

The “Core Industries” Group



1 July 2004

Hon David Benson-Pope MP
Associate Minister for the Environment
Parliament
Wellington

Dear Minister

Review of Resource Management Act – Submission from “Core industries” group

The organisations that have signed this letter come from a diverse range of sectors. Collectively, we employ many thousands of New Zealanders. We are also major contributors to the nation’s well-being, through the goods, services and wealth we produce and/or the investments we make in the country’s infrastructure.

We welcome the Government’s decision to review the Resource Management Act (RMA). We believe the Act is not achieving its intended purpose in a number of important areas, and we consider the review to be very timely.

While many of the signatories below have made separate submissions, there are important areas of common ground. This letter is intended to set out those areas in a succinct manner. We believe the review must address these matters to yield meaningful benefits.

Consent processes

The RMA currently does not work well for unusual, large, or complex projects. Under present arrangements, applications to build a major infrastructure project or a small but unusual / complex project¹ are treated within the same overall framework as applications to undertake relatively minor works. This “one size fits all” approach is not conducive to effective decision-making.

In particular, the RMA does not cope well with projects whose local effects may be generally adverse, but which produce significant benefits from a regional or national perspective. To remedy this situation we believe there is a need for a “special” process to be developed for such projects. This process would facilitate timely and high quality decisions, whilst still allowing local interested parties to have appropriate input.

A number of possible improvements are set out in more detail in the Appendix to this letter.

Scope of RMA is not clear

Secondly, we believe that the scope of the RMA as set out in Part 2 of the Act requires greater clarity, particularly the statutory definition of key terms such as “environment”. The 1998 Reference Group proposed a number of useful revisions.

¹ The Trio holdings application to develop a sponge farm for cancer drug purposes is often cited as an example of a small but nationally important project in this respect.

These could be complemented by increased guidance to regional councils from central government. We are not advocating that the potential social or economic impacts of projects on other individuals should be discounted, but that the criteria for decisions be more clearly defined.

In addition, Part 2 should be clarified to ensure that the broader benefits of projects (including both national and local economic benefits) can be appropriately weighed against any environmental costs. However, we would caution that consideration of benefits and costs should be measured against the status quo rather than any notional "ideal". The latter approach is inherently subjective and is likely to lead to a central planning-type approach to determining the "best" uses of resources.

Mechanisms for allocating natural resources

The final core area of concern relates to possible modifications of mechanisms for allocating the resources that are allocated via the RMA among competing users². At present the RMA operates on a "first come, first served" basis. Whilst this has some drawbacks, it does help to underpin investment because it provides consent holders with a reasonable degree of security over their usage rights.

Significant amounts of investment have been committed over many years based on a legitimate expectation that usage rights would be sustained under the RMA framework and its predecessors. Any proposal that does not recognise this runs the risk of seriously chilling future investment intentions. This would run directly counter to the Government's stated objectives.

We also note with some concern the precedents that seem to be emerging through the aquaculture reform process and the Waitaki Bill, which appear to place little weight on the position of existing resource consent holders.

In summary, we believe that policy can be improved in this area, particularly through the potential use of market mechanisms to help allocate scarce resources. However, any such review needs to recognise that different allocation mechanisms (market and non-market) may be appropriate for different resources (water, air, marine space etc.), and that the respect of existing rights is essential to ensure that investment is not retarded.

Because these issues are complex and require thorough and careful consideration, we believe the Government should proceed with caution if unintended, adverse consequences are to be avoided.

Conclusion

Too often in the past, debates about the RMA have been seen as "business versus the environment". We believe that such characterisations are not only wrong, but are dangerous. Business and the environment are not mutually incompatible. Indeed, we believe – and clear international evidence suggests – that a healthy environment can only be afforded by a prosperous society.

That being so, we submit that it is New Zealand's best interests to create a legislative framework that facilitates and favours the creation of that prosperity. To do so is, in

² We note that a large proportion of resources (land, minerals, petroleum, radio spectrum, fish etc.) are allocated via other mechanisms that generally work very well. A common aspect of these mechanisms is the recognition of long-term usage rights.

our view, the best path to being able to afford the healthy environment that today's New Zealanders, and their future generations, deserve.

We would welcome an opportunity to discuss the issues raised in this letter with you.

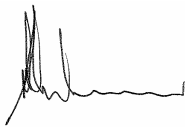
Yours sincerely,



Don Huse,
Chief Executive, Auckland International Airport



Peter Griffiths
Managing Director, BP



Simon Carlaw
Chief Executive, Business New Zealand



Stephen P Barrett
Chief Executive, Contact Energy



Alan Jenkins
Chief Executive, Electricity Networks Association



Ralph Waters
Chief Executive, Fletcher Building



Tony Carter
Managing Director, Foodstuffs Auckland



Terrence Currie
Chairman, Major Electricity Users Group



Caryll Shailer
Chief Executive, Meat Industry Association



Harvey Weake
Managing Director, Methanex



Doug Heffernan
Chief Executive, Mighty River Power



Roger Kerr
Executive Director, New Zealand Business Roundtable



Thomas Zengerly
Chief Executive, New Zealand Refining
Company



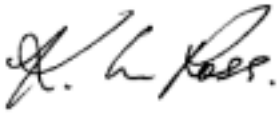
Bill Jacob
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Tasman



Murray Sturgeon
Managing Director, Nelson Pine Industries



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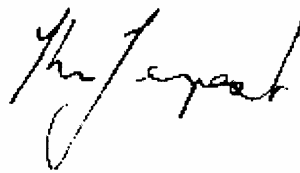
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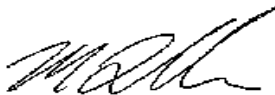
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CC : Rt Hon Helen Clark
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Hon Pete Hodgson
Minister of Energy
Hon Jim Sutton
Minister of Agriculture
Hon Parekura Horomia
Minister of Maori Affairs
Hon Marian Hobbs
Minister of Environment
Hon Chris Carter
Minister of Conservation

Appendix. Specific recommendations for RMA Amendment

Existing consent processes do not operate very effectively in a number of areas, particularly in relation to the handling of unusual, large, or complex projects. A number of problems can arise including:

- Inconsistent approaches by consenting authorities to managing the application, resulting in widely differing timeframes for completion of an application. Such differences stem from differing levels of resource between consenting authorities, and differing extents to which local politics influence a consent authority's decisions;
- An inability to take account consistently of national benefits at the initial local hearing;
- The ability of individuals to make vexatious claims in respect of an application, and significantly slow or derail decision making processes; and
- The ability of a consenting authority decision to be appealed to the Environment Court by any individual on any grounds, with the Environment Court then hearing the application from scratch ("de novo"). For large projects, which almost inevitably get appealed to the Court, this makes the initial local hearing a costly sham, and adds considerably to the length of time to obtain a consent.

A number of possible approaches could be used to address these difficulties including strengthening the existing local hearing processes, enabling projects to go straight to the Environment Court, or "calling-in" such projects for consideration by a government appointed Board of Inquiry.

While each option has its benefits and drawbacks, the key requirement is to address the current "one size fits all" approach of the RMA, which does not adequately cope with projects that are unusual, large, or complex. We believe a "special" process should be developed for such projects, and it should exhibit the following key features:

- A definition of "special" should be set out within the legislation. Applicants should have the ability to appeal as to whether they are classified as "special"³.
- Hearings should be heard by individuals with appropriate qualifications, and chaired by a person with extensive RMA experience.
- Hearings should be held locally to give local people an opportunity to have their say;
- Cross-examination should be allowed of expert witnesses, consenting authority, applicant staff members, and representatives of special interest groups, but not for individual submitters⁴. There may also be merit in requiring parties to exchange written evidence prior to applications being heard, and permit the exchange of written cross-submissions;

³ Smaller projects should be able to be classed in this special category if they are particularly complex and/or involve new technology or impacts.

⁴ One of the existing shortcomings of the RMA is the prevention of cross-examination of submitters. However, the adversarial nature of cross-examination may be intimidating for many local people wanting to have their say. For this group of people, the current RMA practice of only allowing the hearing panel to put questions should remain.

- Greater guidance should be given regarding the time taken for the various elements of a hearing, and the grounds for temporarily suspending or adjourning a hearing ;
- For projects heard at a local level, there should be limited right of appeal to the Environment Court, and not heard de novo, on specific adverse environmental impacts or on points of law only. In appeal cases the Environment Court decision power should be limited to matters that are subject to appeal. It should be noted that this improvement should only be adopted if it is in conjunction with other improvements to ensure a better quality of process at the local level.
- The extra costs of a special process for large / complex projects should be borne by the applicant.
- Multi-jurisdictional projects should be heard via a single process, although with submissions being heard in each of the jurisdictions that the project spans.
- Only individuals with “standing” should be allowed to submit on applications⁵. This will help address the problem of vexatious and/or time-wasting objections.

⁵ “Standing” means that a person has to show they are more affected by the proposal than the public generally.