# Submission

by


to the

# Local Government and Environment Select Committee

on the

# Resource Management Reform Bill

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**RESOURCE MANAGEMENT REFORM BILL - SUBMISSION BY BUSINESSNZ**[1]

## 1.0 INTRODUCTION

1.1 BusinessNZ welcomes the opportunity to make a submission on the Government Bill entitled 'Resource Management Reform Bill' (the 'Bill'). BusinessNZ is pleased that progress is being made by the Government on resource management reform matters.

1.2 BusinessNZ considers that the basis on which the Resource Management Act, 1991 (the 'RMA') was established was sound. However, its implementation has left much to be desired, causing significant unnecessary costs. Such costs are manifest in the form of the misallocation of resources away from their highest value use (allocative inefficiency), administrative burdens that do not reflect reasonable costs (productive inefficiency) and a dampening of the desire to invest in productive capacity (dynamic inefficiency). This appears to reflect the growing rules-based gulf that now separates how the RMA was intended to operate (the legitimate protection of the public interest in the environment) from its increasing use to reallocate private property rights[2] and interests in order to achieve often opaque or highly dubious public goals.[3]

1.3 As could be expected, the incentives created by the presence of such a gulf have generally been negative. Ever complex rules designed to deliver such opaque public goals at the cost of private interests have had unintended consequences that ultimately serve to defeat the objectives sought. For example, rules making it harder to remove trees have served only to discourage them from being planted in the first place. Incentives do matter, though their impact is often hard to measure.

1.4 Some improvements have been made in regards the above in previous RMA amendments, but further substantial gains are still possible. Some gains are reflected in the proposed amendments set out in the Bill and, with qualification in some areas, BusinessNZ supports them.

1.5 Key to the qualifications expressed by BusinessNZ is ensuring that the changes can be shown to deliver a clear objective, and that they can be clearly set within a broader strategic context.

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[1] Background information on BusinessNZ is attached as Appendix One.

[2] The term "private property rights" should not be confused as referring solely to ownership by private interests (as ownership can be held by either a public entity or a private citizen), nor does it only reflect the status of ownership, but can encompass a range of rights, such as use or management rights, and the responsibilities that accompany them.

[3] A number of relatively well-known examples of such an extension are set out on page 52 of the document entitled 'Report of the Minister for the Environment's Resource Management Act 1991 Principles Technical Advisory Group', dated February 2012. For example, 1.2 metre limits on heights of front fences and rules requiring lounge rooms to face the street.

## 2.0 RECOMMENDATIONS

2.1 BusinessNZ **recommends** that the Select Committee supports the amendments set out in the amending Bill with the following qualifications, that:

a. all proposals must be shown to deliver a clear objective of high quality resource management decisions that reflect the public interest in the sustainable management of the environment, and private interests;[4]

b. with respect to the six month consenting process for medium-sized projects:

   i. give particular attention to the extent to which the new incentives faced by decision-makers will contribute to the delivery of better quality decisions;
   ii. be assured that this proposal is not better considered in the context of the next tranche of RMA reforms later in the year which will assess the wider RMA planning and management system;
   iii. ensure that applicants have the choice as to whether an application proceeds via the new shorter timeframe or the standard, nine month process; and
   iv. ensure that the new consenting timeframes do not give councils more time than at present to process medium-sized project applications before applicants are able to claim discounts;

c. with respect to the direct referral process for major projects:

   i. do not proceed with the amendments to section 87 but also use a modified Part 6AA - proposals of national significance - in order to allow applicants, subject to the recovery of costs, to choose the most appropriate pathway (that choice being either the standard nine month process, the new six month process or the process set out in the amended Part 6AA; and
   ii. remove the "exceptional circumstances" exemption;

d. with respect to the proposed changes to section 32:

   i. ensure that section 32:

      - is an analysis of the proposal (that is, its economic impact) against the purpose of the Act, rather than the *objectives* the proposal is trying to achieve; and

[4] See paragraphs 3.10 to 3.23 for a fuller description of the benefits from such an objective statement.

- more closely mirrors the regulatory rigour of the public sector regulatory impact statements and economic cost-benefit analysis;

ii. that an additional criterion be added into new section 32 (1)(b) that requires the evaluation report to examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by –

> "assessing whether the proposal is necessary to protect the public interest in the environment; and"

iii. that the changes to section 32 proceed in conjunction with the development, by the Ministry for the Environment of the RMA performance monitoring regime and that consideration be given to using the Audit Office as an independent quality assessor;

iv. that new section 32(4) be amended to reflect the fact that while a greater prohibition than that set nationally may be regionally appropriate, it will reflect a diminution in property rights relative to the national standard and therefore needs to be justified;

v. related to (iii) above, where the proposals involve the regulatory taking of private property rights, that the Bill be amended to require the analysis to incorporate the costs of compensation as a means to assess whether there is still an overall net public benefit; and

vi. a clarification be inserted to prohibit local councils proceeding with the change where the public costs are shown to exceed the public benefits (that is, where there is a net public cost); and

e. new requirements for resource consent applications:

i. note the potential disproportionate impact on small businesses from the new information requirements set out in section 88 and new schedule 4, and the difficulty in demonstrating the activity is permitted.

## 3.0 DISCUSSION

3.1 BusinessNZ welcomes the Bill. BusinessNZ sees it as another step in delivering a more productive economy that facilitates the unlocking of New Zealand's productive capacity in a way that continues to carefully balance various commercial interests with environmental interests in a way that delivers an overall increase in economic activity.

3.2 But before getting into the specifics of the Bill, BusinessNZ thinks it worthwhile to set out for the Select Committee its views on the following over-arching points:

a. some misplaced perceptions of the role of business and its views of the environment;

b. how to measure success – the importance of a clear objective; and

c. getting the incentives right – delivering the right decisions.

3.3 Consideration of these factors inform BusinessNZ's broader view about how to maximise the protection of New Zealand's environmental assets while at the same time growing the New Zealand economy generally, and of the amendments set out in the Bill specifically.

### Business is Taking Action

3.4 While regulation of business is a welcome omission from the Bill currently in front of the Select Committee, many would seek such regulation on the basis that business activity equates to a negative impact on the environment, and that business activity should therefore be constrained. In this view, businesses (and more specifically, voluntary action) cannot be trusted to protect the environment and instead, regulators know better.

3.5 Fortunately, the reality is that business is making significant advances in the area of resource sustainability.

3.6 While always a gross exaggeration, a Dickensian view may have been more relevant in the 1970's and 1980's but is no longer consistent with modern-day general business practices. There is widespread acceptance that in a context of constantly growing demand (driven by factors such as growing population pressure and aspirations of the emerging [predominantly Asian] economies to mirror the wealth of traditional western economies), natural resource supply (including the use of natural resources) will become constrained.

3.7 Where a key input into a production process, businesses (and consumers) place an increasingly high value on the availability and responsible use of natural resources. Increasingly, therefore,

businesses recognise that sustainability of resources is fundamental to their on-going success.

3.8 With governments and businesses grappling with the complexity of internalising the costs of externalities into the cost of production (such as with carbon pricing), businesses look to developments in such areas as resource efficiency, supply chain management, biodiversity and ecosystem services and license to operate to help them find tools that will enable them to adapt to this situation where relevant to their business model. Such considerations are increasingly common in mainstream business thinking. For example, the BusinessNZ Major Companies Group and the Sustainable Business Council are working on license to operate issues.

3.9 In this context, a desire to continue to accept the status quo, or worse, stretch the ambit of government further, beyond the legitimate role of the protection of the public interest in the protection of natural resources, no longer reflects the best environmental outcome.

**Are We There Yet? – How Do We Know Success When We See It?**

3.10 When assessing changes such as those proposed in the Bill, it is important to be able to determine a reasonably clear line-of-sight between the proposals and the desired outcome. A set of objectives and assessment criteria is listed, but these are overly complex and confusing – the objectives are better described as operational strategies ("Ensuring that principles of good regulatory practice are met") and duplicative[5] and the assessment criteria are both numerous and tactical ("streamlines resource management planning and consenting processes (new or existing) under the RMA and other statutes").

3.11 It is also unclear what "to achieve the least cost delivery of good environmental outcomes" actually means (and in particular, why the primary focus is on least cost (productive efficiency) and not the allocation of resources (allocative efficiency) or innovation and investment (dynamic efficiency)).

3.12 The business community places much importance on a single overriding objective whose pursuit dictates how conflicts between subsidiary objectives should be traded-off, and relevant assessment criteria. Such a loosely defined objective statement only serves, in BusinessNZ's view, to perpetuate the absence of clarity about what in practical terms the RMA intends to do. Statements about needing an appropriate balance of rights, about the need to make trade-offs between the interests of parties seem to pit the environment and

[5] For example, it is hard to discern a tangible difference between "Improving economic efficiency of implementation without compromising underlying environmental integrity" and "Avoiding duplication of processes under the RMA and other statutes".

environmental interests against the economy and economic interests. This need not be the case.

3.13 Decisions weighing up where the public and private interests lie in the natural and built environment are to a large extent determined by the RMA framework. This distinction between public and private interests lies at the heart of the RMA. Unfortunately, the RMA has become a tool to increasingly extend the ambit of government regulation of private rights in the name of the public interest. This involves blurring the boundary between public and private interests by a process of constant legislative and judicial review and adjustment. The practical effect of the RMA is therefore to serve to reallocate property rights rather than act as a tool which manages the effect of their use.

3.14 In light of this, BusinessNZ considers that the objective or outcome against which changes to the RMA should be assessed is:

> High quality resource management decisions that reflect the public interest in the sustainable management of the environment, and private interests.

3.15 Such an objective statement, if implemented, could have a range of potentially positive practical outcomes such as:

a. providing a greater level of understanding about what is considered to be in the public, versus the private interest (and in turn facilitating a more informed debate about this);[6]

b. the ability to provide clearer guidance as to the jurisdiction of central government, local authorities and the judiciary (and in turn, the form of supporting institutions required). The government, for example, is best placed to determine where the boundary is to be drawn on the extent of the public benefit (and by default, where the private benefit lies);

c. the greater protection of private property rights (and, in turn, facilitating a conversation about the need to provide compensation where these are diminished in the public interest[7]); and

d. in focusing on the public interest in the sustainable management of the environment, allowing a more informed conversation about how best to allocate resources in the public interest. This conversation is about how to most efficiently allocate resources amongst competing uses (that is, social, environmental, cultural, economic,

[6] For example, the regulation of air quality standards, and minimum water quality standards would appear to be legitimately in the public interest, but the environmental regulation of fence height, deck extensions and shop verandas would appear not.

[7] This is not novel with two examples on the reallocation of private interests in the public interest with the provision of compensation being the allocation of fishing quota (based on historical catch) and the establishment of the NZETS (with the free allocation of units).

and recreational) where doing so results in a net welfare gain to society, including the cost of externalities.[8]

3.16 Clear property rights can facilitate improved resource management by providing incentives to protect and enhance the value of property. In particular, they can reduce the harm that arises in their absence due to:

a. over-exploitation – as in situations involving the tragedy of the commons where no-one can exclude others;

b. neglect or under-exploitation - as in situations involving the tragedy of the anti-commons where no-one has the incentive to preserve or protect;

c. an inability to get a court injunction in response to polluters setting themselves above the laws and where doing so has caused others damage; and

d. an inability to afford a better environment as exchange based on clear property rights lie at the very heart of all modern mixed economies.

3.17 On the other hand, the continued blurring of the distinction between the public interest in the sustainable management of the environment and the private interest will result in continued erosion of property rights, undermining confidence and dampening desire to invest.

3.18 This is the core of the business community's on-going dissatisfaction with the implementation of the RMA despite numerous attempts to address its problems.[9] In particular, the absence of clarity about public and private interests is reflected in the RMA implementation becoming a quagmire of guesswork, opacity, complexity and cost which has only served to dampen and frustrate the desires of business (and government) to progress developments that involve low, or in some cases net positive, environmental impact projects.

3.19 Looking at this from a slightly different perspective, the blurring of the public interest turns the sustainable management of the environment into a complex, and uncertain negotiation where the risk of the loss of property rights is high. This creates a regulatory framework that is unstable and subject to intense lobbying.[10]

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[8] In other words, where marginal social benefits exceed marginal social costs.

[9] BusinessNZ understands that at least 20 legislative amendments have been made to the RMA since it was passed in 1991.

[10] A classic (and tragic) example, of how a breakdown in the clear allocation of property-rights is the breakdown of responsibilities in the UK between the then national railway infrastructure company, Railtrack, and the Train Operating Companies resulting in three crashes (Southall, September 1997, Ladbroke Grove, October 1999 and Hatfield, October 2000) which exposed the major stewardship shortcomings of Railtrack and the failings of the regulatory oversight which the company displayed in its initial years (principally a failure regarding the incomplete nature of responsibility for the condition of its assets and conflicting commercial incentives).

3.20 This does not mean, however, the policy settings cannot continue to evolve. It is inappropriate to see any issue, particularly environmental regulation, as static – regulation must evolve, particularly as technology and understanding develop. Regulators must be willing to fine-tune and adjust their positions over time and it is inappropriate to argue that change per se creates uncertainty and regulatory instability.

3.21 Rather, the government needs to balance certainty and regulatory stability against the ability for the regulatory framework to evolve over time. As a general over-arching principle, BusinessNZ considers that it is important that those seeking to use resources must have confidence in regulatory decision-making processes and that arbitrary and inefficient outcomes will not result. This is not currently the case.

3.22 In BusinessNZ's view, application of the above principle means that the government must give due weight to ensuring that all:

a. of its decisions (and the decisions of its regulatory agents) are coherent and rational given the particular circumstances under consideration; and

b. businesses must have confidence that their returns will not be expropriated by regulatory fiat.

3.23 Due regard of these tests will minimise uncertainty and regulatory instability and enable businesses to plan investments with confidence.

**How Do We Avoid Getting Bad Decisions Sooner?**

3.24 The RMA establishes a complex resource management system that enables and requires central, regional and local government to plan for the future and manage the environment. Consent decisions lie at the heart of this complex planning and management system and exist in the context of the range of planning documents.

3.25 In an increasingly complex world, the intuitive response is simply to write more and more complex rules, though it is not immediately clear that this will deliver the best outcomes. However, the reverse risk is also present – that we simply sweep rules aside without the consideration of the fact that they exist in a complex system.

3.26 This leads BusinessNZ to query how the select committee will assure itself that by changing a process (such as shortening the timeframe within which a decision must be made), but not the context in which the result is delivered (such as the quality of the planning documents), that improved outcomes will be the result. The risk of perverse decision-making behaviour (such as delays via appeals etc.) exists.

## 4.0 CONSIDERATION OF THE SPECIFIC PROPOSALS

4.1 This section of BusinessNZ's submission outlines specific comments on proposals set out in the Bill. In general, BusinessNZ welcomes the proposed policy changes and supports the amendments. Comments made on the specific proposals are broadly informed by the propositions outlined in section three above.

### Six Month Consenting for Medium-Sized Projects

4.2 This amendment honours a National Party policy commitment to facilitate "medium-sized projects", particularly large housing developments. The effect of the Bill is to propose that the new six month time limits apply to *all* applications that are subject to public or limited notification. In essence, the proposed amendments relate to timeframes for processing applications and "stopping the clock".

4.3 BusinessNZ supports the proposal. However, this support is qualified in light of the following points which BusinessNZ considers warrant further consideration by the Select Committee:

a. BusinessNZ is not completely convinced that (as per page one of the Ministry for the Environment's regulatory impact statement) this issue has been selected as a discrete matter because it does:

> " ….. not require further detailed policy development, and can be implemented relatively quickly in 2012, to provide some early benefits to stakeholders."

and therefore, as a result, can be implemented outside of the consideration of a more strategic, system-wide improvement to the resource management system (as these more strategic, system-wide improvements require the appropriate alignment across the resource management system, which this proposal does not). BusinessNZ considers that the Select Committee needs to be assured that officials' claim that this matter can be dealt with independent of a wider systems review is justified. As a general point, BusinessNZ considers that process changes should be seen in a broader context as the changes simply presume that the sets of decision making rights must fall within the institutional ambit of local government and are necessary to the protection of the public interest – we doubt that either of these presumptions hold in all cases;

b. it appears that applicants will have limited or no choice regarding the process that they consider best meets their needs. It seems that the presumption is that if the project meets the threshold for a 'major' project then it will be subject to the direct referral process, with all projects under the threshold falling into this new process. As a matter of principle, BusinessNZ considers that applicants

should have the choice as to which process their medium-sized applications should proceed under. While this could be considered as 'process-shopping', BusinessNZ considers that the applicants are best able to determine which process best matches the nature of the application (for example, the extent of the community interaction may dictate a desire to stay with the longer 'standard' nine month process) and the fact that applicants must meet whatever the stated criteria are for that process provides a useful check on the risk of 'process-shopping'; and

c. in addition to delays associated with stopping the clock or section 37 extensions, the practical reality is that, as with existing deadlines, councils will sometimes simply fail to meet the statutory timeframes. The Bill does not propose a new tool to enforce the new deadlines beyond the existing incentive to avoid fee discounts under the Resource Management (Discount on Administrative Changes) Regulations 2010. Indeed, the Government is proposing to amend the regulations to reflect the new consenting timeframes which could give councils more time than at present to process medium-sized project applications before applicants are able to claim discounts.

**A New Process for Major Projects**

4.4 The Bill proposes an easier path for directly referring major regional projects or projects involving "major investment" to the Environment Court. Currently, the consent authority has broad discretion over whether to grant a direct referral request. This discretion will be removed, other than in exceptional circumstances, where the value of the investment in the proposal is likely to meet or exceed a threshold amount. The threshold amount is to be consulted on and set in regulation.

4.5 BusinessNZ supports the intent of the proposal but not how it is proposed to be implemented. In particular:

a. it is difficult to distinguish between what is nationally and regionally significant (as both are potentially regionally significant, with national benefits). This raises the question as to why another process, with different criteria (it is unclear why a particular investment threshold is a good proxy for a regionally significant project – other criteria such as its environmental impact may be equally important) is an appropriate response. In particular, it is unclear as to the difference between a major regional roading project which happens to have been labelled as being nationally significant, and power generation projects, coal mines and gas and oil exploration sites which while regional, can also have a substantial national economic impact. Modifying the criteria set out in section 142(3)(a) slightly to accommodate such projects is likely to be the best outcome;

b. using a modified national significance process could also benefit larger projects that are potentially significant regionally but are infrequent and could benefit from centralised consideration. Such consideration would account for an absence of local capacity and capability to address such infrequent projects (a key benefit of national consideration is the development of body of expertise), while also allowing for a greater measure of consistency across regional boundaries;

c. as for the proposed new shortened timeframe, BusinessNZ considers that as a matter of principle, choice is important. It is BusinessNZ's expectation that even if a project meets whatever regionally significant criteria are eventually set, that the applicant has the ability to determine its preferred process with an ability to remain within either the new shortened timeframe or the standard nine month process. Choice is important to introduce quasi-competitive benefits;

d. while also wishing to avoid a flood of inappropriate applications for the deferral process, BusinessNZ considers that the criteria do not have to be overly stringent due to the following checks and balances, these being:

   i. the ability to recover costs places the incentives in the right place and will help ensure that applications are not frivolous; and
   ii. the decision as to whether a project can proceed through to the direct referral ultimately rests with the Minister.

   This approach avoids the need to list a specific, though ultimately arbitrary, dollar threshold that will potentially eliminate projects that would otherwise qualify as 'major'. The same logic (the presence of sufficient checks-and-balances) applies with regard to the removal of the ability for consenting authorities not to directly refer applications on the basis of "exceptional circumstances"; and

e. BusinessNZ's first-hand experience with the EPA has shown it to be a progressive, and engaged entity that is actively looking to understand (if not always agree with) what drives business.

**Strengthening Section 32 Reports**

4.6 Expanded requirements for section 32 reports are proposed, including more robust cost-benefit analysis, with more emphasis on the need to quantify costs and benefits and an express requirement to consider how the economy and jobs will be affected. BusinessNZ considers that the provision of these reports will go some way towards helping address the evident principal-agent problem that exists between

councils and council staff – by providing councillors with a richer source of information on which to base their decisions.[11]

4.7 Therefore, BusinessNZ supports this proposal, but with the following qualifications:

a. while expectations are lifted (and as a result, ambiguous case law clarified), as a general comment, it is unclear whether the new section 32 report requirements will actually result in better quality outcomes that reflect the public interest in the sustainable management of the environment. BusinessNZ has three suggestions in this regard:

i. the primary purpose of section 32 should be an analysis of the proposal (that is, its economic impact) against the purpose of the Act, rather than the *objectives* the proposal is trying to achieve. For example, section 32(1)(a) says:

> "examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the Act: and"

While section 32(1)(b) says:

> "examine whether the provisions in the proposal are the most appropriate way to the objectives"

Perhaps this potential internal circularity and disconnect between the proposal and the purpose of the Act is unintended but either way, BusinessNZ considers that it is the cost and benefit effect or impact of the *proposal* that should be evaluated against the purpose of the Act and the objectives;

ii. ensure that section 32 more closely mirrors the regulatory rigour of the public sector regulatory impact statements and economic cost-benefit analysis. This means attempting to capture all benefits and costs regardless of to whom they accrue. Greater guidance as to the nature of the costs (for example, the opportunity costs) and benefits (any gain in the welfare of society or the individuals that comprise it from the proposal being considered) would be helpful to councils; and

iii. BusinessNZ suggests that an additional criterion be added into new section 32 (1)(b) that requires the evaluation report to examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by –

> "assessing whether the proposal is necessary to protect the public interest in the environment; and"

[11] The principal–agent problem or agency dilemma concerns the difficulties in motivating one party (the "agent"), to act in the best interests of another (the "principal") rather than in his or her own interests.

b. BusinessNZ agrees with the conclusion set out in the regulatory impact statement that "legislative change on its own is unlikely to improve section 32 practice…" Monitoring compliance via an audit or oversight role (similar to the Treasury Regulatory Impact Assessment Team) will in the short-to-medium term be vital though this should not extend to a 'sign-off' role at the risk of reducing council accountability to deliver. Use of the Audit Office as an independent quality assessor should be considered. If councils do not have the required capability to conduct such reports in-house, it can be hired-in until sufficient capability is developed. Alternatively it can be shared across councils;

c. the economic growth requirement is curious in that the cost-benefit analysis must include opportunities for economic growth that are anticipated to be lost – but not those to be gained. This should be rectified (or its omission better explained);

d. new section 32(4) should be amended to reflect the fact that while a greater prohibition than that set nationally may be regionally appropriate, it will reflect a diminution in property rights relative to the national standard and should therefore be justified on that basis. Therefore, this section should be amended to read:

> "…… whether the prohibition or restriction in private property rights is justified in the public interest and in the circumstances of the region…."

e. consistent with (d.) above, where practicable (and consistent with the desire to reflect the real costs of regulatory takings), one of the costs that should be quantified should be the level of compensation required to achieve the regulatory taking. This would help provide a more complete picture of the proposal's total public costs, and therefore whether a net public benefit still exists as a result of the proposal; and

f. councils should not be allowed to proceed with new proposals regardless of the extent to which they may be considered to be in the public benefit if the evaluation report shows that the proposal demonstrates a net public cost (including the cost of any compensation). This is a necessary check and balance that will ensure that only those proposals that clearly demonstrate a net public benefit proceed and also help drive the development of more sophisticated evaluation reports.

**New Requirements for Resource Consent Applications**

4.8 The Bill seeks to "clarify and strengthen" the requirements for resource consent applications and assessments of environmental effects (*AEE*). Section 88 is amended and a replacement Schedule 4

inserted. Essentially, it will be mandatory for consent applications to include the information required by the new Schedule 4 (which covers both AEE requirements and matters for inclusion in a consent application more generally).

4.9 Importantly, the existing matters that "should" be included in AEEs will become matters that "must" be included. Applications must include details such as Part 2 and s104(1)(b) statutory document assessments, and additional information will be required for certain applications (such as a description of any related permitted activities to demonstrate why the activity is permitted).

4.10 On the face of it, the revised information requirements set out in Schedule 4 would appear to be an appropriate 'quid-pro-quo' to the improvements to council consenting processes, but BusinessNZ wonders about the extent to which:

a. these new requirements will add significant costs, especially to small businesses. Currently most applications don't include an assessment of Part 2 and statutory documents. Often applications for building height/location, home business, and small quarries for example, are done by the applicant themselves, by filling in simple template forms (often just handwritten). Assessing all of the new legal requirements is likely to be outside most applicants' knowledge. So if the proposed changes are taken at face value, most or all applications would require a planning consultant to prepare the material. This would mean significant added cost and time, but no improvement in the quality of the process. BusinessNZ understands that most councils are primarily concerned with receiving a good description of the activity and some comment on what effect it will have on the applicant's neighbours. As far as legal assessments are concerned, these are usually done by the councils themselves when they process the application. Therefore the net effect of the proposal is to transfer costs from the councils to applicants. If the proposal to identify a threshold for medium-sized projects goes ahead, this is an area where such a threshold might have relevance; and

b. it will be possible to satisfy the conditions of allowing an project to proceed as a permitted activity (based on an applicant's ability to prove ex ante that performance standards, where specified, will be met).

**Other Streamlining-related Matters**

4.11 The amending Bill also contains a wide-range of other, streamlining-related matters. These are also supported by BusinessNZ. For example:

a. the alternative plan development process for the Auckland Unitary Plan. BusinessNZ considers that here is a need for such a

mechanism to avoid the excessive delays that result with district plan processes in a plan of this size. BusinessNZ is also more comfortable with the removal of rights of appeal now that the panel members will be independent appointments, but cautions against this bespoke model being used as a basis for other, broader resource management issues;

b. national environmental reporting. BusinessNZ, in its submission to the Ministry for the Environment dated 18 October, 2011, supported proposals to require regular state of the environment reports, and consistent regional environmental statistics. The regulation-making power contained in the amending Bill goes some way towards delivering on this objective; and

c. a series of technical, or 'tidy-up' provisions. For example, the Bill also:

    i. contains various amendments to improve the processing of proposals of national significance - including removing the period 20 December to 10 January from the nine month time limit within which a board must produce its final report;
    ii. extends the RMA's emergency provisions to "lifeline utilities" (by reference to the definition from the Civil Defence Emergency Management Act 2002);
    iii. clarifies that councils cannot adopt blanket tree protection rules, and
    iv. requires that the Environment Court must "regulate its proceedings in a manner that best promotes their timely and cost-effective resolution."

## 5.0 SUMMARY

5.1 This amending Bill will undoubtedly be perceived by some as another step in the progressive unpicking of New Zealand high environmental standards. BusinessNZ does not subscribe to that view. Rather, we believe that a strong, well-focused RMA is fundamental to New Zealand's future economic strength, and is necessary in order to allow the Government, business and the broader community to achieve their economic and environmental aspirations in the most efficient way. BusinessNZ believes the RMA must continue to reflect the legitimate public interest in the sustainable management of the environment.

5.2 Business is actively taking steps alongside the RMA framework to put sustainable business practices in place that speak to the more responsible use of natural resources.

5.3 But changes to the implementation of the RMA are needed. The persistent and on-going departure from the principles of consent to the diminution of private interests in the name of the public interest, and compensation when this occurs, has resulted in enduring and deep-seated dissatisfaction with the implementation of the RMA by the business community. This is despite numerous amendments to address this. However, none of the attempts to rectify the RMA have to date addressed this fundamental problem. As a result, the RMA has instead become a convoluted and highly uncertain process of negotiating away property rights.

5.4 The current suite of amendments set out in the Bill start to redefine where the boundary between the public and private interest may lie and BusinessNZ supports these approaches. However, we find that the incremental (and often tactical) approach to making changes to the RMA has blurred the original intent of the RMA to the point that the changes proposed are often difficult to assess in terms of the outcomes sought. As such, it is hard to give the proposed changes unqualified support in the absence of a wider set of strategic goals against which the tactical changes can be assessed.

5.5 BusinessNZ's modifying proposals have sought to reset the proposed amendments within a wider strategic context. While process changes are important, they are, of themselves, unlikely to create an improved set of incentives, and may in fact drive perverse decision-making behaviour.

5.6 A more extensive, and fundamental assessment of what will deliver a clear objective of high quality resource management decisions that reflect the public interest in the sustainable management of the environment, and its implications for issues such as jurisdiction, decision-rights, and supporting institutional and governance arrangements, is required for this.

## APPENDIX ONE: ABOUT BUSINESSNZ

Encompassing four regional business organisations (Employers' & Manufacturers' Association (Northern), Business Central, Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), BusinessNZ is New Zealand's largest business advocacy body. Together with its 80 strong Major Companies Group, and the 70-member Affiliated Industries Group, which comprises most of New Zealand's national industry associations, BusinessNZ 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.

In addition to advocacy on behalf of enterprise, BusinessNZ 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.

BusinessNZ'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.