

## Question and Answers regarding Phase 1 of the RMA Amendments 2009

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### **1. What consultation has been carried out on this draft Bill?**

- On 1 December 2008 the Minister for the Environment wrote to all local authorities seeking their comment on how the RMA could be improved.
- On 10 December 2008 the Minister for the Environment invited members of the key sector organisations to send in comments.
- The Minister, and the Minister of Local Government, received hundreds of letters outlining proposals for improving the function of the Act.
- Since December 18 the Technical Advisory Group has worked intensely with the Minister and Ministry for the Environment officials. The TAG had six full-day meetings to consider options it developed, options suggested by officials, and ideas and comments received from local authorities, other organisations, businesses and the community.

The Group has extensive, practical experience with the Act. Membership of the TAG consists of: Alan Dormer, Barrister (chairperson); Guy Salmon, Executive Director of the Ecologic Foundation; Penny Webster, Mayor of Rodney District; Michael Foster, Director of Zomac Planning; Dennis Bush-King, Environment and Planning Manager at Tasman District Council; Wyatt Creech, businessman and former Deputy Prime Minister; Paul Majurey, Partner, Russell McVeagh; Mike Holm, Barrister.

### **2. What Parliamentary support is there to pass these changes into law?**

- National, ACT New Zealand and United Future are committed to supporting this reform. The Maori Party have indicated support for the first reading of the Bill subject to caucus approval.

### **3. Are there any variations from National's 2008 Election Policy on these reforms, and if so, why have changes been made?**

- There were 17 specific policy commitments in National's policy of reforming the RMA – 15 are included in this reform. There have been two changes:
  - a) National's policy said it would replace Section 8 in respect of the Treaty of Waitangi with a new clause setting out specific consultation requirements with iwi. The Maori Party has made strong representations opposing any change to section 8. The Technical Advisory Group has advised that case law on section 8 and the improvement in practice is such that this is no longer a significant issue.
  - b) National's policy proposed narrowing the definition of "the environment". This was intended to try and prevent trade competitors abusing the RMA. The Technical Advisory Group advised that a narrower definition would have other

unintended consequences that would not improve the overall performance of the Act. Instead it has recommended other significant changes to prevent trade competitors misusing the RMA. The Government has adopted this package of amendments.

#### **4. *What examples would you cite supporting the case for RMA reform?***

- **Wairau Pak'nSave** – The proposal to develop a Pak'nSave supermarket on Wairau Road on the North Shore has been embroiled in litigation since the 1990s. Consents have been granted several times only to be appealed to higher courts, and although the supermarket building has been constructed, it is unable to operate due to ongoing litigation.
- **Wellington Inner-City Bypass** – In 1992 Transit and Wellington City Council approved a design in principle. Finally opened in 2007 – 15 years later.
- **Project Hayes** – Environment Court hearing underway but adjourned as further information is sought on potential cumulative effects that may have arisen since the application was lodged in mid-2006.
- **Long Bay Structure Plan** – 12-year planning process characterised by disagreement between North Shore City Council and developer ended with Environment Court issuing a decision in favour of the council-proposed Structure Plan.
- **Whangamata Marina** – Initially proposed in 1995, the Whangamata Marina proposal is still awaiting a final decision after the High Court directed the then Minister of Conservation to set his decision aside and reconsider the applications.
- **Crest Energy Marine Energy Project** – After almost four years Crest Energy is awaiting an Environment Court hearing.
- **Project West Wind in Makara** – Although the councils granted consents within six months, the Environment Court took a further 18 months to confirm their decision.
- **Alpurt B (Albany to Puhoi Realignment) State Highway One** – RMA approvals took approximately 10 years from lodgement to completion.

#### **5. *What is being done to strengthen the environmental protection aspect of the Act?***

- Greater central government guidance via National Environmental Standards and National Policy Statements assists local authorities to set local standards on nationally important environmental issues.
- Speeding up the plan changing process will encourage councils to keep their plans up to date and therefore enable them to deal more quickly with environmental issues as they emerge.
- Maximum fines are being increased significantly from \$200,000 to \$600,000 for corporate offenders and from \$200,000 to \$300,000 for individuals. This is a tangible disincentive to those breaching consent conditions.
- Courts will have specific power to review a consent if an offender breaches their conditions. This is a major incentive to keep within the consent rules.

- Enforcement action will be able to be pursued against the Crown. This power will be given to councils as per the Building Act.
- Requiring Authorities will no longer make the final decision on notices of requirement for a designation.

**6. *Can you reassure the public they won't be cut out of the process of RMA decision making?***

- The principle of inviting local community involvement in decision making in order to achieve good, balanced decisions remains firm. The Bill will also be open for consultation through the select committee process.
- The issue is to strike a proper balance between a reasonable level of public participation and the need for councils to take action to protect the environment and the improvement of national infrastructure.
- The reforms will mean better and more focused decisions locally. The larger and sometimes more controversial applications will still be publically notified. Local Government will still consult on major plan changes

**7. *Will the reforms speed up the decision making process?***

- Yes. The quality of District Plans will be higher, the consistency of decision making better, streamlining of processes will be improved and all this will combine to achieve better and faster decisions which are less likely to be appealed.
- Changes to the public notification procedure for consents will mean more consents can be processed on the faster 'non-notified' track.
- Distribution of consent information by email and via websites to affected parties is a quicker and more efficient way to speed up communications.
- Not stopping the clock when asking for more information will encourage councils to follow up faster. Councils will in turn demand higher quality applications from the outset.

**8. *Why are you setting up an Environmental Protection Authority and how does this help improve implementation of the RMA?***

- The Bill sets up a transition to an Environmental Protection Authority (EPA) to achieve national environmental goals. The EPA will provide efficient and timely administration of proposals of national significance. It will make decisions within nine months.
- Under the RMA it is relatively common for decisions on significant roading projects, energy projects, and other large scale infrastructure projects to be appealed to the Environment Court. This is very costly, time consuming and increases uncertainty for all. The Environmental Protection Authority board of inquiry process will avoid this situation.

- Further detailed work on the structure and functions of the EPA is to be developed as part of the Phase II RMA work programme. The Government's aim is to have this concluded by 1 July 2010.

### **9. *What happens next?***

- The Bill will be introduced into Parliament in February and referred to the Environment and Local Government Select Committee for public submission and hearings.
- It is expected the Bill will be enacted by September.
- This Bill is the first of two phases of reforming the resource management area. Phase II will set up the EPA and deal with reforms relating to aquaculture, fresh water, urban design and infrastructure/Public Works Act.