

# **Resource Management (Simplifying and Streamlining) Amendment Bill 2009**

## **Presentation to the Local Government and Environment Select Committee by Te Ohu Kaimoana, 23 April 2009**

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### **Who we are**

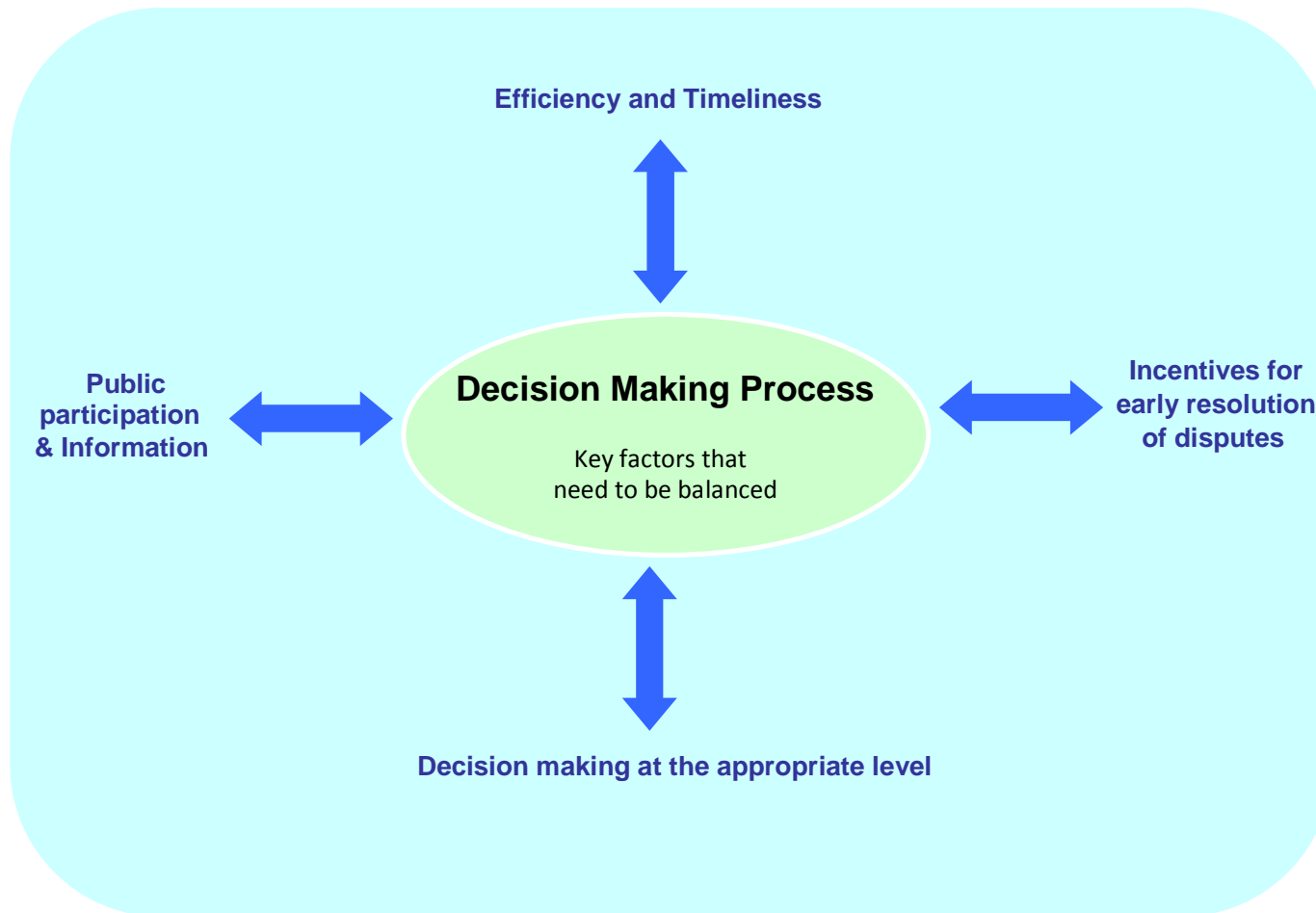
- This submission is made by Te Ohu Kaimoana Trustee Ltd (“Te Ohu”).
- Te Ohu was created as part of the Fisheries Settlement between the Crown and Maori. Our purpose is to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing and fisheries-related activities.
- Te Ohu is now the trustee for two settlements, the Fisheries Settlement, entered into in 1992, and the Aquaculture Settlement, enacted in January 2005.

### **Our interest in the RMA**

- The primary organisations we work with are Mandated Iwi Organisations, who also come within the definition of an Iwi Authority under the Resource Management Act (RMA). These organisations have been mandated by their members for the purpose of fisheries and aquaculture. However most work on behalf of their members on a far greater breadth of issues relating to natural resources, as well as social, economic, political and other cultural matters.
- Iwi/hapu have a diverse range of interests in the environment, from the protection of important wahi tapu, conservation of important mahinga kai (including fisheries) as well as resource development. In some situations they may be applicants (for example in the case of aquaculture) or submitters (where a proposal may adversely affect a wahi tapu or water quality).
- It is in the interests of iwi – given their diverse interests and potential roles in the RMA process – that the decision-making process works in a balanced way. In general, Te Ohu believes that the RMA is basically sound as far as these matters are concerned. Effective implementation is as much about good practice by decision-makers and participants as it is about the specifics of the law, and we think that many problems could be dealt with through improved practice and guidance.

### **Key aspects of the RMA decision-making process**

- There are four key aspects of the process relevant to this amendment, and that need to be in balance:
  - efficiency and timeliness
  - public participation and the need for good information
  - effective management of conflict, including provision of good incentives for parties to resolve disagreements as early as possible
  - decision-making at the most appropriate level (national, regional or local).



- Some of the amendments we support help keep these matters in balance, or at least do not upset it. These include:
  - Provision for councils to summarise submissions
  - Removal of the mandatory ten year review (subject to monitoring and direction from central government if necessary)
  - Provision for an EPA (noting much further work is required in phase 2).

However we believe other amendments will have the effect of putting the key elements of the process out of balance, and either need to be set aside, or amended.

### **Improving efficiency and timeliness at the expense of public participation and information**

- Some of the amendments in the Bill endeavour to improve efficiency and timeliness. However this is mostly at the expense of public participation – and ultimately – the information that is needed to make good decisions. These include:
  - Modifying the requirement for notification of consent applications. We are not convinced that a change is needed to these provisions, but have made some suggestions as to how the Bill might be amended to ensure decision-makers are able to obtain the information they need.
  - Removing the requirement for councils to call for further submissions. Without a further submission process, there is a danger that parties affected by a decision a council could make in response to a submission will not be identified and important information will be lost in the process.
  - Limiting appeals on policy statements and plans to questions of law only. This relies on councils making the right decision, and removing the role the Environment Court has played in helping mediate disputes before matters reach a hearing. In addition, the power for the Court to grant leave for parties to take a merit-based appeal is necessary to return to some form of balance – however we believe this provision will encourage parties to do just that, and enter the judicial process through a different route.

### **Apparent simplification – with potential to lead to greater complexity**

- Some of the measures that are also intended to simplify processes will increase complexity and uncertainty in the long run. These include:
  - Clarifying when proposed plan provisions will have legal effect – the provisions as drafted are unclear. In addition, they will make it harder for members of the public to understand the status of rules.
  - Removing the non-complying category. This category gives councils a certain amount of flexibility in dealing with applications for activities that don't quite fit the plan but whose effects, if managed in the right

way, could be minor – reducing the freedom to innovate. One of the effects of taking non-complying activities out of the plan would be wider use of prohibited activity status, and as a consequence, an increase in applications for private plan changes.

- Reducing delays for unnecessary council requests for information. We have supported this provision on the basis that it should act as incentive for applicants to clarify and gather the information they need before entering into the formal application process. However we note that some councils have submitted that they would prefer to retain the current provisions on the basis that it gives them the ability to work with applicants as they process applications, rather than decline them on the basis of insufficient information. The committee may wish to consider how far council staff should be able to work with applicants to clarify necessary information before the formal process commences.
- Direct referral to the Environment Court. While there is some merit in this proposal, the process will need to be managed carefully to avoid abuse by applicants to restrict public participation. This, in combination with higher fees for lodging appeals, could act as a real barrier to participation by parties with limited resources but genuine concerns. More guidance could be provided on the appropriate circumstances for referral, and a power given to the Court to refer the matter back where it considers the request is inconsistent with the purpose and principles of the Act.

### **Managing conflict and resolving disputes at the expense of public participation and information**

- Security for costs. We believe the provision for security for costs – as they stand - will go a little too far in discouraging genuine parties from participating in appeals. However we agree that there is a need to provide incentives for parties to participate in decision-making processes in good faith – no matter what resources are available to them. We have made some suggestions on alternative approaches in our submission.
- Provisions relating to trade competition. We are concerned that these provisions are going to have far reaching and unintended consequences for iwi – particularly given their multiple interests in the environment, in fisheries and in the seafood industry. The provisions act to link different parties in a manner that assumes they are all acting together to prevent trade competition whereas in most cases they won't be. It also reduces the ability for a party who may be defined as a trade competitor from participating in the process on genuine grounds – the exception being circumstances in which there is a direct affect on that party.
- We have provided an example in our submission that demonstrates the potentially far reaching effect of the provisions relating to trade competitors. These will have the effect of preventing or discouraging iwi, and the companies in which they have interests through the Fisheries Settlement, from participating in objections and appeals for genuine reasons.
- We are not convinced that the scale of the problem regarding trade competition is so great as to warrant this approach, which will have the effect of reducing

participation as well as genuine information about the potential effects of an activity on the environment, as well as the value of assets allocated to Maori under the Fisheries and Aquaculture Settlements.

- The potential effect of activities on settlement assets has been a matter of ongoing concern to us. In previous submissions on the RMA, we have highlighted that the RMA does not explicitly recognise rights granted under other legislation, such as rights that take the form of Individual Transferrable Quota (ITQ) under the Quota Management System (QMS) as it is argued their spatial extent is unclear. While there is a process under the Fisheries Act for assessing the effects of aquaculture proposals on fishing, there is no similar process to assess other allocation decisions made under the RMA that could have an adverse effect on fishing rights (e.g. cable protection zones or marinas). Ultimately, the RMA can allow a significant erosion of the Fisheries Settlement as it creates no clear responsibility for decision-makers to consider the effects of their decisions on the Fisheries Settlement. We recommend this matter be considered - perhaps as part of phase 2 of the reforms if you consider this matter out of scope for this Bill.

### **Making decisions at the appropriate level**

- National Policy Statement – policies and objectives. Provisions in the Bill require councils to insert policies and objectives contained in National Policy Statements into plans without formality. While central government direction on these matters may well be appropriate, the process of developing the objectives and policies needs to ensure that there is good provision for regional and local participation – in light of the potential effect on the environment and people’s property rights. We assume that the development of methods and rules to implement objectives and policies will be subject to the normal Schedule 1 process.
- Involvement of the Minister of Conservation in decisions on restricted coastal activities. We have supported the removal of the Minister of Conservation from decisions on restricted coastal activities on the basis of the Minister’s multiple and conflicting roles as “owner”, regulator and advocate for conservation. We note that the Minister still retains their role as decision-maker for National Coastal Policy Statements and Regional Coastal Plans (which provide the framework for consideration of consent applications) and will have other opportunities to participate in the consent process through submissions.
- We understand some concerns have been expressed about the removal of this provision – that it undermines the relationship between iwi and the Crown as Treaty partners. We believe there are wider questions to be addressed as far as the role of Ministers in the allocation of use rights to, and regulation of the coastal marine area. These include whether the Minister of Conservation is the appropriate Minister, whether decisions on allocation (normally guided by the “owner”) and environmental effects should be made by the same decision-maker, whether that be at a Ministerial level or otherwise.
- Many of these matters are being reviewed to a certain degree in the review of the Foreshore and Seabed Act (in which questions of “ownership” – amongst other things - are being reviewed) and in the review of the regime for managing aquaculture. We recommend these matters be considered alongside further work on Phase 2 of the reforms.