

Iwi Provisions in the Resource legislation amendment bill 2015

An Explanation of Provisions of concern

THE SPECIFIC PROVISIONS

1. IWI PARTICIPATION ARRANGEMENTS

- **Clause 38 (new sections 58K to 58P) and Schedule 1, new clauses 1A, Part 4**

(a) **Clause 38** inserts a subpart heading “Iwi participation arrangements” with new sections 58K to 58P:

- i. **New section 58K** states that the purpose of this subpart is to provide for local authorities and iwi authorities to discuss, agree, and record how tangata whenua, through iwi authorities, are to participate in the plan-making processes under Schedule 1.
- ii. **New section 58L** requires local authorities to invite iwi authorities to enter into 1 or more iwi participation arrangements within a month of being elected. The iwi authority must notify its acceptance within 60 working days after the date it was issued.
- iii. **New section 58M** sets out the required content of iwi participation arrangements, including IPAs.
- iv. **New section 58N** sets out a 6-month time frame for concluding an iwi participation arrangement if the iwi authority accepts the invitation under section 58L. If the arrangement is not able to be concluded within the 6 months, the local authority must invite the iwi authority to participate in mediation or some other form of alternative dispute resolution. There is no restriction on such arrangements giving binding authority over the elected party. Subsection (3) suggests that

dispute resolution should not enable participation to delay planning processes.

- v. **New section 58O** provides for the Minister to provide assistance, on request, to the parties to enable them to conclude an iwi participation arrangement.
 - vi. **New section 58P** says that any IPA does not limit any relevant provision of any iwi participation legislation or any agreement under that legislation.
- (b) **New clause 1A of Schedule 1** of the RMA requires proposed policy statements or plans to be prepared in accordance with any applicable iwi participation arrangement.
- (c) **New Part 4 of Schedule 1** of the RMA sets out the procedural matters applying to the local authority's use of the collaborative planning process for a change to a policy statement or plan, including that the local authority must be satisfied that use of the process is not inconsistent with its obligations under any relevant iwi participation legislation or arrangement.

The IPAs will be the framework for iwi participation and consultation in planning processes. They will formalize consultation arrangements with iwi and make councils abide by them. Nick Smith says the purpose is "to provide better processes for iwi to be involved in council plan making"¹.

2. EARLY CONSULTATION WITH IWI ON DRAFT PLANS AND POLICIES

Clause 13 and Schedule 1, new clause 4A

1. The Bill requires local authorities to provide a relevant draft policy statement or plan to iwi authorities for early comment and advice. New **clause 4A of Schedule 1** requires local authorities to seek and have particular regard to iwi advice given on the draft proposed policy

¹ Nick Smith "Resource Management changes pass first reading" (press release, 3 December 2015)

2. statement or plan before the draft proposed policy statement or plan is notified.
3. **Clause 13** amends **section 32** by requiring evaluation reports of a proposed policy statement, plan or change to summarise advice received from iwi authorities.

4. HEARING COMMISSIONERS

Clause 16, new section 34A(1A)

Clause 16 inserts new **section 34A(1A)** to require local authorities to consult Tangata whenua, through relevant iwi authorities, on the appointment of hearings commissioners. If the local authority considers that it is appropriate, the local authority must make at least 1 such appointment in consultation with the relevant iwi authorities

5. CONSENT APPLICATIONS

Clause 125, new sections 95B, 95E

Clause 125, new section 95B sets out a process for consent authorities to follow to determine whether to give limited notification of a consent application, if it is not publicly notified. In relation to particular iwi interests, it provides for the following persons to be notified of an application if they are affected persons in terms of new **section 95E**.

This includes to persons, unless notification of the application to those persons is precluded—either by a rule or national environmental standard or because the proposed activity is a controlled activity (other than a subdivision of land) or a prescribed activity:

- (a) if the proposed activity is on or adjacent to, or may affect, land in respect of which a nohoanga, an overlay classification, or a vest and vesting back (as defined in new section 95B(11)) is granted in accordance with an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975, the person to whom the nohoanga, overlay classification, or vest and vesting back is granted:
- (b) if the proposed activity is on or adjacent to, or may affect, land that is the site of a wāhi tapu that is recognised in a plan or entered on the New Zealand Heritage List/Rārangi

- (c) Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014, the iwi to whom the site is wāhi tapu.

6. STREAMLINED PLANNING PROCESS

Schedule 1, new clauses 5A, 6A, 74(b)(iv)

1. In **Schedule 1, new clause 5A**, councils will have the option to give limited notification of a proposed change to a policy statement or plan. As with new clause 4A, the local authority must provide a copy of the proposed change to “Tangata whenua of the area, through iwi authorities” (**new clause 5A(8)(e)**). Only those persons who have been given this limited notification may make submissions or further submissions on the proposed changes (**Schedule 1, new clause 6A(1)**).

In effect this means iwi authorities may be able to make submissions on a proposed change while the rest of the public cannot.

These streamlined planning processes cannot be inconsistent with obligations set out in any relevant iwi participation legislation (e.g. LGA) or IPA. This makes them subordinate to IPA arrangements that are virtually unlimited as to content and effect.

2. In **Schedule 1, new clause 74(b)(iv)** any application to the Minister for a direction to enter a streamlined planning process must set out “*the implications of the proposal for any relevant iwi participation legislation or iwi participation arrangement entered into under subpart 2 of Part 5 of the Act*”.