

Forest & Bird submission guide for the: Resource Management (Simplifying and Streamlining) Amendment Bill 2009

Submissions close 3 April

Introduction

The Resource Management Act (RMA) is the main way that ordinary New Zealanders can have a say in how our resources and environment are managed. One of the core ideas behind the Act is that the best outcomes for sustainable management are achieved when the public has the ability to participate in decision-making processes.

While this amendment Bill is meant to simplify and streamline the RMA, many of its proposed changes are likely to have the opposite effect. The Bill proposes to significantly restrict the public's ability to participate in decisions that affect them. Fewer resource consent applications will be notified – the first many will know about a development in their area will be when the bulldozers or chainsaws start up.

The Bill's proposal for a quicker - rather than thorough - planning process will lead to poor plans that in turn are likely to lead to more - rather than less - court cases. Fewer affected individuals or community groups will challenge unsustainable developments because developers will be able go directly to the Environment Court and the costs of appealing council decisions to the Environment Court will rise 900%.

Forest and Bird will be making a detailed submission on the Bill, which will address all the relevant changes that could result in negative outcomes for our environment, while also supporting the proposed changes that will have positive outcomes.

It is vital that the Government hears from as many people as possible, so that we have the best chance of ensuring that our environmental protections are retained.

Below are the most important issues that are raised by the proposed changes. Please take the time to make a submission .

If you would like more detailed information on the issues, see here - [http://www.forestandbird.org.nz/files/file/RMA%20Amendment%20Bill%20analysis%20for%20submitters%20March%202009\(1\).pdf](http://www.forestandbird.org.nz/files/file/RMA%20Amendment%20Bill%20analysis%20for%20submitters%20March%202009(1).pdf)

Resource consents

Notification

- The Bill removes the presumption that resource consent applications will be publicly notified. This means that the public will find out about even fewer resource consent applications, which will mean less public participation in decision making. The Bill also changes the criteria for when a consent application will be notified. An application will now need to involve adverse effects *beyond the immediate environment* (rather than the environment generally), so that the public won't get to hear about consents that involve 'localised', but potentially environmentally harmful, effects.

Suggested submission: Delete clause 68, and retain the current notification provisions. As a positive change, appeals on Council decisions about notification should go to the Environment Court (rather than the High Court, as they do now). This would be cheaper and simpler for all parties.

Developers can apply to fast-track their proposals

- Consent applicants will be able to ‘fast-track’ applications, by-passing the local authority hearing and going straight to the Environment Court. This will mean that individuals and community groups who want to have their say at the informal, relatively cheap, local Council hearing will be denied that chance and instead will have to voice their concerns in the formal and generally more expensive Environment Court setting. Council hearings also often give the community a chance to become fully informed on an issue, giving them the background to fully participate at a later stage if necessary. Fast-tracking will remove this important participatory function of Council hearings.

Suggested submission: Delete clause 60. Retain the current local authority hearing provisions. This will allow for effective public participation to be retained, as an essential check and balance on resource consent decisions. This will also avoid ‘clogging-up’ the Environment Court.

Representing a relevant aspect of the public interest will be lost

- Community groups and individuals will no longer be able to join in appeals on either consents or plan changes on the basis that they represent a “relevant aspect of the public interest”. This would mean, for example, that a local environmental group would not be able to join an appeal against a subdivision that involved clearing native bush (unless they submitted at the beginning of the consent process, which given the low levels of notification, will be less likely). If an individual or group can convince the Environment Court that they do represent an “aspect” of the public interest that is “relevant” to the case, it is surely in the public interest that they be allowed to participate.

Suggested submission: Delete clause 131. Retain the current provision allowing parties to join Environment Court proceedings where they represent a relevant aspect of the public interest.

Plans

Appeals only on questions of law

- The Bill removes the ability to appeal policy statements and plans, unless on questions of law (except with the leave of the Environment Court). Policy statements and plans are the main way that the principles of the RMA are put into practice, and are the basis for most resource management decision-making. It is therefore very important that these plans are accurate and well thought out. The public’s ability to appeal on issues of fact and policy is the main way to ensure that local authorities are giving effect to sustainable management principles.

The majority of planning appeals are resolved at mediation, without any need for a Court hearing. There is greater community support for planning documents where the issues have been properly considered. Furthermore, the appeal process is often a way of sorting out unintended consequences of planning documents – local authorities themselves often appeal their own plans to sort out such issues.

Suggested submission: Delete clauses 132, 136 and 148. Retain the current right to appeal policy statements and plans to the Environment Court:

- Having to apply to the Environment Court for leave to appeal will add further complexity and cost.
- It is a basic right of the New Zealand justice system that there is a first right of appeal.
- Removing the ability to appeal will reduce the quality of plans.

Greater use of precedents and national planning instruments would be a more effective way of making the planning process more efficient.

Removal of right to make further submissions on plans

- The Bill also removes the ability to make further submissions in the planning process. Further submissions are an important step in the process, because they give the public a chance to have a say on issues that have only become apparent through the first submissions process. Like the right to appeal, the further submissions process means that issues are fully considered, and results in better quality plans. Again, it's better to have a good plan than to rush through a poorly drafted plan, which will inevitably involve more litigation and poor outcomes for the community, businesses, and the environment.

Suggested submission: Delete clause 148. Retain the ability to make further submissions. Further submissions allow issues to be fully considered, resulting in better quality plans. This process also flushes out issues that otherwise would be dealt with by costly and lengthy litigation.

Rules won't take effect until decisions are notified.

- Rules in proposed plans won't have any effect until decisions on those rules have been notified. This change has been proposed to ensure that local authorities have an incentive to complete their planning processes. However, the proposed change could mean a 'goldrush', where developers rush through consent applications to avoid the new regulation, without any regard to the reason for the rule change. The Government's objective would be better met by putting in place timeframes for local authorities to complete their planning processes.

Suggested submission: delete clauses 16 and 59. Retain current provisions around the effect of proposed rules, to avoid the 'gold rush' effect where parties apply for consent based on the old rules, disregarding the policy reasons for changing the rule. Consider setting timeframes for local authorities to complete rule change processes.

Costs of going to the Environment Court

Security of costs will discourage many relevant and worthwhile appeals

- The Environment Court will be allowed to require security for costs. This means that when someone wants to appeal a resource consent they may be required to pay the anticipated costs of the other party upfront, in case they're not successful. Being forced to raise this kind of money at the outset will make it impossible for many community groups and individuals with worthwhile cases to appeal decisions that have bad environmental effects. When this provision was previously in the Act unscrupulous developers used spurious applications for security of costs to drain an objector's resources even before they got to Court.

Suggested submission: Delete clause 133 of the Bill, as this will significantly restrict vital public participation in resource management decision making, particularly for environmentally-focussed community groups who have limited funds.

900% increase in cost of lodging an appeal

- The fee for taking an appeal to the Environment Court will increase 900% from \$55 to \$500. The Government has said that this is to deter frivolous and vexatious appeals, however it will most likely act as a disincentive for parties with limited resources.

Suggested submission: Oppose the significant fee increase. It will only affect those with limited funds, such as community groups or individuals, and will not deter those motivated by trade competition.

Removing the Minister of Conservation decision making role in respect to restricted coastal activities

- The Minister of Conservation's consenting role recognises the values associated with the coastal environment and only applies in respect of restricted coastal activities. It also recognises the position of the Minister as "landowner" on behalf of the people of New Zealand. The Minister, as "landowner", should be afforded the opportunity to refuse access to the coastal environment (and to collect rents where access is granted).

Concern has been expressed that an applicant can go through a very long process only to have the Minister of Conservation say no. This issue might be better dealt with by making a change where an applicant would have to seek the Minister's agreement before making a consent application for a restricted coastal activity.

Suggested submission: Delete clauses 20, 82 and 83 of the Bill. The important opportunity of the Minister of Conservation as the "landowner" to say approve or decline a restricted coastal activity should not be lost. Other ways to simplify the process of dealing with applications for restricted coastal activities could be better considered in phase two of the RMA reform.

Proposals worth supporting

- Increasing the maximum fine from \$200,000 to \$300,000 for individuals or \$600,000 for corporations. It allows the Environment Courts to review a resource consent where the consent holder is repeatedly in breach of the consent conditions (clause 141).
- The Environment Court will now have the power to require new conditions as well as fines when dealing with breaches of consent conditions (clause 141)

If you would like more detailed information on these and other issues to do with the amendment Bill, see here -

[http://www.forestandbird.org.nz/files/file/RMA%20Amendment%20Bill%20analysis%20for%20submitters%20March%202009\(1\).pdf](http://www.forestandbird.org.nz/files/file/RMA%20Amendment%20Bill%20analysis%20for%20submitters%20March%202009(1).pdf)

Submissions close 3 April, 2009

Address your submission to:

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

You can also make a submission on line. Click on the link below

<http://www.parliament.nz/en-NZ/SC/SubmCalled/3/7/3/49SCLGEresourcemanagements200904031-Resource-Management-Simplifying.htm>

then go to the bottom right hand side of the page and click on “Making a Submission to a Parliamentary Select Committee”.