ministers went in a different direction

Purpose

1. This briefing is to advise you of those changes proposed to the RMA in Phase One which are of significance to your portfolio, and to set out the department's concerns about some of those changes.

Background

2. The Minister for the Environment is proposing a package of changes to the Resource Management Act 1991 (RMA). The intention is to undertake amendments in a series of phases. Phase One will be considered at the Cabinet Business Committee meeting on Monday 26 January. We understand that after that meeting changes will be made to the paper which will then go to Cabinet on 2 February.

3. The department has analysed those changes which would affect its ability to participate effectively in RMA processes or the costs of doing so, and those which would alter your statutory functions under the Act.

4. The department has an operational focus, and in order to achieve the intent of the legislation the department administers, we engage in RMA processes in a number of different ways:
   - as an applicant for activities such as water takes and discharges associated with the management of public conservation land and with the use and maintenance of facilities used by tourists and the public
   - as an affected party where activities are undertaken by others on adjacent properties that may have adverse effects on public conservation land
   - as a tool to achieve outcomes (e.g. in relation to freshwater fisheries and wildlife) where the conservation values affected are located outside public conservation land.

5. The Conservation General Policy establishes a statutory framework for advocacy undertaken by the department, supported by the Statement of Intent.

Comment

6. We have only commented on those recommendations which directly affect your portfolio. The department could provide information on other recommendation if requested. We consider that some of the other recommendations will improve the RMA regime, while the merit of others is less clear. A number of the recommendations will be controversial.

Part B - Proposals of National Significance

7. The paper proposes changes to the call-in process in relation to significant projects. Recommendation 17 seeks agreement to allow the Minister for the Environment to refer a call-in to the Environmental Protection Agency (EPA). The paper does not seek a similar authority for you, despite the fact that you are responsible for any call-in within the coastal marine area (cma).

8. If the recommendation is not changed to also cover your call-in powers, you will be unable to refer any matter that you call-in to the EPA, should that be considered appropriate. This could be achieved by changing "Minister for the Environment" to

"relevant Minister" in the recommendations. The same issue applies in relation to a number of other recommendations that affect powers which are held by both the Minister for the Environment and Minister of Conservation. Suggested amended recommendations are provided in the Appendix.

Part D - Improving plan development and plan change processes (Removal of non-complying category of consents)

9. Recommendation 44 seeks removal of the non-complying activity category, with these becoming discretionary activities after a transitional period of 36 months.

10. The department considers that this change would have significant impacts on the protection of biodiversity and other conservation values. Non-complying activity status is commonly applied to sensitive environments, the habitat of threatened species, and protected areas. The non-complying category has also been used to address water allocation, where further allocation of water would place waterbody values at risk. The non-complying category provides a high level of certainty about the tests that the decision-maker will use in considering applications where there are risks to the environment.

11. The potential implications of this proposed change have not been fully analysed. It is our view that that analysis should be carried out, and the matter addressed as part of the Phase Two programme.

Part F - Improving national instruments

12. This section in the Cabinet paper deals with the development and implementation of National Policy Statements (NPSs) and National Environment Standards (NESs). The NZ Coastal Policy statement is an NPS, and therefore changes to the provisions relating to NPSs affect your functions.

13. The section proposes new powers for Ministers responsible for NPSs. The department supports these proposals which are essentially administrative in nature.

Plan changes

14. A number of the recommendations would limit people's ability to appeal proposed policy statements and plan changes, except in cases where the appellant has sought the leave of the Environment Court. Changes that limit the ability for people to appeal are likely to be controversial. These changes will affect the department's ability to effectively advocate for conservation, as well as the rights of the public. The effect of this on coastal management is particularly significant, given that regional coastal plans are the main mechanism for managing foreshore and seabed.

Part G – Improving the effectiveness of compliance mechanisms

15. Recommendation 75 proposes to increase the maximum fine for a prosecution, and Recommendation 77 proposes to open the Crown up to enforcement action.

16. Allowing enforcement actions to be taken against the Crown has financial implications for the department. Paragraph 286 incorrectly states that the department is only concerned about raising the maximum fine levels. There can also be significant costs in defending

the department against any proceedings, and these may not be recoverable even if the department is ultimately found innocent.

17. Enforcement proceedings can be vexatious or taken on matters of principle. The department has already been the subject of an application for an enforcement order associated with the use of 1080, which was refused by the Court on the grounds that it had no merit.

18. There is potential for the changes proposed to have a precedent effect in that they widen the range of activities which enforcement action can be taken against the Crown beyond the current health and safety matters contained in Building and Health and Safety legislation. This could lead to further extensions, and if those related to matters such as biosecurity and pest management they would also have significant financial implications.

Part H – Streamlining Decision Making (Proposal to Remove Restricted Coastal Activities (RCA))

19. Recommendations 84 and 85 deal with the removal of your powers to make decisions on RCAs.

20. Recommendation 84 proposes the removal of your final decision-making role. Agreement to this recommendation would mean that there would still be a separate category of consents which had to be notified (allowing the public to make submissions), you would still appoint a representative on the hearing committee, but the final decision would be made by the council or Environment Court. Recommendation 85 notes that further work is needed as part of the phase two programme before the RCA category of consent is removed, in order to allow Crown foreshore and seabed ownership matters to be considered and to consider the outcome of the current review of the NZ Coastal Policy Statement.

21. There are three options for dealing with RCAs:

a) retain the status quo
This will ensure that a Crown Minister makes any decisions on applications that could result in the destruction of foreshore and seabed (a Crown asset) or have other major implications for the Crown's interests. This would also avoid complete devolution of a function with major Treaty significance to authorities that are not part of the Crown. Under this option, the number of activities that are declared to be RCAs is decided by the Minister of Conservation through the NZCPS. This means that you could decide to have no RCAs, while still retaining the ability to declare activities to be RCAs in future if this is considered useful.

b) remove the final decision power for RCAs, but retain the requirement to notify applications for activities that are RCA, and your ability to appoint a member of the hearing committee.
This would ensure that the public were able to make submissions on applications, and your representative will be able to ensure that a satisfactory process is used that takes into account the Crown's interests.

c) remove the RCA provisions altogether
This would leave call-in as the only power that allows the Minister of Conservation to make decisions on applications. Using call-in rather than RCAs creates uncertainty about what activities will be affected.

22. There is no evidence that the RCA process creates significant delays or increased costs, and the process has been successfully used to improve outcomes - Ministers of Conservation have corrected technical errors in consents, and have taken actions to improve conditions to protect the public interest (e.g. in relation to water quality and sewage discharges). It is also likely that it has increased public, and particularly iwi, confidence that their concerns will be considered. The summary of submissions to the Board of Inquiry show that there are a range of views on the RCA process. Infrastructure companies and local authorities tended not to favour RCAs or supported them in principle only, and conservation board, NGOs, tangata whenua, and some individuals supported the retention of RCAs.

23. It is hard to see what benefits will be provided from removing the function from the Act, and as noted above, you are already able to decide whether to have any RCAs, and if so how many.

24. In addition, we do not see any benefits from making a partial change in Phase One. We recommend that any changes to RCAs be deferred to Phase Two. This will allow the Board of Inquiry considering the revised NZCPS to complete its report and recommendations. The Judge who is chairing the Board of Inquiry into the New Zealand Coastal Policy Statement (NZCPS) has heard from a number of submitters on this issue and intends to write to you setting out her preliminary views on RCAs. To take a decision now could be seen to be pre-empting the outcome of the Board of Inquiry work. There are also matters relating to the ownership responsibilities in the Foreshore and Seabed Act that should also be considered as part of the policy formulation.

Cost Implications

25. The most significant financial implications relate to the proposal to allow enforcement actions against the Crown. Those cost implications are further detailed above.

Consultation

26. Not applicable.

Section 4 Conservation Act

27. There are implications for your ability to achieve your Treaty obligations, and also for foreshore and seabed management.

Risk Assessment

28. There are high risks from a number of the recommendations in the Cabinet paper. These are detailed above.

Legislation

29. Proposed changes to the Resource Management Act 1991 (referred to as the Resource Management (Streamline and Simplify) Amendment Act 09)

Appendix

Amended Recommendations for Proposals of national significance

16. **agree** to amend the process for decisions on proposals of national significance (section 140 to 150AA of the RMA) by allowing an 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)

17. **agree** that the call-in provisions be amended to allow the relevant Minister ~~for the Environment~~ to refer a call-in application to the EPA for processing

18. **agree** that the relevant Minister ~~for the Environment~~ 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. **note** that a board of inquiry will continue to consider and decide on the proposals of national significance

20. **agree** that additional criteria be added to the appointment process for the board of inquiry that requires the relevant Minister ~~for the Environment~~ to seek nominations from local authorities in which the proposal relates and to appoint a person with local knowledge

21. **agree** to increase the number of Environment Court judges that may hold office at any one time from 8 to 10

22. **invite** the Minister for the Environment, in consultation with the Minister for Courts, to report back means to address the financial implications of increasing the number of Environment Court judges by end of March 2009

23. **agree** to remove the restrictions imposed on the scale of remuneration paid to members of boards of inquiry within the statute

24. **agree** that a time limit be placed on the decisions of Boards of Inquiry of nine months, commencing with the date of notification, and ending with the release of final decision

25. **agree** that the nine month time limit can only be extended by application to, and agreement from, the relevant Minister ~~for the Environment~~

26. **agree** that supplementary resource consents associated with a proposal that have not applied for at the time the original application was lodged with the EPA, can be forwarded to the EPA and the relevant Minister ~~for the Environment~~ will decide how it should be processed

27. **agree** that appeals on decisions made by the Board of Inquiry can only be made to the Court of Appeal and are restricted to questions of law

28. **agree** 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 circulate this information to all parties attending hearings

29. **agree** that comments on a draft decision of the board of inquiry may include comments on proposed conditions and minor or technical issues but can not challenge the decision of the Board at to whether or not an application should be granted

30. **agree** that board of inquiry members be given legal protection against actions arising out of any acts or omissions made in good faith

31. **agree** that the provisions of the RMA relating to call-in powers be amended to clarify the relevant Minister ~~for the Environment~~ can call in a private plan change request

    (a) 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

    (b) after the a decision has been made by the local authority with whom is was lodged to accept, adopt or decline the plan change request

32. **note** that I intend to direct officials to prepare public guidance on the relevant Minister ~~for the Environment's~~ powers of intervention under the RMA, including call-in

ENDS