Submission

By

Business|NZ

to the

Local Government and Environment Committee

on the

Resource Management and Electricity Legislation Amendment Bill

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1.0 Introduction

1.1 Encompassing four regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' & Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), Business New Zealand is New Zealand's largest business advocacy body. Together with its 56-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, Business New Zealand is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

1.2 In addition to advocacy on behalf of enterprise, Business New Zealand contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

1.3 Business New Zealand's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.

1.4 The strength of the economy also determines the ability of a nation to deliver on the social and environmental outcomes desired by all. First class social services and a clean and healthy environment are possible only in prosperous, first world economies.

1.5 Business New Zealand has consistently espoused the view that the Resource Management Act 1991 (RMA), as currently written and implemented, presents an unnecessary impediment to delivering such outcomes.

2.0 Part II of the principal Act

2.1 Since its introduction in 1991 the RMA has been the subject of almost continuous debate. While few believe total abandonment of the legislation to be the appropriate course, an increasing body of commentary points to the implementation of the principles of the Act by local government as being the major source of the costs, time delays and exhaustive legal processes associated with its application.

2.2 Supporters of the current regime point to the fact that less than 1% of applications are declined each year. What is not so readily acknowledged is the number of consent applications, both large and small, that are withdrawn by applicants when confronted with the cost and complexity of the process. Similarly, this figure does not give account to the approvals that are granted with substantive conditions frequently having little relationship to the,

"sustainable management of natural and physical resources", or those subsequently subject to formal appeal.

2.3 The way local government applies the Act through the mechanism of regional and district plans leads to many of the problems that have generated the ongoing debate. Those plans, in turn, are based on a particular regional or territorial local authority's interpretation of Part II of the Act.

2.4 Problems associated with the use, or misuse, of Part II were recognised some time ago and in 1999 attempts were made to rectify the situation by way of an amendment bill. This attempt was not successful. Since that time there has been minimal improvement to the situation, despite a series of minor amendments, and it seems appropriate to Business New Zealand to recommend to the Committee that the issue of change to Part II and the definition of "environment", with a view to improving the process and allowing new development while achieving the Act's underlying goal of the *"sustainable management of natural and physical resources"*, be included in the Committee's deliberations.

3.0 Proposed Changes

3.1 The Bill under consideration, while introducing some changes that may improve the Act's implementation, includes others likely to add further complication, cost and delay. The Bill also includes several proposed changes that Business New Zealand submits should be deleted.

4.0 Contaminated Land

4.1 Clause 5 introduces a definition of "contaminated land" and clause 9 amends section 30(1) of the principal Act to make the, "location, monitoring, investigation, and remediation of contaminated land", a regional council function. This new function is not discussed in the Explanatory Note, regulatory impact or business compliance cost statements.

4.2 Business New Zealand views the lack of explanation with some concern and would draw to the Committee's attention the fact that this issue has been the subject of a number of government reports and investigations in the past. Efforts to develop an effective national regime to deal with contaminated land have to date not been successful, all having failed to resolve the difficult questions of liability for remediation and "orphaned" sites.

4.3 Given this situation it is not appropriate to give full responsibility for resolution of the issues surrounding contaminated sites to regional councils.

4.4 Pending a full consideration of the implications of resolving these issues Business New Zealand recommends the clause 5 definition and clause 9(1) be deleted.

5.0 Accreditation

5.1 Clauses 16 and 17 amend sections 39A and 39B of the principal Act to require the chair and at least half of a hearing committee to be formerly accredited. While Business New Zealand supports the up-skilling of persons conducting hearings we recommend that a further amendment be introduced allowing either the applicant or the consent authority to request the hearing be conducted by an independent, expert commissioner(s).

5.2 Business New Zealand has participated in the development of the existing accreditation programme and notes it is unlikely to address underlying problems such as inadequate resources at some local levels, lack of a particular specialist expertise, conflict of interest issues and loss of accredited council capacity resulting from the election process.

5.3 The increasing complexity of applications resulting from the introduction of new innovative technologies or new uses of existing resources make provision of a process to allow the appointment of independent commissioners a priority.

6.0 Hearings

6.1 Clause 18 amends section 41 of the principal Act to significantly change the manner in which local authority hearings are conducted. Business New Zealand submits the proposed changes, rather than fulfil the desired objective, *"to enable consent processes to be undertaken in a manner that is effective and efficient…."*[1] , will instead reduce the current flexibility of initial council hearings, increase costs and generally protract the process. We also note that in the absence of guidance a wide variance of implementation and exercise of power may result across the range of councils.

6.2 Clause 42 amending section 99 of the principal Act proposes making pre-hearing attendance compulsory and introduces sanctions for non-attendance. A formality and rigour is introduced into a part of the hearing process that should be low-cost and informal. There is no obvious justification for the proposed changes and Business New Zealand recommends both clause 18 and clause 42 be deleted.

6.3 Business New Zealand also views with concern that clause 74 suggests limiting the right to a de novo appeal. In the absence of a requirement in the Bill to make accurate evidence recording mandatory and serious concerns regarding capacity and expertise at the local consent level Business New Zealand opposes any limits on the right to a de novo appeal. An additional reason to oppose limiting appeal rights is that this will mean applicants will face significant additional costs at the consent hearing stage in expectation that this will effectively be the "court of last appeal".

[1] Explanatory note, p1

7.0 National Environmental Standards

7.1 Clauses 19-22 amend section 43 of the principal Act to improve the National Environmental Standards (NES) system. Business New Zealand supports more extensive use of NES as a technically robust way to address the many inconsistencies in local rules and consents.

7.2 The proposed amendments do however still allow too much variance from an NES to be exercised by a local authority. In particular, new section 43B(2) allows a local authority to overrule an NES with a local rule or consent. Business New Zealand recommends this subsection should be deleted and replaced with a requirement that if a local authority wishes to apply conditions that vary from the relevant NES they must draft a regulation to the Minister that allows for that variation. If the Minister, after extensive consultation, considers the variation appropriate the Minister may recommend to the Governor General an amendment to the NES in question.

7.3 Clause 19 introduces subdivision of land as one of the activities that could be covered by an NES. The Explanatory Note offers no explanation of why subdivision requires an NES and Business New Zealand submits this lack of explanation could allow unnecessary and unreasonable constraints to be applied to land use. In the absence of consultation on why land use should be subject to an NES Business New Zealand recommends clause 19 should be deleted.

7.4 Business New Zealand also recommends that a provision be introduced that allows for the formal involvement of industry and local government in the development of any new NES.

8.0 National Policy Statements

8.1 Clauses 23-27 amend sections 44-57 of the principal Act in to improve the process for introducing National Policy Statements (NPS). In particular, Business New Zealand supports the new section 46A that allows the Minister to vary the consultation process over how a proposed NPS is developed. Given the potentially wide subject range for NPS this flexibility will be important.

8.2 We would draw the Committee's attention to a matter regarding the application of NPS. Both clause 30, regional plans, and clause 33, district plans, discuss the contents of those plans. In both cases plans are required to "give effect to" NPS. The imprecise nature of this phraseology currently appears to create considerable difficulties for both applicants and consent authorities in reference to the Coastal and regional policy statements. Business New Zealand recommends that this phrase be deleted and replaced with "not inconsistent with". In our view this language would give consent authorities more flexibility in accommodating the provisions of NPS.

9.0 Resource Allocation

9.1 Both clause 9 and clause 30 introduce the issue of the allocation of natural resources and propose changes that would see allocation become the explicit responsibility of regional councils. Business New Zealand strongly opposes this move.

9.2 Allocation of resources such as water or heat and energy is a very complex area beyond the capacity of many local authorities. The prospect of multiple, differing models of property rights would only further confuse this complexity.

9.3 Business New Zealand believes a new framework for resource allocation, outside of the RMA, needs to be developed with some priority. We are party to the developing Water Programme of Action and the work done there could provide a useful base from which to develop a national framework that could then be applied at the local level.

9.4 This framework would need to address the extent and nature of property rights and offer guidance on a tradable rights mechanism. There is a growing body of international experience in this area that could help inform the introduction of new mechanisms.

9.5 Business New Zealand recommends the Committee acknowledges the RMA is not a resource allocation Act and deletes clauses 9 and 30.

10.0 Resource Consent Renewals

10.1 Clause 46 introduces new sections 124A - 124C to the principal Act. Business New Zealand supports the intent of this amendment in that it recognises that investment certainty is a critical element of national growth and well being. It is therefore very important that the question of resource consent renewal is clarified. As written the amendment does not appear to give sufficient emphasis to the existing consent holder as the priority when it comes to considering new applications. Business New Zealand recommends that new section 124B (1) and (2) be amended to make it clear that if an existing consent holder fulfils the requirements of 124B (1) that consent holder has priority over new applicants.

10.2 A further clarification is required and this concerns the duration of resource consents, particularly in relation to essential infrastructure. Business New Zealand submits that a resource consent renewal relating to access to a natural resource, such as water, should not be limited to the current 35 year maximum duration, but rather calculated with reference to the economic life span of the related project.

11.0 Non-Local decision Making

11.1 Clauses 54-57 amending sections 139B, 139C, 139D, 146, 148, 149, and 149A introduce reforms to the call-in regime and are supported by Business New Zealand. There is growing evidence that a greater role is required by

central government in a number of matters involving local government. We are, however, concerned that in leaving it to the Minister to decide which projects be subject to the call-in regime, the process as outlined will result in a high risk of politicised decision making.

11.2 To avoid this Business new Zealand recommends the process be amended by introducing a role of "commissioner" or "chairman" who would be a politically independent individual familiar with RMA processes.

11.3 The Minister, applicant or local consent authority would make application to the commissioner/chairman that a project be subject to the process outlined in the proposed amendments. The commissioner/chairman would decide whether the project should go through the amended call-in process or be sent back for hearing through the standard RMA process.

11.4 The commissioner/chairman would head a ministerial appointed hearings panel, or board of inquiry, that would be convened on an "as required" basis. The Minister could make a whole-of-government submission to the panel, as could the relevant local consent authority.

11.5 Business New Zealand recommends that clause 54's proposed new section 139B be amended to reflect that it is the commissioner/chairman who decides whether or not a project should be subject to the new call-in process, not the Minister.

12.0 Recommendations

12.1 Business New Zealand recommends that the Committee;

- investigate Part II of the principal Act with a view to including more specific reference to the importance of economic and social development;
- delete the definition in clause 5 and delete clause 9(1) both in reference to contaminated land;
- introduce a further amendment to allow for the appointment of independent commissioners;
- delete clause 18 and clause 42 in relation to hearings;
- change clause 74 to ensure limits are not placed on the right to a de novo appeal;
- delete new section 43(B)2 allowing a local authority to overrule an NES and introducing a requirement that a local authority must seek formal change to an NES if they wish to vary from it;
- delete clause 19 making subdivision subject to an NES;

- introduce a provision allowing for the formal involvement of industry and local government in the development of NES;

- in reference to district and regional plans remove “give effect to” and replace with “not inconsistent with”;

- acknowledge the RMA is not a resource allocation mechanism and delete clause 9 and clause 30;

- amend new section 124B (1) and (2) to clarify the priority rights of an existing consent holder;

- remove the 35 year limit on consents and introduce reference to the economic life span of projects; and,

- amend clause 54 to create a role of “commissioner/chairman” and clarify that person is the decision maker in reference to the “call-in” process, not the Minister.