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Te Kaunihera Wahine O Aotearoa

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Submission to the Local Government and Environment Select Committee on the Resource Management and Electricity Legislation Amendment Bill

Introduction

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 42 nationally organised societies, with 33 branches throughout the country to which women from some 150 societies are affiliated. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action. This submission has been prepared from comments submitted by members of the Council's Environment Standing Committee and by the wider membership. NCWNZ thanks the Select Committee for the opportunity to comment on the Bill.

Executive Summary

Members of NCWNZ have been quick to respond to requests for comments on proposed changes in the Resource Management legislation, since the Council first engaged in the development of the original legislation, passed in 1991. It has submitted on the various amendments made since then, demonstrating that its members have a continuing interest in the matter. NCWNZ members believe that the Resource Management legislation is fundamental to the management of New Zealand's natural and built environment, affecting every citizen, and proposals to change it must come under careful scrutiny, in order that the original purpose and principles of the Act remain intact. Respondents make it clear that they strongly support established NCWNZ policy on the importance of protection of the environment.

Preliminary remarks

Dissatisfaction with the Act stems often not so much from the Act itself as from its interpretation. Local bodies vary in their ability to deal with RMA matters because they vary in the expertise available to them at the level of elected councillors and Council officers. Central government guidelines have been needed to help local bodies with the RMA since it was first passed, and consistency across the country in the application of the Act must be the ideal to strive for.

Comments on some of the key measures summarised on Page 2 of the Explanatory Notes to the Bill

Accreditation of members of hearing panels:

NCWNZ members support there being a requirement that the majority membership of hearing panels are accredited for hearing resource consents, private plan changes, designations and heritage orders; some even remark that the ideal would be to have total accreditation, but recognise that it would not be practicable. Wide panel membership should protect against bias, and local membership should be given priority; it would not be acceptable to establish a permanent national panel that moved around the country hearing cases. One branch mentions that accreditation should not mean that people who have gained their expertise through experience rather than examination could be excluded, as common sense and the 'people factor' are important when making decisions that affect local communities.

Appeals in the Environment Court to be focused on testing the merits of the first hearing:
Responses to this proposal varied considerably, from endorsing the appropriateness of the purely legal process of testing the merits of the first decision, to expressing anxiety that new evidence would not be considered in the Environment Court, since in other areas of the work of the courts, it has sometimes happened that new evidence, when allowed, has proved very important. It is suggested that exceptions to the rule be allowed for in the legislation, as strong dissatisfaction from the public could in the future mean that further amendment would have to be made. Alternatively, the Environment Court could be given the power to decide on the merits of new evidence on written submission only, and the power to then decide whether a formal hearing is required.

Providing for notification decisions of consent authorities to be challenged in the Environment Court:
There should always be the possibility of testing the decisions of a local authority, and restrictions should not be placed on this, but it should be kept in mind that the purpose of public notification is to allow the public who may be affected to voice their opinion. It would not be desirable that this measure brought about even fewer requirements to notify than at present. One respondent believes that it could be a step backwards from open government, with communities and individuals being left unaware of decisions about developments to take place in their locality. The present system could be streamlined by Councils improving their own systems, for example by providing a strict time limit for responses to notifications and an efficient mediation process for challenges, quickly followed by a decision by the Hearing Panel. The process could include sending some of the challenges to the Environment Court. It is important that local people continue to feel part of the decision-making process so that they build up trust in the ways of the RMA. If this sort of system were followed, there would be little disadvantage to developers of large-scale projects that had complex environmental effects, if they had done all the necessary research in the first place. Consent hearings and the notification process should then proceed smoothly and produce an outcome acceptable to the community and within the principles of the RMA.

Clarifying that it is the role of regional councils to allocate natural resources:
NCWNZ agrees to this measure, but two respondents caution that there should be a role for public participation in the allocation of natural resources, because of a perception that regional councils may be swayed to believe that if it means economic benefit, it must be good.

Regional Policy Statements will be given greater strategic importance:
NCWNZ members support this measure. National Policy Statements can be used more readily to express matters of national importance and interest. It is desirable that the differences between the purpose and standing of local and national resource policy statements be clarified and strengthened, so that there is no possibility of confusing and thus misusing the one or the other. NCWNZ supports the greater use of National Policy Statements in the interests of national benefit.

General Comment on any changes to the Environment Court:
Most respondents favoured making no changes to the Environment Court, as they believe that already the impartiality of the Environment Court ensures all appellants get a fair hearing. If, however, costs are reduced by some streamlining changes, that would not be a bad thing, but it must not be at the expense of reducing the possibility of any individual or group being treated justly.

One branch believes that the current costs are not so excessively high as to preclude appeals by people who have a serious reason for doing so. Efficiency and lower costs should have a lower priority than justice being seen to be done, and attention could be given to present Court processes to see if, without making many changes, they can be made more cost effective without reducing opportunities to be heard.

Specific comments
Part 1
Amendments to Resource Management Act 1991
Subpart 1 - Amendments to the principal Act

Clause 5 Interpretation
"The national interest" is frequently referred to in the Bill, but the term is not precisely defined. NCWNZ suggests that a definition be included in this clause.

Members of NCWNZ were asked what they thought might come into the definition, and most responses referred to such things as the provision of basic infrastructures such as roading and other transport systems, communications systems and energy; heritage orders; conservation of natural and historic features which have some intrinsic value; preservation of a healthy environment to promote the health and wellbeing of all New Zealanders; restrictions on using natural resources to the point of unsustainability; and environments or sites which provide resources important to New Zealand's economic development or which may provide a base for future economic developments which are deemed to be in the national interest rather than of local interest only, for example the foreshore and seabed. .

One branch's respondent said that her group did not like the term "national interest," as it suggests a loop-hole for all sorts of environmental vandalism to be committed, which is contradictory to the principle of sustainability upon which the Act is based. What may seem to be very much in the national interest now, may in the future prove to have been a poor choice; the group recommends that decisions on projects in the "national interest" should be made with a fifty-year time-frame in mind.

Clear guidelines need to be drawn up about making "national interest" decisions to reduce opportunities for purely political decisions. National interest should be consistent with the original intent of the RMA and with other policies and legislation designed to protect the environment such as sustainable development policy and control of overseas investment.

Clause 6 New Sections 24A (Power of Minister for the Environment to require information from local authority) and 24B (Power of Minister for the Environment to direct action by local authority) inserted and **Clause 7 New section 25A (Minister may direct preparation or change of plan) inserted:**
These clauses provide the Minister for the Environment with new powers to direct local authorities to take certain actions relating to preparing or changing regional or district plans. NCWNZ members are generally in favour of these new sections being inserted, but there is no consensus of opinion, some members and groups being in favour of the Minister having these new powers, usually with qualifications, but others, especially those living in regions where previous ministers have called in projects "in the national interest" being strongly opposed. A median view is that as it takes a long time to prepare regional and district plans, after much consultation including with the Minister if the Minister wishes to contribute, the Minister should not require changes to the plans later unless a glaring lack of environmental protection emerges.

Some respondents have little faith in the decisions of local bodies, and see the proposed new powers of the Minister as desirable, just so long as ministerial intervention is directed toward preservation and protection. Local authorities do not always inform the citizens of developments that affect them, and ministerial intervention may oblige them to do so.

Giving the Minister such new powers follows on from the proposed national policy statements, and the Minister must have the power to action the statements, so it is reasonable to give the Minister

such powers. It is possible that a local body may become too narrow in its planning and not be able to see the bigger picture, and in this case the new ministerial powers could be used to alleviate the difficulty.

Furthermore, giving the Minister such new powers assumes that there will be sufficient funding to implement and police local body plans. As New Zealand is a small country with closely adjacent district and regional boundaries, it makes sense to have some central power of regulation to avoid having widely differing policies and regulations amongst all the local bodies, but there must be central funding.

Overall, NCWNZ supports the inclusion of these new sections, subject to the provisos mentioned.

Clause 10 Consideration of alternatives, benefits and costs
Sub-clause (4) (c) requires that a local authority wishing to set a more stringent standard than that in a national environmental standard, must consider the necessity for the more stringent standard, which appears to mean that local authorities may be required to lower the standard they set. NCWNZ is pleased to see that on page 3 of the Explanatory Notes there is a provision for a National Environmental Standard to specifically allow a district or region to set a more stringent standard. Comments from members indicate that they would prefer to see local authorities allowed to set higher standards than the national standard. In Hawkes Bay the water is naturally of an excellent quality, above the national standard, and the local authorities could not be expected to set a lower standard.

One respondent qualifies her support with the remark that cost effectiveness must be taken into account if a local authority is to set a higher standard, as is set out in Section 32 of the Act. Duties to consider alternatives, assess benefits, costs etc, because other priorities which require resourcing should not be at risk in the interest of achieving high standards for water or air quality. Another respondent remarks that a local authority would need to justify setting a higher standard to the Minister, who could consider whether the national standard was adequate. However, if the national standard is high initially, then there should not be many cases when any local authority would need to differ.

Need for review
One group noted that there does not appear to be any clause specifying the need for review of any changes made as a result of enacting the Bill. NCWNZ recommends that at the end of a specified period, there be a review.

Conclusion
Although opinions differ on some of the matters addressed in the Bill, NCWNZ members remain supportive of the original intention of the Resource Management Act, to promote the sustainable management of natural and physical resources, enabling people and communities to provide for their total wellbeing now and in the future. NCWNZ would regret seeing any changes that diluted this intention.

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National President

Elizabeth Lee
Convener, Environment Standing Committee