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Green Minority report on the Resource Legislation Amendment Bill

The Bill amends the Resource Management Act (RMA), the Exclusive Economic Zone and Extended Continental Shelf (Environmental Effects) Act (EEZ) and the Conservation and Reserves Acts.

The RMA is a crucial foundation of New Zealand's environmental law and planning system. Changes to it should be based on sound analysis and evidence and have broad cross party support so that they are enduring. The Bill has neither. Many of the changes appear driven by ideology rather than robust analysis and evidence.

The Bill attracted 764 submissions, many of them critical of its fundamental aspects. Many included detailed technical analysis of the Bill's clauses and their implications and represented a significant investment of time and expertise by submitters.

Resource users such as Fonterra Ltd, quarry operators, and infrastructure operators such as airports made similar points in opposition as environmental interests such as Fish and Game New Zealand, the Environmental Defence Society and Forest and Bird.

Federated Farmers, for example, described the proposed Ministerial regulation making powers as "excessive" and the provisions which allow central Government to intervene directly in local council plans as "heavy handed."

Sir Geoffrey Palmer presenting evidence for Fish and Game described the regulation making powers which would override the provisions of regional and district plans as a "constitutional outrage." "Due process is replaced by Executive fiat."

The Green Party opposed the Bill when introduced. Reading and hearing sweeping criticism of the Bill in submissions at select committee confirmed our opposition. The changes suggested in the draft departmental report are at the margins and do not satisfy our, or submitters' substantive concerns.

The Bill's changes put Executive power and individual property rights ahead of community and environmental wellbeing. They insert new processes for national direction, plan making, consideration of land use and other activities, and public notification while previous changes in 2013 are still bedding in. The Bill is likely to make the RMA and its implementation more complex and litigious and increase costs for councils and users of the Act.

Some of the major reasons for the Green Party's opposition to the Bill and its view that the Bill should not proceed are set out below.

Poor process

Through no fault of the chair, the process for considering the Bill has been a shambles. Despite five months having elapsed since hearings on submissions ended on 2 June 2016, officials were unable to provide the select committee with a full final departmental report until two working days before the

select committee was due to report back to the House. The committee was only able to discuss a draft report on the majority of the bill's provisions six working days before the report back date.

The Executive has dominated the select committee's consideration of the Bill and stalled progress on it. The Minister's influence on the content of the departmental report and when the committee should receive it has compromised an effective select committee process and the committee's ability to consider submissions and potential amendments in a robust and thoughtful way. Officials repeatedly told committee members that provisions in the Bill (such as a national planning template which determines plan content and not just structure) were "policy issues". The strong implication is that there was no scope for them or the select committee to recommend changes. The ability for select committees to scrutinise bills, seriously consider submissions and recommend changes is an important check on the power of the Executive and helps improve bills and Parliamentary law making. The public expects select committees to be much more than a rubberstamp for Ministers. Yet the process around the RLA Bill has been a sham. It has abused Parliamentary process by strangling the mandate and effective operation of the select committee.

National direction and Ministerial powers

The new regulation making powers for the Environment Minister inserted as new sections 360D, 360F and s360G are excessive and were opposed by virtually all submitters. They are unconstitutional in weakening the role of local government and the checks and balances it provides on Executive powers. The regulation making powers enable the Minister to intervene in and dominate district and regional plan making in an ad hoc way, fast-track consent applications, and restrictpublic participation. They continue the centralisation of environmental management and decision making and undermining of local democracy which has been a hallmark of this government.

The regulation making powers cut across the ability of local authorities to represent and consult their communities to develop the policy framework to guide consent decisions about how land, rivers, lakes, aquifers, air and coasts are used, developed and protected and which environmental, economic, cultural, social and other effects are acceptable and which are not.

The exercise of the regulation making powers relies on the Minister's opinion about broad, subjective criteria. There is no indication in the Bill about what these powers would be used for so they create an uncertain operating environment for councils. Judicial review and the Regulations Review Committee are inadequate checks on their use.

As Fonterra Ltd said, "These provisions can detract from local decision making on local issues; compromise the principles of natural justice for stakeholders, and compromise robust resource management decision making."

New powers in clause 104 inserting section 360D enable the Minister to make regulations prohibiting or removing plan rules whenever the Minister considers these rules "duplicate" the same subject matter included in other legislation. This appears intended to override recent Court decisions upholding the right of communities and local authorities to regulate land uses and the planting and use of genetically modified organisms in their regions. Again this cuts across local democracy.

The removal of explicit council functions in relation to the management of hazardous substances is opposed as preventing councils from controlling the effects on amenity values and community health of the establishment and operation of facilities such as fertiliser plants and petrochemical storage areas.

Plan making

Submitters supported a national planning template providing guidance on plan structure and format and definitions but 77% opposed using the template to insert mandatory content in plans. The Green Party agrees and believes adequate national direction on plan content can be provided through national policy statements and national environmental standards.

Submitters from Meridian to Forest and Bird highlighted the value of well-informed participation in helping produce better outcomes for both plan development and resource consents.
Yet the Bill substantially limits public participation rights in both plan making and consenting decisions through new processes.

The bespoke streamlined planning process (SPP) gives the Minister significant power in plan making while restricting public involvement. The Minister determines the process, there is no guarantee of a hearing, the Minister can request changes to the plan and has final approval rights and there are no appeal rights, even on questions of law. More than half of submitters oppose the streamlined process. The provisions around limited notification of plan changes also curtail public comment.

Proposals in the departmental report to allow a streamlined planning process to be used for private plan changes accepted by councils, notices of requirement and designations are likely to result in less intense scrutiny of these proposals and significantly advantage private developers and requiring authorities such as irrigation companies. The Green Party opposes amendments which the public has had no chance to comment on.

The provisions around collaborative planning processes are muddled. They provide no certainty that there will be an open and transparent process for appointing collaborative group members, give too much power to the group and too little to elected councils and the review panel; fail to ensure there is sufficient expertise on the review panel, and reduce the safeguard which appeal rights provide by restricting appeals to points of law only.

The bill allows landholders to challenge any plan provisions which make “land incapable of reasonable reduce" or “place and unfair and unreasonable burden” on landholders. This is likely to have a chilling effect on councils’ efforts to use plans to regulate to protect assets of value to the wider public, such as indigenous vegetation and habitats for indigenous wildlife and water quality.

Public participation

The Bill’s changes to notification were seen almost universally as making the RMA more complicated. There was a consistent and widespread view among submitters that the RMA’s notification procedures, as amended in 2009, were working well with no need for further changes or more limits on public involvement. Many submitters were concerned about the Bill providing for blanket non-notification of controlled activities, restricted discretionary and discretionary boundary

infringement and most subdivision and residential activities. Not all neighbours are likely to be consulted by developments which infringe on the boundary for example

While the Government claims these provisions respond to urban growth pressures the provisions also apply to rural areas including outstanding natural landscapes and the coast.

By not allowing enough time for councils to change their plans, the Bill risks allowing uncontrolled subdivision, urban sprawl, and poorly planned ad hoc development in rural areas. The notification changes also prevent infrastructure owners and operators (such as airport authorities) raising issues of reverse sensitivity.

Clause 120 which allows councils to strike out submissions is likely to make the consent process more uncertain, confused and adversarial with arguments over rights to submit because of the broad subjective decision making criteria for council officers.

Fast track consenting

The Bill provides for controlled activities and activities which the Minister identifies in regulations to be decided by councils within 10 working days under a "fast track" process. This is an inappropriate interference by the Minister in local decision making. It will increase the pressure on councils and prevent adequate scrutiny of activities and their effects, even if it is restricted to land use consents as the departmental report recommends.

Offsets

The Bill amends section 104 of the RMA to require councils to have regard to offsets offered by consent applicants. Many submitters believed this would erode environmental bottom lines and risks a greater focus on addressing effects rather than avoiding, remedying or mitigating them. There are no clear criteria to guide the use of offsets such as ensuing there is "no nett loss".

Conservation Act

Halving the time for public to submit on major commercial developments on public conservation land from 40 to 20 working days as part of an alignment of concessions processes under the Conservation Act and notified resource consent processes under the RMA is opposed. Public notification can be the first opportunity for the public to consider the development and its impacts on biodiversity, landscape and recreational values. Conservation land is held and managed on behalf of the public and our indigenous species. A longer submission period provides for better scrutiny of the project and its effects.

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act

The Green Party opposes the politicisation of decision making in Part 3A of the Bill which has the Minister, rather than the Environmental Protection Authority, appoint decision making panels for publicly notifiable marine consent applications in the EEZ. Prior to the Bill's introduction officials' advised against this and suggested that the EPA appoint RMA boards of inquiry, as well as EEZ ones. The proposal to consolidate decision making around the Minister is not supported by any evidence or analysis.

The bill is not fit for purpose. It increases Ministerial power, will expedite development activities with few environmental safeguards and scant consideration of sustainable management and remove basic rights of public participation. It should not proceed.