

SUBMISSION OF RESOURCE MANAGEMENT AMMENDMENT BILL
(SIMPLIFYING AND STREAMLINING)

BEFORE: Local Government and Environment Select Committee

ADDRESS: Clerk of the Committee
Local Government and Environment Select Committee
Select Committee Offices
Parliament Buildings
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Please note two hard copies of this document have been sent by post.

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Please note, we wish to appear in relation to this submission.

23 March 2009

Local Government and Environment Select Committee,
Parliament Buildings,
Wellington.

To whom it may concern

Re: Submissions to the Resource Management Amendment Bill 2009

INTRODUCTION

This submission is put forward to the Local Government and Environment Select Committee from Te Whakaminenga o Kapiti, a partnership forum set up under the Memorandum of Partnership between Te Ati Awa Ki Whakarongotai, Ngati Toa Rangatira, Ngati Raukawa ki te Tonga and Kapiti Coast District Council to discuss and progress matters of mutual interest and benefit. Therefore, this submission should be seen as a joint submission by Te Whakaminenga o Kapiti, Te Runanga o Ati Awa ki Whakarongotai, Te Runanga o Ngati Toa, Te Runanga o Ngati Raukawa and the Kapiti Coast District Council. Kapiti Coast District Council has also submitted separately on other matters. This submission relates to issues of concern to tangata whenua and therefore to Council as partner to the three iwi.

Te Whakaminenga o Kapiti requests to be heard by the select committee in relation to the matters raised in this submission.

SUMMARY OF CONCERNS

In 1991, the Resource Management Act 1991 (“the Act”) when introduced in 1991 the RMA replaced 69 other acts and was obviously intended to create a more consistent and efficient process. The Act’s primary intent is that the best outcomes for sustainable management are achieved when the public has the ability to participate in decision making processes. The RMA is the main way that ordinary New Zealanders can have a say in how our resources and environment are managed.

While the review of the Act aims to speed up the consent and planning processes, it does this in a way that makes it harder for New Zealanders to have their say and prevent damage to the environment. We are concerned that this is a backward step for both the sustainable management of our natural resources, and community participation in decisions that affect tangata whenua and the wider community. Tangata whenua will have specific concerns in their role as kaitiaki. This role also covers a responsibility to defend the ability of people living within the rohe of each iwi to participate in resource management matters.

We ask the committee to acknowledge that the timeframes for consultation the draft Bill have been unreasonably tight, thereby greatly reducing our ability to obtain comment from a wider cross section of iwi. Many groups have had at the most minimal opportunity to participate in this process.

In summary, this submission addresses the following areas:

- While the Bill will simplify or streamline some process, it will create layers of bureaucracy due to the multiple avenues that now exist for the processing of resource consents, notices of requirement or private plan changes.
- The rationale for these many differences is not clear. The resulting complexity compounds administrative challenges for those processing consents.
- There is a need for greater clarity around 'local presence' on the Boards of Inquiry, how this is chosen and iwi presence on the Board.
- Te Whakaminenga o Kapiti seeks clarity around the process for developing national environmental standards, and their relationship with local authority planning documents.
- Te Whakaminenga o Kapiti seeks more detail about the role and powers of the proposed Environmental Protection Authority and the ability of tangata whenua to have input into these processes.
- If the second stage of the current two-stage submission process is removed as proposed, Te Whakaminenga o Kapiti seeks that there should be greater clarity around the implications for iwi in the planning process.
- A recommendation that Iwi Management Plans are a key tool in improving national instruments, and that NPS and NES processes explicitly consider Iwi Management Plans.
- We are opposed to :
 - the significant fee increase associated with lodging an appeal with the Environment Court
 - removing the non-complying category of activities with increased costs to council and ratepayers (for changes to district plans) and a reduction in the ability of councils to refuse developments.
 - amendments that limit appeals on proposed policy statements and plans to questions of law, except in cases where the appellant has sought the leave of the Environment Court.
 - the removal of the requirement for territorial authorities to review their (district) plans every ten years, and the impacts of this on tangata whenua.

CLAUSES OF THE BILL THAT ARE OPPOSED

Te Whakaminenga o Kapiti opposes the following amendments to the Bill:

1. Removing frivolous, vexatious and anti-competitive objections

1.1 Increasing costs associated with lodging an appeal lodgment of appeals to the Environment Court will be raised from \$55 to \$500.

Discussion: While the Government's intention is to deter frivolous and vexatious appeals, this provision will most likely act as a disincentive for parties with limited resources.

Te Whakaminenga o Kapiti opposes the significant fee increase. It will affect those with limited funds, such as community groups or individuals, and will not deter those motivated by trade competition.

1.2 Security for costs – reinstatement of the power of the Environment Court to award security for costs

Discussion: The Government intends this amendment to act as a disincentive against making appeals of dubious merit particularly those likely to be frivolous, vexatious.

Te Whakaminenga o Kapiti also considers this will act as a disincentive for public participation in the Environment Court.

2. Streamlining processes for projects of national significance

2.1 The role of Board of Inquiry

The intention of the reforms is to make greater use of the existing board of inquiry process, but to also improve the capacity for local authorities and communities to have confidence and involvement in that process.

Discussion: This has the potential to put large infrastructure projects outside local control. What is the status of iwi in respect of

- (a) membership of the Board
- (b) as expert witnesses and
- (c) as submitters to the Board?

It is proposed to have 'local presence' on the Board, but what does this mean in reality? There is a need for more clarity around the role of iwi in this process.

Te Whakaminenga o Kapiti seeks clarity around 'local presence' on Boards of Inquiry, how this is chosen and that membership would include tangata whenua. In its view, tangata whenua should be appointed to a Board of Inquiry alongside and in addition to the 'local presence'.

2.2 Development of National Policy Statements (NPS) and National Environmental Standards (NES)

Discussion: There is an increased need for iwi participation in the development of NES and NPS given the increased weight they will have at the local level.

Also, if local authorities are obligated to include and defend these standards in their district plans, and the documents do not align, this will prove an uncomfortable role.

Te Whakaminenga o Kapiti seeks a specific process for including tangata whenua in the development of NPS and NES. This should include a specific requirement to take into account Iwi Management Plans.

3. Creation of the Environmental Protection Authority

3.1 Establish the Environmental Protection Authority (EPA) as a statutory office. This office will be convened to ‘achieve national environmental goals’

Discussion: The EPA’s goals may or may not include protection of the environment. Given that this review is at Stage One it is unclear what powers the Authority may be given in future. What will its relationship be with the Environment Court? and what are the terms of reference?

Te Whakaminenga o Kapiti seeks more detail about the role and powers of the proposed Environmental Protection Authority. In particular there should be a mechanism to include tangata whenua in relevant EPA processes as these evolve.

4. Improving plan development and plan change processes

4.1 Modifying the requirement for local authorities to summarise submissions and call for further submissions on proposed policy statements and plans.

Discussion: If the second stage of the current two-stage submission process is removed as proposed, this would put the onus on councils and staff to make a decision at the outset about who will be an affected party. However, iwi are not concerned when the relationship between iwi and council is already established (such is the case on the Kapiti Coast) but where this is not the case, there is cause for concern.

Te Whakaminenga o Kapiti seeks that there should be greater clarity around the implications for iwi in the planning process.

4.2 Removing the non-complying activity category of activities. There will be a three year transitional period together with a deeming provision so that these activities become classified as full discretionary activities after a transitional period of 36 months.

Discussion: This is of great concern to iwi, the key issue is that it removes any notion of ‘bottom lines’ in decision-making and any base test against impacts on general policy. For tangata whenua this is a significant problem. If the government wishes to reduce the number of consent categories it is suggested that the restricted discretionary category may be considered.

Te Whakaminenga o Kapiti opposes removing the non-complying category of activities.

4.3 Amendments so that rules in proposed plans shall have no legal effect until such time as decisions made on submissions have been notified, except where such rules are required to protect a natural resource, historic heritage or apply to an aquaculture management area. A local authority may apply to the Environment Court to have particular rules take effect earlier if they do not meet the above criteria.

Discussion: Iwi are concerned at the potential for this provision to slow down Council’s ability to quick lay address issues with the District Plan.

Te Whakaminenga o Kapiti opposes the provision.

4.4 Limiting appeals on proposed policy statements and plans to questions of law, except in cases where the appellant has sought the leave of the Environment Court.

Discussion: The limitation of appeals to matters of law is of real concern to iwi. This will result in lay submitters being shut out of the process, and represents a limiting of the democratic process. This would particularly affect iwi. In many situations, the Environment Court is the only place where policy issues as they affect iwi concerns can be addressed, for example, water and water quality.

Te Whakaminenga o Kapiti opposes this provision and seeks its removal.

4.5 Removing the requirement for territorial authorities to review their (district) plans every ten years.

Discussion: In the event that a territorial authority’s District Plan is of poor quality or unresponsive to tangata whenua concerns then this provision will have the effect of limiting the ability to address those concerns.

Te Whakaminenga o Kapiti opposes this provision and recommends that national minimum standards in district planning be developed and instituted across all territorial authorities. If the government wishes to proceed with this provision it should include a clear mechanism whereby tangata whenua could call for the review of a district plan.

5.0 Improving the Resource Consent process

5.1 Removing the current presumption in favour of notification of resource consent applications (most applications are not notified now) and amending the criteria for when public notification is required on projects with more than minor effects on the wider environment.

Discussion: Again the effect of this provision would appear to be limiting the democratic process of decision-making and marginalising iwi input. While there is an added requirement to consult with tangata whenua this is very dependent on the attitude and goodwill of councils – some inform iwi of all consents, some only those notified. The Bill also changes the criteria for when a consent application will be notified. The changes to the notification criteria are complicated and difficult to fully comprehend. However, iwi are concerned that activities with significant localized and potentially harmful environment effects, will not be notified based on s94AA. A standard across local authorities is required to prevent differing interpretation from Council to Council pertaining to resource consents.

Te Whakaminenga o Kapiti opposes this provision and recommends that a standard across local authorities is developed and implemented for informing iwi and hapu of relevant consents.

5.2 Reduced opportunities for public participation will increase the pressure on iwi to actively participate in the planning process. Iwi are already under-resourced and struggling, this will place greater stress on our iwi resource management.

Te Whakaminenga o Kapiti recommends that Government commit to greater resourcing of iwi to help them engage effectively in the resource consent and plan change processes.

5.3 Inserting provisions into the RMA that remove the ability for blanket tree protection rules to be imposed in urban areas.

Discussion: Under this requirement, if trees in urban areas were to be protected they would have to be designated in the District Plan which could prove administratively onerous. In effect, this provision would result in less protection for urban trees and this is of concern to iwi.

Te Whakaminenga o Kapiti recommends that the status quo be maintained.

5.4 Limit the ability for local authorities to ‘stop the processing clock’ during request for further information from applicants. The proposal is to limit it to the first request only and that from that time the applicant either supplies the information or refuses to supply it. There is not further ability for the local authority to stop the clock in conjunction with further requests for information.

Discussion: If councils aren’t committed to consulting with iwi then this provision could be a problem as the need for further information may not emerge until later in the process. This underlines again the need good consultation with iwi early in the resource consents process. As discussed earlier, this could be achieved by having national standards.

Te Whakaminenga o Kapiti opposes this provision and recommends that a standard across local authorities is developed and implemented to ensure that requests for information relating to concerns to iwi are specifically provided for.

6. Streamlining decisions

6.1 Removing the Minister of Conservation’s powers in respect to decision-making on restricted coastal activities. Currently, the Minister of Conservation has authority on behalf of the ‘owner’ of the coast, the public, and therefore makes decisions on restricted activities like sewage discharges or marinas. The Bill removes this power, leaving Regional Councils as the sole decision-maker on coastal activities.

Discussion: This provision could be problematic, particularly where a local project has national significance such as the coastal highway. There are also implications for any future Foreshore/Seabed Act amendments or related negotiations with the Crown. The public and conservation interest is represented by the Minister. Regional Councils should not have complete control over coastal activity, especially contentious issues like sewage discharge and marina development. The ability of tangata whenua to seek intervention by the Minister is an important mechanism where local councils have ignored tangata whenua views and failed to adequately consult. If this provision was to continue, Te Whakaminenga o Kapiti seeks a specific and transparent path for tangata whenua in the coastal decision-making process.

Te Whakaminenga o Kapiti recommends that the status quo be maintained.

7. Improving national instruments

Discussion: Ensure that Iwi Management Plans are a key, formally-recognised instrument used to provide direction on specific national, regional or local issues.

Te Whakaminenga o Kapiti recommends that Iwi Management Plans are a key tool in improving national instruments, and that NPS and NES processes explicitly consider Iwi Management Plans.

Other points

Te Whakaminenga o Kapiti also asks for clarity around who is an 'affected party' in terms of the removal of the non-complying category.

CLAUSES OF THE BILL THAT ARE SUPPORTED

Te Whakaminenga o Kapiti supports

- removing 'broad appeal rights'
- **enabling the regional council and all local authorities to combine to produce a single RMA planning document.**
- **increased flexibility and scope of local authorities to enforce**
- increasing **fin**es
- the provision to give the **Environment Court the power to conduct a review of a resource consent connected to an offence.**
- the **removal of current provisions of Act that hinder or limit carrying out of enforcement.**

CONCLUSION

In conclusion, we thank you for the opportunity to provide comment on the Resource Management Amendment Bill 2009. We are concerned that the drive to speed up the consent and planning process will impact on the ability for ordinary New Zealanders to have their say and prevent damage to the environment. We reiterate that this will be a backward step for both the sustainable management of our natural resources, and community participation in decisions that affect tangata whenua and the wider community.

As tangata whenua we have specific concerns that these amendments will impact adversely on our role as kaitiaki. We recommend that this committee:

1. Consider strengthening mechanisms by which iwi contribute to decision making at all levels.
2. provide greater clarity around 'local presence' on the Boards of Inquiry, how this is chosen and iwi presence on the Board.
3. provide clarity around the process for developing national environmental standards, and their relationship with local authority planning documents.
4. provide more detail about the role and powers of the proposed Environmental Protection Authority and the ability of tangata whenua to have input into these processes.

5. If the second stage of the current two-stage submission process is removed as proposed, Te Whakaminenga o Kapiti seeks that there should be greater clarity around the implications for iwi in the planning process.
6. A recommendation that Iwi Management Plans are a key tool in improving national instruments, and that NPS and NES processes explicitly consider Iwi Management Plans.

We would also like to reiterate our opposition to:

1. the significant fee increase associated with lodging an appeal with the Environment Court
2. the removal of the non-complying category of activities with increased costs to council and ratepayers (for changes to district plans) and a reduction in the ability of councils to refuse developments.
3. amendments that limit appeals on proposed policy statements and plans to questions of law, except in cases where the appellant has sought the leave of the Environment Court.
4. the removal of the requirement for territorial authorities to review their (district) plans every ten years, and the impacts of this on tangata whenua.