OraTaiao
NZ Climate & Health Council

Submission to the Environment Select Committee on the "Resource Legislation Amendment Bill 2015" (hereafter called "RLAB 2015") amending the Resource Management Act 1991 (hereafter called "RMA" or "the Act")

14 March 2016

Executive Summary

Thank you for the opportunity to submit on the proposed changes to the Resource Management Act, the most important piece of legislation pertaining to environmental sustainability in New Zealand. On balance, while we understand the need to clarify and simplify the RMA and find a good balance between national and local interests in resource management, we do not support the proposed amendments, as they do not address the recognised issues with the RMA in ways that strengthen its fundamental purpose as a procedural piece of legislation that supports the sustainable management of natural resources. We make 10 specific recommendations in our submission. They are summarised here:

Recommendation 1: That section 70A Application to climate change of rules relating to discharge of greenhouse gases be repealed, allowing regional councils to consider greenhouse gas emissions as a polluting discharge to air when considering resource consent applications.

Recommendation 2: That the select committee process address the poor explanations made of the amendments to the public, and the inadequate consultation process through improved drafting and public documents as well as a series of public meetings and improved public input about the changes to this crucial piece of legislation.

Recommendation 3: The Select Committee needs to see National Policy Statements and National Environmental Standards as a bare minimum and reject this proposed amendment.

Recommendation 4: Reject any proposed amendment that allows the Minister or central government to remove council bylaws through an undefined argument of "unreasonableness" as an undermining of the fundamental purpose of the Resource Management Act.

Recommendation 5: Strengthen this proposed amendment to specifically mention the need to adapt to the already locked in impacts of climate change, including the need to develop regional climate change mitigation plans in partnership with other relevant agencies (such as public health units and civil defence).

Recommendation 6: Accompany this amendment with responsibilities for local government to support local government with the skills and financial resources needed for climate change adaptation planning and action.

Recommendation 7: Strengthen part (1) of the insertion from a single invitation required to require invitations to all iwi whose recognised rohe fall within the regional boundary.

Recommendation 8: Include as part of formal iwi participation arrangements a requirement to also provide for the meaningful participation of Māori who are either manuhiri in the region or who are not able to or choose not to whakapapa to a particular iwi.

Recommendation 9: All amendments to the act that limit participation of individuals and organisations whose role is to speak on behalf of the environment/ecosystems/species and public health in plan-making and resource consent processes need to be rejected.

Recommendation 10: All amendments that move powers of decision-making from democratic regional planning and consent processes and national judicial processes through the Environment Court, to the Minister and appointed Boards or the EPA should be rejected.

Introduction and general comments

1. OraTaiao: NZ Climate & Health Council (hereafter called "OraTaiao") is an incorporated society of over 420 senior doctors and other health professionals who understand that human health and wellbeing are fundamentally dependent on well-functioning ecosystems. In particular, because climate change is the greatest threat to public health facing us, we understand that climate change requires urgent global and national action to reduce greenhouse gas emissions – particularly emissions from fossil fuels, but also from agriculture[1,2]. Within its members, OraTaiao has some of the world's leading climate change and health experts, as well as national and international leaders in understanding the broader links between ecosystem and human health.
2. New Zealand is a signatory to the recent Paris Agreement – in which all countries committed to limiting average temperature rise to well below 2 ^{o}C, aiming for 1.5 ^{o}C. This will require a very challenging and rapid transition in NZ as well as globally. Climate change poses current and future significant threats to natural resources in NZ: coast lines are threatened by sea level rise; natural resources and human wellbeing are damaged by increasing frequency of flooding and storms; water quality is under threat from flooding; native forests are threatened by drought and fires; changing weather patterns threaten wetlands and other indigenous ecologies; and already threatened native species face extinction due to changes in average temperature, mast years and pest ecologies.

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1 Costello A, Abbas M, Allen A, Ball S, Bell S, et al. Managing the health effects of climate change: Lancet and University College London Institute for Global Health Commission. Lancet.2009; 373:1693-1733.

2 Watts N, Adger WN, Agnolucci P, Blackstock J, Byass P, et al; Montgomery H, Costello A; for The 2015 Lancet Commission on Health and Climate Change. Health and climate change: policy responses to protect public health. Lancet. 2015.

3. OraTaiao recognizes that the Resource Management Act requires some simplification and strengthening. We therefore support the move to review in this light. OraTaiao also recognizes that currently RMA consenting processes make for difficulties in balancing national (indeed global) interests and commitments with local ones. We therefore also support moves to consider how that balance is best managed. However, we consider that the amendments proposed in the RLAB 2015 **do not address this balance in a way that is fair or in keeping with the principles of the Act.**
4. We agree with Sir Geoffrey Palmer, who in his speech discussing this Bill, stated that the current Resource Management Act is "highly problematic, deficient and in need of urgent attention" with regard to climate change, and refer to the MFAT briefing paper from 2014 which stated that climate change is the most urgent and far-reaching threat we face. We consider it essential that climate change is addressed specifically in this legislation, in concordance with Geoffrey Palmer's observation that it forms one of the two major statutes governing actions on climate change. It is clear from the current form of the NZ Emissions Trading Scheme and the scope of the review, that it will remain an inadequate instrument for NZ to meet its international obligations with regard to climate change. The RMA needs to therefore resume its appropriate role in reducing our greenhouse pollution.

   Recommendation 1: That section 70A Application to climate change of rules relating to discharge of greenhouse gases be repealed, allowing regional councils to consider greenhouse gas emissions as a polluting discharge to air when considering resource consent applications.

5. The Ministry for the Environment has provided an inadequate summary of the 40 proposed amendments to the Resource Management Act in the RLAB 2015 for members of the general public to play a meaningful part in the consultation. The information provided in lay terms included only a broad and limited overview released by the Minister (ME 1214) with no summary of the specific changes being made put in terms for ordinary New Zealanders to understand and consider the implications. This is a central piece of legislation governing the everyday lives of New Zealanders. However, even with the assistance of lawyers with expertise in the RMA, it was extremely difficult to understand the implications of the many amendments proposed.

   Recommendation 2: That the select committee process address the poor explanations made of the amendments to the public, and the inadequate consultation process through improved drafting and public documents as well as a series of public meetings and improved public input about the changes to this crucial piece of legislation.

Specific comments on proposed amendments

6. Changes to National Policy Statements and National Environmental Standards

   Clause 29: New Section 45A subsection D
   Clause 37: Section 58C Subsection 1, Subclause B

These amendments appear to be increasing central government involvement in ensuring consistency between regional plan making and national policy statements. For climate change and other environmental issues, this is very likely to result in a weakening of many regional plans to come down to current national standards. Rather than ensuring regional councils don't go further than national standards and policies, the national policies and standards should be seen as minimum standard. Because of the undue role of industry in national policy-making, and the lack of good public involvement, national regulations and policies **must** be seen as a bare minimum. The stronger involvement of communities in a more robust democratic process at regional and local level means will quite often mean that regions and districts are able to move beyond, and do better than, the national regulations and standards, including in the area of climate change – better balancing human and environmental wellbeing with regional and local economic development. In particular the role of regional and district councils in New Zealand with regard to climate change has been both to provide leadership in demonstrating what is possible in reducing our greenhouse gas emissions from (e.g. from electricity generation, housing and transport) and provide greater policy consistency and long-term policy direction for businesses and industry that has been missing from national regulation and policy. We consider this amendment to undermine this leadership and long-term consistency.

Recommendation 3: The Select Committee needs to see National Policy Statements and National Environmental Standards as a bare minimum and reject this proposed amendment.

7. Removing council bylaws which are "unreasonable" in the light of national policy and regulation

As above, local government processes improve on national ones in terms of community and local business input. Council bylaws may for this reason often go further than national policies and standards. The term "unreasonable" is poorly defined and would allow central government to remove any council bylaw it sees fit with very little justification. This makes a mockery of the Act.

Recommendation 4: Reject any proposed amendment that allows the Minister or central government to remove council bylaws through an undefined argument of "unreasonableness" as an undermining of the fundamental purpose of the Resource Management Act.

8. Greater requirement for local council to manage risks from natural hazards (New matter of National Importance in Section 6, and amendment to Section 65, Preparation and change of other regional plans)

Overall, OraTaiao supports this proposed amendment. In particular, we note that climate change is increasing the need for local government to anticipate, prepare for, and respond to increasing natural hazards. These include sea level rise, fires, droughts and severe storm events. However, we note that overall the proposed amendments are, on the one hand, preventing local government from addressing the causes of climate change by using RMA processes to reduce local and regional greenhouse gas emissions, while on the other hand, placing both

responsibility and cost on local government to deal with the impacts. Local governments need to be given the power and resources to deal with both cause and effect.

Recommendation 5: Strengthen this proposed amendment to specifically mention the need to adapt to the already locked in impacts of climate change, including the need to develop regional climate change mitigation plans in partnership with other relevant agencies (such as public health units and civil defence).

Recommendation 6: Accompany this amendment with responsibilities for local government to support local government with the skills and financial resources needed for climate change adaptation planning and action.

9. Iwi participation arrangements

Clause 38 new Subpart 2

As the government's Treaty partner, Māori have particular rights under the RMA. In addition, the evidence on climate change and health, as well as other environmental health issues, demonstrates that Māori suffer the impacts of environmental change first and hardest[3]. For both these reasons, strengthening meaningful Māori participation in RMA processes is vital – both in planning and consenting. While we support the proposed insertion of Subpart 2 to Clause 38 of the RMA, we think overall that Māori participation is undermined by other proposed amendments, particularly those limiting who can be considered an "affected party" in plan changes and resource consent applications. In addition, we consider part (1) of the insertion too limited in its consideration of the number of iwi that many regional authorities need to meaningfully engage with. Further, we recognise that many Māori (particularly, but not limited to, urban Māori) choose not to, or are no longer able to, identify with a particular iwi. These are likely to represent the most vulnerable and affected members of communities, as well as those least likely to be considered "affected persons" under currently proposed definitions. We therefore consider it necessary for particular provision for regional councils to engage with Māori who do not identify with a particular iwi – particularly in urban planning.

Recommendation 7: Strengthen part (1) of the insertion from a single invitation required to require invitations to all iwi whose recognised rohe fall within the regional boundary.

Recommendation 8: Include as part of formal iwi participation arrangements a requirement to also provide for the meaningful participation of Māori who are either manuhiri in the region or who are not able to or choose not to whakapapa to a particular iwi.

10. Further limitations to the definition of "affected person" in streamlined planning and resource consent processes

[3] Jones RG, Bennett H, Keating G, Blaiklock A: Climate change and the right to health for Māori in Aotearoa/New Zealand. Health and Human Rights Journal 2014, 16(1):54-68.

The purpose of the RMA is to "[*Manage] the use, development, and protection of natural and physical resources in a way, or at a rate,* ***which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety*** ***<u>while</u>*** *–*
(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

The RMA is also fundamentally a piece of procedural legislation. Its purpose is open to interpretation, so it sets up a framework for dispute resolution by providing for wide participation in plan-making and resource consent processes. This framework of participation is fundamental to New Zealand's ability to meet the purpose of the RMA.

Since the air, water, soil, ecosystems, natural and physical resources and other species are unable to speak for themselves, and the process of environmental impact assessment is fraught with vested interests as a private concern, achieving the purpose of the Act relies fundamentally on the strength of the Department of Conservation and the wide and meaningful participation of environmental and public health expertise in the academy and the community. Public health units and non-governmental organisations are particularly important for speaking on behalf of affected environments and populations.

Furthermore, environments and communities at a distance to the activities suffer many of the impacts of proposed plans and consent applications. Examples include air and water pollution and climate impacts causing multiple physical, mental, cultural and environmental health impacts far from the activity itself.

Many of the proposed amendments further limit who can participate in planning and consent processes, by limiting who can be considered an "affected person". Both the streamlined planning process and the new section under clause 128 (Section 95DA) further exclude all the significant organisations described above with crucial roles in upholding the purpose of the RMA. The Amendments go further than limiting participation by placing powers to decide who is affected in the hands of the Minister for the Environment. One example is Clause 151: new section 360 F and G – in a fast-tracked resource consent application the minister can prescribe particular persons or classes of persons, or the process by which the authority can identify affected persons is one example of where participation is being limited. A further, more extreme example is found in the new Schedule 1, proposed clause 5A(2) where limited notification on plan changes will be to those "**directly** affected".

In case law, directly affected persons are defined as those with property rights. This not only stops people and organisations speaking on behalf of the environment and population health, it also excludes those who are more directly affected but without property rights, creating deep participation inequities by income and ethnicity.

Because the the Act is procedural rather than prescriptive, it is inappropriate to prescribe or proscribe the persons and organisations who can participate in disputing the meaning and practice of sustainable management at a local, regional or national level.

Recommendation 9: All amendments to the act that limit participation of individuals and organisations whose role is to speak on behalf of the environment/ecosystems/species and public health in plan-making and resource consent processes need to be rejected.

11. Reducing regional democratic and judicial powers while increasing Ministerial, appointed EPA and appointed Board powers

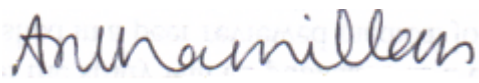
Including but not limited to:
Proposed changes to clause 9: Section 24 amended
Proposed changes to clause 30: Section 46A amended
Proposed changes to clause 37: new Sections 58B-J
Proposed changes to clause 66: Section 142 amended
Proposed changes to clause 72: 149J amended
Proposed changes to clause 73: 149K amended

Trustworthy democratic and judicial processes are fundamental to the RMA. Any amendments that move powers from regional democratic process and national judicial process, and politicise disputes resolution, severely weaken the Act and undermine the trust that communities can have in decisions that are made. In particular, the EPA and Boards of Inquiry consist of appointed members and are therefore the least democratic instruments of the RMA. Their powers should continue to be limited.

Recommendation 10: All amendments that move powers of decision-making from democratic regional planning and consent processes and national judicial processes through the Environment Court, to the Minister and appointed Boards or the EPA should be rejected.

OraTaiao would like to speak to this submission in person. We look forward to hearing when the Select Committee will make this opportunity available to us. Please contact Alex Macmillan on 021 322 625, alex.macmillan@otago.ac.nz.

Yours sincerely,



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