NEW ZEALAND FOREST INDUSTRIES COUNCIL
NEW ZEALAND FOREST OWNERS ASSOCIATION

SUBMISSION TO THE LOCAL GOVERNMENT AND ENVIRONMENT SELECT COMMITTEE ON THE RESOURCE MANAGEMENT AND ELECTRICITY LEGISLATION AMENDMENT BILL

FEBRUARY 2005

1 Introduction

1.1 Background

The New Zealand Forest Industries Council (NZFIC) and the New Zealand Forest Owners Association (NZFOA) represent the interests of all sectors of New Zealand's forest owning and wood processing industry. The two organisations' memberships comprise New Zealand's largest companies in the sector as well as other sector associations representing the interests of smaller growers and manufacturers of wood products.

New Zealand's forest, wood and paper industry currently accounts for 4% of GDP, is the 3rd largest export sector with international sales in excess of $3.5 billion (representing 12% of New Zealand's total exports), directly employs 26,000 New Zealanders and generates an estimated 100,000 additional jobs. Since 1988, over $4 billion has been invested in further forest products manufacturing capability.

Our members have long been concerned about the delays, inconsistency, poor quality decision making and costs, imposed by the administration of the Resource Management Act. In our assessment the Act has not only added directly and indirectly to the costs of doing business but has discouraged investment, particularly in further added value processing.

1.2 Industry's submission to the RMA Review Process

We participated actively in the Government's recent RMA review process and welcomed the Government's stated intention, through this legislation, to amend the Act in ways which would improve its operation for economic stakeholders.

We supported some of the areas that were identified as a focus for the review. We submitted that there was 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 assessment the main problems with the Act are that:

- 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 local authorities alike.

These issues do not relate to the content of 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. This poses a significant disincentive for international companies whose investment is required to develop New Zealand's wood processing capacity and to process on-shore an expanding forest harvest.

The Wood Processing Strategy (WPS) – the industry's partnership with central and local government and the unions - seeks to attract the investment required to process half of the expanding harvest by 2015. Today it is increasingly apparent that the ambitious aims of this Strategy are unlikely to be met due, in part, to the difficulty in obtaining consents for the establishment or expansion of processing operations. The alternative to local processing is increasing exports of logs and the loss of the potential employment and wealth creation that would accompany an expansion of the wood processing industry.

1.3 General assessment of the Bill

Our assessment of the current Bill is that while there is merit in some of its provisions, overall it will not contribute to a significant alleviation of the problems with the RMA which is necessary to address the industry's concern. Some sections will in fact make the current situation worse. The amendment fails to address the root causes of the problems with the administration of the Act and these will ultimately need to be re-visited.

2. Approvals Process and Decision Making

2.1 Provisions Relating to Hearings

Clause 18 of the Bill amends section 41 of the Act to give consent authorities greater powers to direct parties making submissions as to the way in which hearings take place.

These include pre-circulating briefs of evidence, establishing time limits for the presentation of evidence, requiring an order or presentation of evidence, recording evidence and striking out evidence.

We doubt whether these changes will improve either the quality of the timing of hearings. To the extent that they are designed to reduce the time spent when appeals are being considered, we note that only 1% of consents are appealed. We consider that the requirement to pre-circulate evidence will replace one set of costs with another.

The changes proposed seem to simply add more bureaucracy and delay to an already difficult process. The real cause of delay is the sheer volume of consents requiring consideration by both councils and applicants. One important solution lies in setting more national standards to reduce the scope of discretion and hence reduce the number and complexity of consents.

We recommend that clause 18 of the Bill be deleted.

2.2 Accreditation

The industry supports the proposals in clauses 16 and 17, inserting new sections 39A and 39B, to require accreditation of the chair and at least 50% of the hearing committee.

We have observed frequent breaches of natural justice, poor process, and blatant bias on many occasions. We would expect that provided the training courses are adequate, these should assist in improving the quality of Council decision making.

In our view there are some occasions where a consent will involve technically complex issues that will test the abilities of even the most experienced Councillors. In these situations, it is our view that the applicant should be able to elect to have the application considered by one or more Commissioner(s) and the Council should also have this discretion.

We support clauses 16 and 17 of the Bill and recommend including a new provision enabling a Council or an applicant to decide that a consent application should be heard by a Commissioner.

2.3 Further Information – Clause 36

The introduction of a new section 92A whereby Councils may require further information and the applicant is entitled to not provide the information makes an unsatisfactory section of the Act even worse. The new section seems designed to impose such adverse consequences on a failure to provide any further information that a refusal to provide it is tantamount to justification for

either not even considering the application, or the decline of the consent. Only the latter is subject to appeal.

We recommend that proposed section 92A be deleted in its entirety.

2.4 Compulsory Attendance at Pre- Hearing Meetings

The proposed compulsory requirement for a party to attend a pre-hearing meeting seems designed to narrow the issues and provide an alternative means of issue resolution before the costs of a full hearing.

The industry is not convinced that such pre-hearing conferences are always necessary. They can be used to delay the consent process and should remain voluntary for all parties.

We recommend that all changes to section 99 be deleted from the Bill.

2.5 Right in Priority to Consent Renewal

Clause 46 of the Bill includes new sections124A to 124C which provide that an existing consent holder has priority to re-apply any expiring consents over applications by new resource users.

The industry supports these changes and recommends no change to the proposals in the Bill.

2.6 Transferability of Consents

Clauses 50 and 51 of the Bill provide improvements to the transferability of water permits and discharge consents respectively.

The industry strongly supports the changes recognising the right to priority consideration of renewals of existing resource consents. Many millions of dollars are invested in reliance on continued access to the resources granted by consent and provided the terms of the consent are observed then the existence of a right in priority to re-apply is an obvious matter that should have been addressed when the Act was first passed.

3. Local Policy and Plan Making

3.1 Status of Regional Policy Statements

The industry supports proposed changes to the status of Regional Policy Statements. The absence of such a recognised hierarchy has been the source of much litigation and confusion in the past.

4. Iwi Consultation and Resource Planning

4.1 Records of iwi authorities

The industry supports proposed new Section 35A requiring Councils to keep records about Iwi authorities. These are often the most likely source of both interest and informed comment on Resource Consent applications. We suggest, however, that section 35A (1) be amended to include after the words "iwi authority" the words "… and tribal runanga".

4.2 Duty to consult

We note that in Clause 15, the circumstances in which consultation must take place under section 36A (1) (b) are now broader than that previously required. The duty to consult where there is no operative plan, or where the consultation undertaken by the Council did not include the matters in question, effectively is a blanket requirement to consult. Applicants are not signatories to the Treaty of Waitangi and cannot be expected to know the details of previous consultations between the Local Authority and Iwi.

A duty to consult of this nature will be yet another source of delay and provide even greater rent seeking opportunities than currently exist.

We recommend that section 36A (1) (b) be deleted.

4.3 Co-management

The industry is extremely concerned at the reference to co-management of natural resources. The Crown and Local Government exercise a regulatory power under the Act and there is no constitutional authority for any other body or person to engage in such activities.

We recommend that section 35A (1) be amended to include reference to Tribal Runanga and that all references to co-management by Maori be deleted.

5. Expressing the National Interest

5.1 Powers for the Minister for the Environment to Request Information or Direct Action – Clause 6

The introduction of new sections 25A and 25B enabling the Minster to request information or direct certain actions on the part of local government is supported.

The industry considers that central government should exercise greater control and influence over the administration of the Act by local government rather than simply taking a policy role.

5.2 National Policy Statement Regulations to Prevail; over Rules - – Clause 21

Clause 21 inserts a new section 43B which provides that national standards take precedence over rules in plans unless the regulation provides for this, in which case the reason for the more stringent standard must be justified by a section 32 analysis.

We do not consider there are any situations where a rule should be able to over-ride a national standard. Section 32 is not an enforceable test and our experience has shown that local government does not have the technical competence in most cases to judge whether any particular standard is appropriate. This lead to precautionary and non science based reasons being given for the adoption of standards which must then be debated on appeal.

We recommend that clause 20 be amended by deleting all the words following "that is inconsistent with them" in subsection (1) and deleting subsection (2).

5.3 Ministerial Choice of National Policy Statement Process – Clause 24

The industry supports the range of options open to Government to access the National Policy Statement process on a "whole of Government" basis and ensure that the current imbalance in favour of local values is able to be addressed where appropriate.

5.4 Ministers Power to Intervene in Applications – Clause 54

Proposed section 139B and C set out the range of circumstances initiated by a third party in which the Minister may choose to intervene and the range of options for such intervention.

The industry supports these proposed changes but is concerned to note that the discretion for the Minister to intervene is dependent on a request from a third party and also that, where a change to a plan has been proposed by a local authority, that this is not within the scope of the discretion under this section. Such an absence is incongruous given that elsewhere the Minister has power to direct a local authority to prepare a plan or a change to a plan.

We recommend that Section 139B and C be amended to provide both that the Minister may intervene on his or her own volition and secondly the inclusion of under subsection (2) of section 139B "(e) a draft plan or policy statement prepared by a district of regional council."

6. Environment Court Processes and Decision Making

6.1 Limiting the Scope of Appeals to the Environment Court

Clause 74 substitutes a new section 290 setting out the powers and functions of the Environment Court in relation to appeals and enquiries.

It seems that in response to pressure to shorten the consent process where appeals are involved, the Environment Court is to consider only the matters appealed against, rather than has been the case in the past where the matter has been considered *de novo*. It does however retain the discretion to rehear the whole case. There are three unsatisfactory provisions of the new legislation which will work against the objectives of this amendment.

The first is that new evidence can be considered in very limited circumstances. The net effect of this is to transfer the burden of evidence to the council hearing. Given that only 1% of consents are appealed, this requirement will substantially lengthen both the individual resource consent application and the backlog of such applications.

Secondly the Court is required to make a recommendation back to Council which requires that the matter be reconsidered by Council. Again the delays caused will be significant and contrary to the stated purpose of this Amendment Bill.

Thirdly the Court will no longer have all the powers of the body appealed against in order to implement its decisions. This is also a retrograde step.

The Environment Court is one of the few bodies associated with the Resource Management Act to emerge from the past 15 years with any credit for its administration of the Act. The proposed changes penalise it and transfer from the Court to the Councils much of the discretion that the latter have proved so incapable of managing over the past 14 years.

We recommend that the changes to section 290 be abandoned with the exception of that proposed for subsection (4) which provides for the Court to take as read evidence presented at the Council hearing. We do not consider it should be necessary for the Court to re-hear all of the details of an application in order to reach a decision on the matters appealed against. However, if on balance it is considered necessary for this to be the case, then all matters considered by the Council must be considered as if they were already on appeal. The benefits of the change are illusory and should be abandoned.

6.2 Environment Court Jurisdiction over Notification Decisions

Clause 82 of the Bill would enable the Environment Court to consider whether a decision to notify or not to notify an application was appropriate. We note that this discretion is usually only exercised by councils where the effects are relatively minor. The opportunity to challenge these administrative decisions will create yet more appeals which will need to be heard consecutively, resulting in greater delays to relatively minor resource consent applications

We recommend that this clause be deleted.

New Zealand Forest Industries Council
New Zealand Forest Owners Association
WELLINGTON

February 2005