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1 July 2004

Hon David Benson-Pope
Associate Minister for the Environment
Parliament Buildings
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Dear Minister

REVIEW OF RESOURCE MANAGEMENT ACT

We write to bring to your attention our views on the current review of the Resource Management Act.

The Forest Industries Council and Forest Owners Association represent the interests of the large majority of New Zealand's forest growers and wood processors. The industry has a long history of exposure to the Resource Management Act in most regions and districts of New Zealand and has worked hard and constructively with Local Government to make the legislation work. Many of our members also have operations outside of New Zealand and can therefore make valid comparisons with the jurisdictions that apply in other developed countries.

Two initiatives have been undertaken by the industry to improve the efficiency with which the Act has been applied to forest growing and processing.

The first, "The Way Forward", was a technical publication undertaken in conjunction with CRI's, MfE and Local Government to provide a code of best practice for the regulation of forest harvesting. The intention was that companies observing these standards, which were capable of being written into plans, would be regulated as a permitted activity subject to conditions.

Secondly, as part of the Wood Processing Strategy, another working group, again with Local Government and MfE participation developed a draft code of practice for Wood Processing Industries. This also sought to describe best practice for the management of common environmental effects of wood

processing facilities with the outcomes being defined standards for these effects thereby reducing the amount of discretion to which new investment would be subject.

In neither case has Local Government moved to use these draft standards to reduce the vast discretion which is at the centre of concerns about delay, complexity, duplication, rent seeking behaviour, and total cost.

Little of the \$3 billion in new investment we sought through the Wood Processing Strategy, and necessary to process the increased wood harvest in New Zealand, has been attracted to these shores. Most of the increase is leaving in unprocessed form. All New Zealanders should be concerned about this and recognise the role of the RMA and its administration by Local Government in this outcome.

It has reached the point where, in some regions such as Auckland, the industry is simply being regulated out of existence. This is in spite of being the only productive use of private land capable of sustaining indigenous biodiversity (including populations of Hochstetter's frog and Kiwi), sustaining over 1 million public outdoor recreation visits each year for high impact recreational activity (taking pressure off regional and DOC parks and reserves), maintaining the highest levels of water quality of any productive land use, and providing significant carbon sinks.

It has reached the point where we can no longer state, as we have in the past, that the failure is one of administration, rather than a failure of the Act itself. The time has come for major reform of both the Act and the means by which it is administered.

The attached paper has been prepared and reviewed by members of our Joint Environment Committee, all of whom are specialist environmental managers with long experience in working with the RMA. We commend the recommendations to you and hope that this review of the legislation will deliver improvements where others have failed. The consequences of failure will be a significant reduction of environmental quality.

Yours sincerely

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Chief Executive
NZ Forest Industries Council

Rob McLagan
Chief Executive
NZ Forest Owners Association

Cc
Rt Hon Helen Clark

Rt Hon Michael Cullen
Hon Jim Anderton
Hon Marion Hobbs
Hon Jim Sutton
Hon Parekura Horomia
Hon Chris Carter
Hon Pete Hodgson
Hon Nick Smith
Don Brash MP
Geoff Dangerfield
Bill Bayfield
Barry Carbon

**NEW ZEALAND FOREST INDUSTRIES COUNCIL
NEW ZEALAND FOREST OWNERS ASSOCIATION**

**OPTIONS FOR REFORM
SUBMISSION ON A REVIEW OF THE RESOURCE MANAGEMENT ACT -
JUNE 2004**

1.0 Background

The Government has announced its intention to review aspects of the Resource Management Act 1991. This paper comments on the principles the Government has set to consider changes and makes recommendations for improvement under each of the five areas the Government has defined as the focus for the review.

2.0 Industry Concerns

The Resource Management Act attempted to combine three environmental management activities into a single, devolved process for natural resource management in New Zealand.

The three activities amalgamated were:

- Land use planning and control of the built environment under the Town and Country Planning Act 1977
- Resource allocation and consent processes for the management of the use of certain natural resources from the Water and Soil Conservation Act 1967 and Geothermal Energy Act 1953
- Environmental regulation functions of the Clean Air Act 1971 and various other acts regulating hazardous materials.

Judged against almost any criteria, it has not been a success.

We support some of the areas that have been identified as a focus for the review. There is a clear and urgent need to -

- Reduce delay by increasing certainty and reducing discretion in the regulatory process.
- Improve resource allocation mechanisms
- Improve the consideration of national costs and benefits in RMA planning and resource consent decisions
- Improve the recognition of social and economic benefits in the Act and decisions made under it.
- Improve the protection of private property rights
- Reduce the bulk and complexity of plans and policy statements. These documents are not readily accessible by even the most literate members of the public.

In our view there are too many consents being required, there are too few nationally binding standards, and the delays generated by such a discretionary process offer too many opportunities for arbitrary or politically-

motivated decisions and rent seeking behaviour by submitters and Councils alike.

The issues do not relate to the standards of environmental quality but rather the time and cost of defining them. The duplication and inconsistency in approaches, poorly qualified decision making at a local level, and time involved does not compare favourably with other developed countries in which our companies operate. Similar or even higher levels of environmental quality can be achieved in time frames of months rather than the years taken in New Zealand.

3.0 Proposed Principles for the Review

The proposed principles for the review suggest that the problems with the Act are either not well understood or that the Government is not inclined to address them.

“Achieving good environmental outcomes in line with the purpose of the Act”

The proper assessment of the environmental effects and their avoidance or mitigation is not, nor are we aware has it ever been, the issue. The concerns lie in the extent to which these assessments must be replicated and the quality of assessment possible within the current structure.

“Certainty of process but not outcomes”

There are many instances in which certainty of outcome is in fact both possible and desirable, providing both higher levels of certainty for investors, better standards of environmental performance and lower costs of achieving these standards.

“Certainty of cost”

We agree that this is desirable but reasonable cost is more important.

“Local decision making”

In general we agree but an agreed failure of the Act is its obvious inability to cope with wider national and international interests. There is also far too much variation between districts and regions about how they treat the same or similar environmental effects or activities. Like effects and like activities should be subject to like controls.

“Public participation”

The concern about local people being most affected is correct. They are also those who benefit most, and yet the Act provides no opportunity for such values to be considered in the decision making process.

“Central Government leadership”

Central Government needs to provide standards and control rather than just 'to provide more effective' guidance and leadership.

4.0 Government's Areas of Concern

4.1 Achieving the right balance between national and local interests

The devolved model of resource allocation established by the RMA recognised that the distribution of costs and benefits associated with the allocation of rights to use environmental resources is primarily regional. The consequences of resource allocation decisions however are increasingly national and even global.

This has led to situations where both Councils and the Environment Court have been required to make resource allocation decisions for which they have no political accountability. Examples include the Wanganui River decision, and potentially the Waitaki.

There is a need, therefore, for national and international perspectives to be considered more effectively, both in the planning process and in individual consent applications.

A higher level of central Government influence can be achieved in several ways:

(i) Consent Call in Provisions

While the RMA contains "call in" provisions to deal with applications where the costs and benefits are primarily national, governments have been wary of such decision making and the power has been used infrequently. Central Government is not at present well resourced or structured to make decisions where the majority of issues to be resolved are local. We do not recommend that a revised call in procedure be considered.

(ii) Central Government Participation in Local Resource Consent Applications

The limitations of the call in process could be overcome by adopting a special process for consent applications where consideration against specified criteria suggest that an application requires that wider consideration and greater weighting is given to national values.

At present the Department of Conservation is the only central government department extensively funded to represent the national interest in local planning and consent processes. This is however only one, and is constrained by the statutory duty to advocate conservation as the only relevant aspect of the national interest. This is such an unbalanced perspective that in our view it should be discontinued.

A preferable process would be the development and representation of a considered central government perspective in circumstances where the magnitude and spatial distribution of the issues involved in a local or regional decision, suggest this is necessary to ensure an appropriately balanced outcome.

(iii) Plan Preparation

The current mechanisms for the development of national policy statements that endeavour to replicate local planning processes at a national level are cumbersome and inappropriate to the development of district and regional plans.

We recommend that a mechanism be developed whereby central government can develop and promulgate policy positions at Cabinet level to which local government is required to give effect at any stage in the development of a proposed plan or the operation of an operative plan.

4.2 Improving the design and process for local policy formation

The size of most Regional and District Councils means that most are inadequately resourced to undertake the functions required of them. In particular, the technical expertise needed to define rules relating to air and water quality standards is not usually available meaning that the rules which would reduce discretionary consent processes do not exist. The expertise required must therefore be purchased on the multiple occasions it is required to deal with consents, creating inconsistency, duplication and the unnecessary costs of a hearing process on these issues.

There are a number of possible solutions to this issue:

- Reduce Council numbers to increase the pool of available expertise.
- Allocate responsibility for the definition of technical standards to a national body such as an Environmental Protection Agency.
- Set mandatory standards by regulation created by the Ministry for the Environment but enforced by local government.

4.3 Improving the consent decision making process

4.3.1 National Standards

Most developed countries have centralised systems for environmental regulation such as an Environmental Protection Agency. New Zealand has partly followed this model with the Environmental Risk Management Authority. This approach recognises that the risk inherent in exposure to hazardous substances, for example, is the same in all parts of the country and a single national standard is appropriate.

There are many areas of environmental regulation where a universal standard, developed and administered by a single entity, could be employed. This would provide several benefits without a loss of environmental quality.

- Better quality standards - A single pool of expertise sufficient to assess risk and set standards will result in higher quality standards.
- No duplication - Technically complex standards must presently be litigated and re-litigated by applicants for resource consents and submitters on plans. This is one of the least efficient aspects of the RMA processes.
- Reduced cost – As noted above, Local Government does not have the scale to retain the expertise required, meaning that each applicant must hire consulting advice. Submitters and councils must also hire independent advice (usually at the applicant's expense) on every occasion a standard is to be developed.
- Consistent application- Applicants, regulators and the Courts are likely to understand and apply more consistently rules and standards which have national effect

The recent changes to facilitate the development of national standards by the Ministry for the Environment leaves the standards open to be second guessed by local government where they consider, for whatever reason, that the standard should be more stringent. This duplicates both central and local systems of regulation as well as creating uncertainty.

4.3.2 Complexity

At present the consent process and plan making process are unnecessarily complex which creates excessive delay. These delays in turn provide opportunities for rent seeking behaviour by submitters.

Possible solutions include:

- Impose time limits on Council consent processes
- Amend Sections 30 and 31 – Clarify and limit the roles of local and regional government
- Create a statutory presumption in favour of activities being permitted subject to conditions, to make fewer activities subject to the resource consent processes, and those that are, subject to fewer areas of discretion.

4.3.3 Objectors – Standing / Funding

Standing to submit on an application is extremely wide in New Zealand. It creates unreasonable consultation requirements on applicants and excessive opportunities for rent seeking behaviour by unaffected parties.

There are a number of possible solutions to this.

- Reduce standing to those affected by the application greater than the public at large
- Impose bonding for costs

4.3.4 Uncertainty in the Consultation Process

Applicants for resource consents currently face the burden of defining who to consult with in an environment where they may be unfamiliar with local interests, particularly local iwi and hapu. Incomplete consultation requires additional time and duplication of process.

If Councils consider that consultation is required by way of a consent application, then they also have an important responsibility to facilitate this process in order to ensure appropriate local input to their decision.

We consider that to assist the process, Councils should be required to;

- specify consultation requirements and identify local Maori with tangata whenua status in particular areas
- Identify sites of cultural and spiritual significance on a register that is available to landowners or applicants for LIM reports.
- Assist applicants in the definition of persons and groups affected by a consent application.
- The Act should be amended to define time limits for consultation, including responses to requests for views.

4.3.5 Environment Court Delays

Significant improvements have already been made to the delays in hearing references to the Environment Court; however these have addressed the symptoms rather than the causes of the delay. More progress could be made and the costs to all parties could be reduced by adopting the following recommendations:

- Direct referral of major consent applications to the Environment Court
- Limiting appeals to the matters appealed against (non de novo hearings)
- Penalise appellants not ready for hearing by the required time
- Apply costs more frequently as a deterrent to appeals of little merit

4.4 Allocation of natural resources (water, air, geothermal)

4.4.1 Improving the Quality of Resource Allocation Plans

The Resource Management Act carried over the “first come first served” basis for resource allocation contained in the Water and Soil Conservation Act 1967 and combined it with the planning model contained in the Town and Country Planning Act 1977.

The planning process inherent in the latter was supposed to guide the allocation of water resources. In practice, the ad hoc methods of regulating both water allocation and soil conservation have continued unchanged.

Too few plans have been completed to the point where the allocation of rights to water for example derives much valuable guidance. The poor quality of plans suggests that some central government oversight should be required including approval.

4.4.2 Development of Tradable Permit Systems

Unless a resource has been over-allocated, the majority of the resource consents allocated for the use of water, geothermal energy and air, are capable of exercise without any risk of compromising the “sustainable management” of the resource.

In this respect, the RMA is not just about ensuring environmental quality. It should also ensure “efficient use” (or if such a term is politically incorrect, “avoid wasteful use”) of natural resources.

As noted above, once allocated, it is important for the purposes of maximising national welfare that these rights gravitate to their most valued use. Tradable permits are the least cost means of ensuring such an outcome while avoiding the need for most consents to be re-allocated through a political or legal process.

Control on the environmental conditions attaching to a consent by review can continue under this framework, just as other rights are traded subject to regulation. While the concept of efficiency may seem somewhat academic to some, the New Zealand economy and the well being of its communities are dependent on the ability to alter the use to which natural resources are put according to market conditions for the food, fibre and manufactured goods we produce.

An example of the benefits of a tradable permit regime can be seen in the Upper Waitaki where there is a suggestion that the water used for hydro storage in the Upper Waitaki could be re-allocated by a local political decision to a small number of prospective dairy farmers. Such a decision would be made on the basis of local political pressure rather than economic value. If the original consent were to be tradable, the economic value of the consent would determine any re-allocation, and result in whichever use represents the highest value of the water. The Council would still be free to maintain conditions relating to “sustainable bottom line” (such as minimum flow and water quality conditions) and other general environmental conditions but a great deal of cost and risk would be avoided.

A number of Councils are now struggling with the development of approaches to tradability both on water abstraction, geothermal energy development and nitrate discharges.

New Zealand has considerable experience in such systems through the Fisheries Quota Management System and is developing trading regimes for greenhouse gas abatement.

It is important that a national model and appropriate legislative provisions are developed to support tradable permit regimes. We appreciate that there are complex issues to be resolved with respect to allocation and Treaty matters. However we consider that this should not deter the immediate investigation and development of trading systems under the Act to facilitate more efficient resource use.

The initial allocation of tradable rights poses significant questions of equity. In an economic efficiency sense, it is irrelevant how rights are allocated provided they are sufficiently certain in their specification and term to be tradable.

It is critical to the viability of existing resource users however that existing rights are protected, and that this includes the right of renewal on expiry. This would not preclude the periodic review of environmental conditions that occurs today. Unless a resource has been over-allocated, this will not create a barrier to entry, but will avoid the risk that new capital investment may be required to close before it has recovered the cost of the capital employed. Such an outcome would actively discourage investment.

Another critical feature is that reviews and rollovers should occur simultaneously where multiple resource consents (air/water, and abstraction/discharge) are necessary for a particular operation.

In summary

- Resource allocation plans should be subject to central government oversight and approval
- An immediate start should be made on the development of a national model for tradable permit systems including the necessary legislative changes
- The initial allocation decision should protect the rights of existing resource users, including a right of renewal, subject to reconsideration of environmental conditions at appropriate intervals.

4.5 Supporting measures for building capacity and promoting best practice and implementation

Accountability / Performance Measures

It is widely agreed that the performance of Local Government in the implementation of the Act has been less than satisfactory in many (but by no means all) cases. Some mechanisms are required to incentivise and police the performance of local government.

Possibilities worthy of consideration include:

- An ERO type review office to vet and approve plans

- Amend Section 32 to create an enforceable test for the efficiency and effectiveness of plans

5.0 Further Work Required - Part II – Purpose and Principles

In addition to introducing a proposed amendment later this year, Government has indicated it wishes to decide the scope of any further work required.

We consider that the time has come for a more fundamental consideration of the purposes and principles of the RMA contained in Part II.

The purposes and principles of the RMA have been the subject of much debate. The key issues revolve around whether;

- (a) the Act is solely focused on environmental regulation to ensure the maintenance of “environmental bottom lines” and to achieve standards of environmental quality desired by local and regional communities, (the Upton version) or alternatively,
- (b) whether the Act requires a broader purpose encompassing recognition of social and economic costs and benefits.

The former (Upton) version was designed to prevent “planners” from seeking to use the wide powers of the Act to direct economic activity rather than regulating the “environmental effects” of that activity. Upton was also concerned to prevent the Act from being used as a trade protection device whereby service stations or supermarkets, for example, would seek to restrict competition within trade catchment areas on the basis of an adverse economic effect.

In practice the Act has been applied in all of the ways Upton tried to avoid. Trade competitors simply use (and cannot be prevented from using) environmental or amenity reasons to object to trade competition. Similarly, there has been no reduction in the regulation of particular forms of economic activity by land use zoning on the basis of the presumed effects of their activities on the environment. In contrast, the economic and social benefits of economic activity are not able to be recognised in consent decisions or in land use planning.

We consider the time has come for some change to Part II, to enable the benefits of economic activity to be recognised, subject to the protection of certain bottom lines of sustainability, including the sustainability of people and communities, (already recognised within the definition of the environment). Explicit exclusions should still be applied to the consideration of the effects of trade competition.