

# TE OHU KAIMOANA



**Submission to the *Local Government and Environment Committee* on the  
*Resource Management (Simplifying and Streamlining)*  
*Amendment Bill***

Te Ohu Kaimoana Trustee Ltd

3<sup>rd</sup> April 2009

## Introduction

1. This submission is made by Te Ohu Kaimoana Trustee Ltd (“Te Ohu”) on behalf of Te Ohu Kaimoana Trust and the Takutai Trust. Te Ohu welcomes the opportunity to comment on this Bill. We wish to be heard in support of this submission. Contact details are provided below.

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## Te Ohu’s interest in the Bill

2. Te Ohu is a statutory body established under section 31 of the Maori Fisheries Act 2004 (MFA).
3. The purpose of Te Ohu under section 32 of the MFA is to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing and fisheries-related activities, in order to:
  - (a) ultimately benefit the members of iwi and Maori generally
  - (b) further the agreements made in the Deed of Settlement
  - (c) assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and
  - (d) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.
4. The fisheries Deed of Settlement and the Treaty of Waitangi Fisheries Claims Settlement Act 1992 settled claims to customary fishing rights that were protected by Article II of the Treaty of Waitangi. The nature of these rights was such that they contained a commercial and non-commercial component. These rights were exercised within an integrated management regime based amongst other things on the practice of kaitiakitanga. However the settlement separated these rights into two different regulatory regimes:
  - a. commercial rights in the form of individual transferrable quota (ITQ) – allocated to Te Ohu Kaimoana Trust for allocation to iwi
  - b. non-commercial rights, which would be given recognition through the making of regulations to recognise and provide for input and participation by Maori in the management and conservation of New Zealand’s fisheries.
5. Te Ohu is the trustee for commercial assets held by Te Ohu Kaimoana Trust and allocated to iwi under the fisheries settlement. It is also the trustee for

aquaculture assets held by the Takutai Trust under the aquaculture settlement. Fisheries assets include quota and shares in fishing companies. Aquaculture assets include authorisations to apply for consent within Aquaculture Management Areas (AMAs) and coastal permits (in some cases for marine farms that are going concerns).

6. As a result of the fisheries and aquaculture settlements, Maori hold rights to natural resources in the coastal marine area that are affected by decisions made under the Resource Management Act (RMA). This means that Maori, for example, through Mandated Iwi Organisations (MIOs), Te Ohu or Maori Fishing Companies could participate in the RMA as applicants (for example for AMAs or consents to establish processing facilities) or as submitters and/or objectors (for example where their interests in particular fisheries might be adversely affected by land use or discharges).

### **General Comments**

7. The commentary provided in the RMA (Simplifying and Streamlining) Bill states that its overall policy objective is:

to reduce delays, costs and uncertainty associated with Resource Management Act processes, and thereby help improve environmental, social and economic outcomes.
8. Te Ohu believes that the RMA is basically sound but effective implementation depends very much on good practice by those responsible for its administration. While it is a worthy objective to reduce delays, increase certainty and so on, the right balance must be struck between efficiency, public participation and the need for information. Some of the measures in the Bill will go some way towards improving efficiency, however in some cases we are concerned that the new measures place these matters out of balance, with potentially adverse consequences for the interests of Maori in fisheries.

### **Comments on measures contained in the Bill**

#### *Removing frivolous, vexatious and anti-competitive objections*

##### Security for costs

9. Clause 134 of the Bill reinstates the power of the Environment Court to award costs by ordering “any party to proceedings before it to pay to any other party the costs and expenses (including witness expenses) incurred by the other party that the court considers reasonable.” This is intended to provide a disincentive against frivolous appeals and allows affected parties to recover their costs.
10. There is much that RMA decision-makers can do to ensure that before they make decisions, every effort has been made to inform affected parties and facilitate the resolution of disputes early in the process. Ideally, by the time an application reaches the Environment Court, the issues that are in contention should be well specified and narrowed down as much as possible.

11. We agree that it is important to provide incentives for parties involved in RMA processes to participate in good faith – and not waste the time and resources of local authorities, applicants or other interested parties by trying to delay the process in a vexatious manner. This type of approach is likely in the process of planning for AMAs – where people do not want aquaculture “in their backyard”.
12. It stands to reason that anyone taking a case to the Environment Court should ensure that they have a sound and genuine case – whether or not they have ready access to resources. For those with limited resources, we understand that legal aid is available to cover parties’ own costs of participating in appeals for genuine environmental or community causes.
13. Cabinet papers indicate that the Ministry of Justice has concerns that the risk associated with security of costs can act as a barrier to those with legitimate cases but little money<sup>1</sup>. The mere fact that an order for security for costs could be made could act as a disincentive to taking a genuine case. Given that the purpose of the provision for security of costs is to prevent frivolous and vexatious appeals, we believe the more effective way of dealing with the matter is to strengthen the current s279 (4) of the RMA, which enables the court to strike out cases that are frivolous or vexatious, or that disclose no reasonable or relevant case in respect of the proceedings.

**Recommendations:**

- **Delete clause 133 and 134.**
  - **Consider amending the RMA to strengthen the provisions of s 279 (4).**
14. If our preferred option is not accepted, another approach would be to include a set of guiding principles in the Bill to guide the Court in its decision, and to provide the right signals to parties considering taking an appeal. We understand that case law on security for costs suggests that the Courts, in exercising their discretion, would take into account a number of matters including:
    - the interests of both the plaintiff and the defendant
    - the merits and bonafides of the plaintiff’s case
    - whether the making of an order for security might prevent the plaintiff proceeding with a bona fide claim
    - whether there are grounds for thinking that the defendants are using the application oppressively to prevent the plaintiff’s case coming before the Court<sup>2</sup>.

**Secondary recommendation: Consider including guiding principles for the Courts to consider in clause 134.**

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<sup>1</sup>Reform of the Resource Management Act 1991: Phase One Proposals, paragraph 49, <http://www.mfe.govt.nz/rma/central/amendments/resource-management-simplify-and-streamline-amendment-bill-2009>

<sup>2</sup> Wakatipu Environmental Society v Queenstown Lakes District Council (C001/97)

### Trade competition: trade competitors and surrogates

15. Clause 139 of the Bill provides for a new Part 11A: “Act not to be used to oppose trade competitors”. Te Ohu is not convinced that these provisions are necessary. Cabinet papers state that the “open standing provisions of the RMA are being exploited by trade competitors with the effect that the economy is less efficient and productive and with few benefits, if any, to the environment or society”<sup>3</sup>. The evidence to support the extent of this claim is not apparent.
16. The changes provided by clause 139 mean that submissions by trade competitors of an applicant can only be made by those directly affected by an adverse effect and the effect does not relate to trade competition. They also mean that a trade competitor cannot use a third party to bring an appeal against another trade competitor for a number of purposes, including 308D (b) preventing them from engaging in competitive conduct in the same market”. The consequences of contravening these provisions are serious. The Environment Court can make a declaration against a party who has contravened these provisions, and can award costs against them. In addition, a person who succeeds in obtaining such a declaration in the Environment Court can also seek damages against the relevant party in the High Court.
17. While the benefit of this provision is intended to be a reduction in the potential for delays and costs associated with inappropriate appeals, we are concerned that its implications have not been fully worked through.
18. A company who has legitimate concerns about the indirect effects of an application by another company competing in the same market cannot submit on the application. The definition of who is, in reality, a trade competitor in this context is vexed. The concept of “trade competition” is not defined in the RMA and consequently, identifying who is a trade competitor is not straight forward. We believe this situation raises serious concerns for the seafood industry, including MIOs and their Asset Holding Companies (AHCs) and Maori fishing companies.
19. While there is a regime under the Fisheries Act for dealing with the effects of new aquaculture activities on fishing (where parties could be judged to be trade competitors) – there is no such regime for dealing with the effects of other activities – such as marinas, establishment of wharves, cables etc on fishing. It could be argued that the effects of allocating coastal space for these activities is not “direct”, however over time there is a cumulative effect on the ability of fishers to access relevant Quota Management Areas with a flow on effect on sustainability.
20. To take an example, where any such activities were to be promulgated by seafood company A, any other seafood company that had concerns about the longer term cumulative effects (seafood company B), could be prevented from submitting or appealing on the grounds that they are a trade competitor as they can be seen to be operating in the same market (even though their business may consist of different fisheries).

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<sup>3</sup> Reform of the Resource Management Act 1991: Phase One Proposals, paragraph 53, <http://www.mfe.govt.nz/rma/central/amendments/resource-management-simplify-and-streamline-amendment-bill-2009>

21. Under the Maori Fisheries Act, MIOs own income shares in the fishing company Aotearoa Fisheries Ltd (AFL), which includes a number of subsidiary companies. If company B were one of the AFL subsidiaries, and a MIO wished to appeal, it would be required under s308F to declare its status as “receiving...direct or indirect help” from a trade competitor (through the income it receives via the operations of the company) and risk being declared under s308G to have contravened the provisions of Part 11A. Because of this risk, the MIO could well decide that it cannot afford to appeal even though it has a genuine case.
22. We envisage the same kind of situation could face Te Ohu (who owns income shares in the same companies) if we wished to take an appeal on the basis of the wider precedent effects facing the companies and MIOs. Given our role under the Maori Fisheries Act to advance the interests of iwi the development of fisheries, fishing and fisheries-related activities, we believe this situation would also have serious implications for the value of the fisheries settlement.
23. We note the comments made in the Regulatory Impact Statement (RIS) that “proposals to address anti-competitive use of RMA provisions...are “inadequate as they were developed extremely late in the process and were not able to be subject to appropriate analysis and consultation”.<sup>4</sup> Clearly greater thought needs to be given for the need and scope of these provisions which, as they are presently drafted, could have far reaching and unintended consequences.
24. We believe it is desirable for further analysis to be carried out with the aim of working towards an amendment (if appropriate) in Phase 2.

***Recommendations:***

- ***Delete clause 139.***
- ***Defer further consideration of trade competition until Phase 2.***

*Streamlining processes for projects of national significance*

Call-in provisions and limitation of appeal rights

25. The aim of these provisions is to improve efficiency and reduce the time for decisions on proposals of national significance (e.g. roads, electricity, large scale infrastructure etc).
26. Under the RMA, the Minister for the Environment or Conservation can presently “call-in” applications that are considered to be of national significance. This power can be used as an alternative to having local authorities make decisions. Under the “call-in” process, the Minister refers the matter to a Board of Inquiry or the Environment Court to consider. Types of proposals include those that arouse widespread public concern and involve significant use of natural and physical resources, amongst other things. Advice to government suggests that the Ministers’ powers are not utilised enough because of inadequacies with the current provisions.

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<sup>4</sup> p.19

27. Clauses 90 to 106 amend the current provisions (set out in sections 140 – 150 of the RMA) to cover a number of matters including the scope of matters that can be defined as nationally significant, the timeframe for processing an application (90 days from the date of notification – with provision for the Minister to extend on the recommendation of the Board of Inquiry), provision for the Board to request further information, provision for an applicant to request referral of an application to a Board of Inquiry and a number of other more administrative matters.

#### Matter of national significance can be lodged with the EPA

28. Clause 35 establishes the Environmental Protection Authority. Its functions include receiving applications for consents or plan changes considered by an applicant to be of national significance, applications for notices of requirement, making recommendations to the Minister on how applications should be processed (for example whether they should be referred back to the relevant local authority or heard by a Board of Inquiry).
29. While the Bill provides for the Secretary for the Environment to exercise the functions of the EPA as an interim measure, we note that the longer term roles, functions, governance structure and legislative provisions of the EPA will be considered in more detail in Phase 2 of the Resource Management review.
30. Te Ohu supports establishment of the EPA and looks forward to commenting on its longer term functions in Phase 2.

#### **Recommendation:**

- **Support the establishment of the EPA.**

#### *Improving plan development and plan change processes*

31. We agree that currently there is a large administrative burden associated with plan change processes and there is a need to speed up and reduce planning costs. In some cases, the success of the changes will depend very much on good practice by Councils. Nevertheless we are concerned that the implications of some of the measures contained in the Bill have not been thoroughly analysed to identify their wider implications.

#### Removing Council requirement to call for further submissions

32. The removal of the requirement on local authorities to call for further submissions is designed to streamline the planning process. We note that the purpose of a local authority calling for further submissions is to ensure that those who could potentially be affected by matters raised in the first round of submissions should have the opportunity to identify that fact. This is meant to ensure that the local authority does not unwittingly make a decision – based on a submission – that affects another party or parties. The alternative to calling for further submissions – as provided for in the Bill - means that the Council “may seek the views of any person that it considers may be adversely affected by a matter raised in a submission” (clause 148 – 8(1)). The advantage of further public submissions is that affected parties can identify themselves.

Thus the new discretionary provision will require local authorities to develop sound criteria for understanding who might be affected by matters raised in submissions. We believe this approach has some risks and we would not like to see a situation in which a Council did not identify the adverse effects on a MIO of a submission.

33. We suggest that to achieve the purpose of the amendment, the call for further submissions could be retained but modified in order to give Councils the ability to more tightly manage the process. This could be achieved by requiring a Council to call for further submissions only on submissions that request changes to a policy statement or plan that had not been envisaged or proposed in the notified policy statement or plan.

***Recommendation:***

- ***Amend clause 8 of the existing Schedule 1 to require Councils to call for further submissions on submissions that request changes to a policy statement or plan.***

Remove requirement to summarise submissions

34. We agree that a consent authority should be able to make decisions based on a summary of issues raised in submissions, rather than on each individual submission. This will decrease the administrative burden and save time and money (clause 148 (10) (3)).

Clarifying when proposed plan provisions have legal effect

35. We note from Cabinet papers that officials have expressed concerns about the need for further analysis of the implications of these provisions, set out in clause 59. Their main reason is that “this change increases the lead-in before rules have legal effect, and may give opportunities to unscrupulous parties to rush in multiple consents applications aimed at beating the rule coming into effect, thereby undermining what the plan may have been seeking to achieve”<sup>5</sup>.
36. The provisions endeavour to address these problems in specific cases (for example in relation to plans seeking to protect water and other natural resources). In addition a “rule” that “provides for an aquaculture management area” also has legal effect on the notification of the proposed plan. We agree that if the intended provisions were to proceed, such exceptions will be appropriate. For example, proposed AMAs should be treated as being in the relevant space as soon as the proposed plan is notified. It is important to ensure that the use of the space is not trumped before the proposed AMA can be finalised. In addition, we also agree that for certain resources such as water, proposed rules should apply so as to prevent people from rushing – in anticipation - to undertake activities that might have an adverse effect on those resources before the plan is finalised.
37. However there are clearly some problems with these provisions. We agree with the comments made by SeaFIC in their detailed submission that the

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<sup>5</sup> Reform of the Resource Management Act 1991: Phase One Proposals, paragraph 126, <http://www.mfe.govt.nz/rma/central/amendments/resource-management-simplify-and-streamline-amendment-bill-2009>

drafting of the provisions is unclear. For instance it will be difficult for people to identify rules that apply in plans and proposed plans vs those that do not. In addition the wording of clause 59 (“86A (2) (a) (ii)”) suggests that a rule in a proposed plan will provide for an AMA – whereas it is the proposed plan itself that is intended to create the AMA.

***Recommendation:***

- ***We recommend clause 59 and related clauses be redrafted for greater clarity.***

**Removing the non-complying category**

38. Clauses 147 and 152 remove the non-complying activities category from the RMA.
39. As we understand it, the non-complying activity class enables activities that are potentially inappropriate in specified circumstances to be considered and granted where the consent authority is satisfied that the effects are minor or where the effects of the activity will not be contrary to the relevant plan. It provides for activities to be considered where their specific effects may not have been able to be identified in developing the relevant plan. While the aim of this amendment is to simplify plans, we are not confident that the broader purpose of simplifying and streamlining the planning process will be achieved. Instead the effect could be to increase the number of private plan changes so as to enable an activity to be considered – increasing the time and cost of decision-making.
40. We note that some officials have concerns that the impacts of this change need further study as part of Phase 2 of the reforms. We agree with these concerns.

***Recommendation:***

- ***Defer clauses 147 and 152 for further analysis of the problem and potential solutions in Phase 2.***

**Limiting appeals on policy statements and plans to questions of law only**

41. Te Ohu opposes clause 148 (17) (2A) of the Bill which removes merit-based appeals.
42. We agree that unnecessary appeals should not delay plan changes. This is an important issue for Te Ohu and iwi in the light of the Aquaculture Settlement, the AMA plan change process and aquaculture development. Appeals on plans should be relevant and address clearly identified concerns. As noted earlier, good management of the process by Councils can help in this regard, for example by encouraging and supporting early discussion and agreement amongst affected parties to resolve difficult issues. Strengthening the strike out provisions of the RMA, as recommended earlier, should also assist.
43. The provisions of clause 148 (17) (2A) will create greater problems. These include:

- reliance on Councils to make the right decisions – we are not confident that Council decision-making will be enhanced by these provisions
  - removal of the incentive for parties to reach mediated solutions prior to Court hearings.
44. The Bill’s inclusion of a power for the Court to grant leave for parties to take merit-based appeals is necessary if “as of right” merit based appeals are removed, however the provision will encourage parties to do just that, and defeat the whole purpose of the amendment.

***Recommendation:***

- ***Remove clause 148 (17) from the Bill.***

Preventing appeals challenging a whole plan

45. Te Ohu agrees that submissions and appeals on plans should be focused on the particular issues of concern, rather than simply place objections in a “catch-all” manner. Thus we agree that in principle, appeals should not seek the withdrawal of whole policy statements and plans – as provided for under clause 148 (17) (2) (b) of the Bill. Certainly as far as Council initiated policy statements and plans are concerned, their provisions cover a wide range of issues with objectives policies, methods and rules – each with potentially diverse implications. However private plan changes can be a different matter as in many cases, they are similar to consent applications. That is they are generally focused on one activity in one location, and are designed to enable the applicant to change the rules a plan in a way that enables them to apply for a consent in the location concerned. In some cases, the nature of the plan change will be such that it would be difficult for an objector/appellant not to seek the withdrawal of the proposed plan change in its entirety – for example a plan change that seeks to change the zoning for one property.
46. In addition, private plan changes may not have been subject to the same level of pre-notification consultation, scrutiny and analysis as a council initiated plan change or policy statement, so that their provisions may not be as well thought through.
47. We suggest that there may well be cases where private plan changes as described above could be exempt from clause 148 (17) (2) (b) of the Bill. However in other cases, such as invited private plan changes, such an exemption may not be appropriate – particularly where a local authority has already prepared a planning framework for the invitation process (such as Northland Regional Council) and spent considerable resources consulting the community about the most appropriate locations to enable plan changes for aquaculture to be invited. While we agree in some cases exceptions are warranted, careful thought needs to be given to the scope of any exceptions.

***Recommendation:***

- ***Consider the scope of any appropriate exceptions that should be made to clause 148 (17) (2) (b).***

Combining plans

48. Clause 57 repeals section 80 of the RMA (“Local authorities may combine to prepare etc. plans”) and inserts a new section 80 that provides a more flexible way or combining plans that includes policy statements. We believe this amendment is sensible.

***Recommendation:***

- ***Support clause 57.***

Changing 10 year review of plans

49. Clause 56 repeals section 79 (2) to change the 10 year review requirement of plans. It is important that plans continue to be relevant and up to date to accommodate aquaculture development and changes in species and technology. With this amendment, incentives will be required for Councils to amend their plans as required. Given the power of the Minister for the Environment to direct that a Council amend its plan – we believe ongoing monitoring by the Ministry for the Environment (and perhaps the EPA in future) will be essential.

***Recommendation:***

- ***Support clause 56.***

*Improving resource consent processes*

Modifying the notification requirements for consent applications

50. Announcements by the Minister for the Environment in February stated that this package of reforms would “remove the current presumption in favour of notification of resource consent applications and amending the criteria for when public notification is required on projects with more than minor effects on the wider environment”.<sup>6</sup> We believe the changes in the Bill are more far reaching than this.
51. Clause 68 repeals sections 93 and 94 and substitutes new sections 93 to 94AAE. These sections reverse the presumption that a consent must be

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<sup>6</sup> National-led Government Reform of the Resource Management Act – Overview of Phase One Hon Dr Nick Smith (Feb 2009).

notified unless the consent authority is satisfied that the adverse effects on the environment will be minor.

52. In so saying, the new provisions are more complex than those they replace. They specify that a consent authority may “in its discretion, decide whether or not to publicly notify an application for a resource consent” (94(1)), subject to a number of other provisions. These include the identification of circumstances in which a consent application is required to be notified (94AA) and those in which a consent application must not be notified (94AAC). It also specifies that a local authority may set out in a plan or proposed plan the types of activities that will be publicly or otherwise notified (94AAD).
53. One of the criteria for public notification is that the Council is satisfied that the adverse effects of the activity “beyond the immediate environment” will be more than minor (94AA (a)). The meaning of “beyond the immediate environment” is not defined and likely to be the subject of litigation.
54. A second related provision for limited notification where an application will not be publicly notified, but the Council is satisfied that “1 or more affected persons have not given written approval to the consent authority for the activity” (94AAB (1) (b)). We assume this provision is envisaged to cover situations where the effects may be more than minor within the immediate environment. Nevertheless, much will depend on the ability of the Council to identify parties who may be affected.
55. A third related provision is the definition of who is adversely affected by an application. 93A (1) (2) (a) specifies that a person must not be treated as being adversely affected unless “the effects of the activity concerned on the person are more than minor”. We note that SeaFIC has raised concerns at the effect this will have on the ability of affected parties to be notified of an application. As the RMA presently stands, the courts have found that minor effects are sufficient to require that a person be notified. This third provision – in particular – makes more sweeping changes to the public participation provisions than intended. We do not believe 93A(2)(a) is necessary given the other two changes discussed earlier.
56. There are a number of ways that our concerns with these changes could be ameliorated, including:

**Recommendation:**

- a. **In 94AA (a) replace “beyond the immediate environment” with “on the environment”, or**
- b. **add an additional subsection (d) to 94AA that requires a consent application to be publicly notified if a council is not satisfied that all parties who may be adversely affected can otherwise be identified**
- c. **delete 93A(2)(a).**

Reducing delays for unnecessary Council requests for further information

57. Clauses 64 to 67 remove the ability of Councils to stop the “consent processing clock” beyond the first request for information, and ultimately require the Council to make a decision even if the applicant refuses to supply further information, or refuses the Council’s request to commission a report on the

information provided. Consent authorities will not be able to use further information to gain extra processing time to meet statutory timeframes. Ultimately if a Council is not satisfied that it has sufficient information, it will have to decline an application. This should provide incentives for applicants to provide the best information possible up-front if they wish to gain approval.

**Recommendation:**

- **Support.**

Direct referral to the Environment Court with agreement of the local authority.

58. Clause 60 of the Bill enables applicants, with the agreement of the Council, to have their application determined by the Environment Court. While direct referral to the Environment Court will be beneficial in cases that are contentious at a local and regional level, this power will need to be exercised carefully to ensure that Councils do not simply refer cases to avoid facing the costs of processing consents themselves, and to ensure that members of the public who may have difficulty appearing in a more formal court environment are not adversely affected by such a referral. We agree with SeaFIC's comment that this could be abused by applicants to restrict public participation in the processing of their application.
59. We agree that more guidance should be provided on the circumstances in which Council can agree to such a request, and that consideration should be given to providing the Environment Court with the ability to refer an application back to the Council where it considers that direct referral may be inconsistent with RMA's principles of devolved decision-making and public participation.

**Recommendation:**

- **Support with some amendment.**

*Streamlining decision making*

Removing the Minister of Conservation's role for restricted coastal activities and matters that are called-in

60. It is proposed to remove the Minister's powers in respect to decision making on restricted coastal activities (s119) and matters that are called-in (excluding regional coastal plans). The Regulatory Impact Statement<sup>7</sup> notes that retaining the decision-making role in relation to regional coastal plans is appropriate to reflect the Crown's interest in the coastal marine area.
61. The multiple powers and responsibilities of the Minister of Conservation are confusing. The proposed change would remove confusion over the scope of the Minister of Conservation's power, avoid a potential source of judicial review and complaints about perceived conflicts of interest, and bring the role more into line with the Minister for the Environment who does not have powers to make final decisions on resource consents and matters that are called-in. The hearing panel's recommendation to the Minister would become the decision. We support this change as a means of resolving the conflicting and multiple

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<sup>7</sup> p36

roles of the Minister. Council planners advise that this change is positive and removes one less hurdle for the AMA plan change process.

**Recommendation:**

- **Support.**

*Improving central government direction*

62. The proposed changes seem reasonable to improve and streamline the development and implementation of national instruments such as national policy statements (e.g. New Zealand Coastal Policy Statement) and national environment standards (e.g. telecommunications facilities and electricity transmission). We note that these instruments are government mandated and have been through a public process.
63. We note the difficulties in drafting and implementing national instruments and it is important that these do not hinder aquaculture development and the Aquaculture Settlement. Pitched at a high-level, these documents should be practical and provide clear guidance for users, especially consenting authorities. We note that the Board of Inquiry report and recommendations on the NZCPS to the Minister of Conservation was due by the end of March. The NZCPS affects the Aquaculture Settlement as it involves resources in the coastal marine area and is affected by decisions made under the RMA. We agree that to improve consistency, definitions in national instruments should be standardised.
64. Clause 48 repeals section 55 (2) and (2A) of the RMA and substitutes new subsections. New subsection 55 (2) requires a local authority to amend a document if a national policy statement directs so, to include specific objectives and policies set out in the statement (2) (a) or so that objectives and policies specified in the document give effect to objectives and policies specified in the statement (2) (b). Local authorities must make these amendments “without further formality” ((2A)).
65. The RMA enables the Minister to choose the standard Board of Inquiry process for preparing a National Policy Statement, or an alternative process that gives the public adequate time to make a submission (section 46A). While the current provisions of the RMA provide that an alternative process cannot be used where a National Policy Statement directs that a specific provision must be included in a plan without notification, the Bill does not appear to make such a distinction. Therefore there is potential for a less robust process to be used to develop policies and objectives that are to be inserted into plans without notification, and that could affect property rights – including Treaty settlement rights in fisheries and aquaculture.
66. We note that all other amendments necessary to give effect to any provision in a national policy statement that affects a Council document must be made using the Schedule 1 process. We assume these matters would include the methods and rules necessary to implement the policies and objectives.

**Recommendation:**

- ***Amend clause 48 to provide that where any National Policy Statement that has a significant impact on private property rights inserts provisions directly into plans without further consultation, the standard Board of Inquiry process should be followed.***

**Closing comments**

67. We note that Phase 2 of the RMA review will consider infrastructure, water, urban design and aquaculture planning and development. As Trustee of the Aquaculture Settlement, we request the Committee to direct officials to actively involve us in the early discussions and drafting of papers on aquaculture of this second phase.