

**BERRY SIMONS / EDS ANALYSIS OF RESOURCE MANAGEMENT  
POTENTIAL AMENDMENTS TO REMOVE OBJECTIONABLE CHANGES  
AND IMPROVE WORKABILITY**



**March 2018**

**Note:** This table is to be read in conjunction with the article titled "Feedback sought on potential short term amendments to the RMA" from Berry Simons' website, dated 7 March 2018.

	<b>Legislative Provision<sup>1</sup></b>	<b>Purpose of proposed amendment</b>	<b>Rationale</b>	<b>Category</b>
<b>Remove Ministerial power to inappropriately influence content of RMA planning instruments and processes</b>				
1.	Repeal section 360D	Remove the Ministerial power to override council functions and plan provisions by regulation.	This amendment: <ul style="list-style-type: none"> <li>• Delivers on Labour's promise to repeal this "draconian" power.</li> <li>• Prevents significant power being aggregated in the Minister for the Environment.</li> </ul>	
2.	Amend sections 58B to 58J and consequential amendments	Rename "national planning standards" as the "national planning template".	This amendment: <ul style="list-style-type: none"> <li>• Delivers on Labour's promise to stop the instrument "extending inappropriately to the content and substantive provisions of plans."</li> <li>• More appropriately reflects what the scope of the instrument should be, i.e. truly a "template" document that provides consistency and clarity both within and between planning documents.</li> <li>• Avoids having "national policy statements" and "national planning standards" within the RMA, both of which would be referred to as "NPS" and would inevitably create confusion.</li> <li>• Is consistent with earlier advice to the Minister from the Land and Water Forum.</li> </ul>	
3.	Repeal sections 58C(2), (3) and (4)	Remove the ability for national planning standards to: <p>(a) Duplicate or stand in the place</p>	These amendments: <ul style="list-style-type: none"> <li>• Deliver on Labour's promise to stop the instrument "extending inappropriately to the content and substantive provisions of</li> </ul>	

<sup>1</sup> Statutory references are to the Resource Management Act 1991, unless otherwise indicated.

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		<p>of National Policy Statements.</p> <p>(b) Specify objectives, policies, methods (including rules) and provisions (other than definitions) to be included in plans.</p> <p>(c) Specify objectives, policies and methods (but not rules) to be included in regional policy statements.</p> <p>(d) Direct local authorities to include specific provisions in their policy statements and plans (other than definitions).</p>	<p>plans.”</p> <ul style="list-style-type: none"> <li>• More appropriately reflect what the scope of the instrument should be, i.e. truly a “template” document that provides consistency and clarity both within and between planning documents.</li> <li>• Appropriately preserve the ability for decision making at a local level, which was one of the cornerstones of the RMA as first enacted.</li> </ul>	
4.	Repeal sections 87AAC(1)(a)(ii) and 360G	Remove the Ministerial power to make regulations identifying activities (in addition to controlled activities) that are to be subject to the fast-track consent process.	<p>This amendment:</p> <ul style="list-style-type: none"> <li>• Prevents significant power being aggregated in the Minister for the Environment.</li> <li>• Avoids the potential for activities to be inappropriately fast-tracked, i.e.; fast decisions at the expense of good decisions.</li> <li>• Avoids the potential for a lower level of information requirements to be prescribed and therefore impact on the quality of decision making.</li> </ul>	
5.	Repeal section 360(da)	Remove the Ministerial power to prescribe the content (including conditions) of water permits and discharge permits.	<p>This amendment:</p> <ul style="list-style-type: none"> <li>• Prevents significant power being aggregated in the Minister for the Environment.</li> <li>• Appropriately preserves the ability for decision making at a local level, which was one of the cornerstones of the RMA as first enacted.</li> </ul>	
<b>Remove objectionable limits to public notification and participation</b>				
6.	Repeal section 41D(1)(d)	Remove the ability for an authority to strike out a submission on the basis that it is supported only by evidence that, though purporting to be	<p>This amendment:</p> <ul style="list-style-type: none"> <li>• Delivers on Labour’s promise to preserve rights of public participation and access to environmental justice, by ensuring that consent authorities consider all evidence before them and apply</li> </ul>	

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		independent expert evidence, has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert evidence on the matter.	<p>appropriate weighting to that evidence, depending upon the particular circumstances.</p> <ul style="list-style-type: none"> <li>• Avoids creating further uncertainty and complexity within the RMA, through the introduction of novel legal concepts that will undoubtedly have to be tested via the Courts.</li> </ul>	
7.	Amend sections 95A to 95E and consequential amendments	Remove the restrictions on notifying applications for Boundary Activities, Residential Activities and Subdivision.	<p>This amendment:</p> <ul style="list-style-type: none"> <li>• Delivers on Labour’s promise to preserve rights of public participation and access to environmental justice, by ensuring resource consent applications can be notified for submission where this is appropriate.</li> </ul>	
8.	Repeal section 360H and consequential amendments	<p>Remove the ability to introduce regulations prescribing:</p> <p>(a) Activities which must be processed without notification; and</p> <p>(b) Who may be considered an “affected party” for the purposes of notification.</p>	<p>This amendment:</p> <ul style="list-style-type: none"> <li>• Delivers on Labour’s promise to preserve rights of public participation and access to environmental justice, by ensuring resource consent applications can be notified for submission where this is appropriate.</li> <li>• Prevents significant power being aggregated in the Minister for the Environment.</li> </ul>	
<b>Ensure RMA practices and procedures are fair and robust, and that they are subject to sufficient safeguards</b>				
9.	Repeal section 80A and Part 4, First Schedule	Remove the Collaborative Planning Process (“CPP”) as an alternative plan making process.	<p>This amendment:</p> <ul style="list-style-type: none"> <li>• Delivers on Labour’s promise to rectify the current lack of safeguards to ensure that single-step processes are fair and robust, when appeal rights are abrogated.</li> <li>• Avoids unnecessary complexity and duplication of processes within the RMA, as the current Schedule 1 process contains sufficient flexibility to follow a similar process to that outlined for the CPP, without that being set out in additional statutory provisions.</li> <li>• Ensures that the plan making process cannot be “captured” by vested interests / “the loudest voices”, as could currently occur under the CPP.</li> </ul>	
10.	Repeal sections 80B and	Remove the Streamlined Planning	This amendment:	

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	80C and Part 5, First Schedule	Process ("SPP") as an alternative plan making process.	<ul style="list-style-type: none"> <li>• Delivers on Labour's promise to rectify the current lack of safeguards to ensure that single-step processes are fair and robust, when appeal rights are abrogated.</li> <li>• Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, which were cornerstones of the RMA as first enacted, by ensuring there is sufficient time for parties to participate and be heard in plan making processes.</li> <li>• Avoids unnecessary complexity and duplication of processes within the RMA, as the current Schedule 1 process contains sufficient flexibility to follow a similar process to that outlined for the SPP, without that being set out in additional statutory provisions.</li> <li>• Prevents significant power being aggregated in the Minister for the Environment, as would currently occur under the SPP.</li> </ul>	
11.	Repeal or amend Part 6AA (Sections 140 to 150AA), in particular sections 149J(3)(b) and 149R(1)	<p>Remove Part 6AA: Proposals of National Significance, or in the alternative and, as a minimum:</p> <p>(a) Require Boards of Inquiry appointed under Part 6AA to be chaired by a current, former or retired Environment Court Judge;</p> <p>(b) Reinstate the requirement for Boards of Inquiry to produce draft reports; and</p> <p>(c) Repeal (or extend) the 9 month time frame that applies to Boards of Inquiry.</p>	<p>This amendment:</p> <ul style="list-style-type: none"> <li>• Delivers on Labour's promise to rectify the current lack of safeguards to ensure that single-step processes are fair and robust, when appeal rights are abrogated.</li> <li>• Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, by ensuring that there is sufficient time for parties to participate and be heard on applications for proposals of national significance (rather than being subject to a nine month time frame).</li> <li>• Avoids unnecessary complexity and duplication of processes within the RMA, as such proposals are more appropriately heard by the Environment Court.</li> <li>• Ensures the RMA decision making processes follow constitutional norms / include standard appeal rights – i.e. a first instance decision followed by the right to a full merits appeal.</li> <li>• Restores the proper role and scope of jurisdiction of the Environment Court, by appropriately recognising its value and institutional knowledge, capabilities and experience as a specialist Court.</li> </ul>	

	<b>Legislative Provision<sup>1</sup></b>	<b>Purpose of proposed amendment</b>	<b>Rationale</b>	<b>Category</b>
			<ul style="list-style-type: none"> <li>Restores the proper role of the Environment Court, by requiring that Boards of Inquiry must be chaired by a current, former or retired Environment Court Judge, if they are maintained (rather than the Minister having the discretion to appoint a High Court Judge as chair, or even a chair who has no legal qualifications at all).</li> </ul>	
<b>Restore the proper role and scope of jurisdiction of the Environment Court</b>				
12.	Amend section 120(1A) and consequential amendments	Remove the restrictions on appealing against decisions regarding Boundary Activities, Residential Activities and Subdivision.	<p>This amendment:</p> <ul style="list-style-type: none"> <li>Delivers on Labour's promise to reverse appeal rights being curtailed to the detriment of adversely affected private parties, councils, communities and the environment.</li> <li>Delivers on Labour's promise to rectify the current lack of safeguards to ensure that single-step processes are fair and robust, when appeal rights are abrogated.</li> <li>Ensures the RMA decision making processes follow constitutional norms / include standard appeal rights – i.e. a first instance decision followed by the right to a full merits appeal.</li> <li>Restores the proper role and scope of jurisdiction of the Environment Court, by appropriately recognising its value and institutional knowledge, capabilities and experience as a specialist Court.</li> <li>Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, by ensuring parties (including applicants) have access to appropriate appeal rights.</li> </ul>	
13.	Repeal section 120(1B)	Repeal the restriction on appealing matters not raised in an original submission.	As for (12) above.	
14.	Amend section 251 and consequential amendments	Rename the "Principal Environment Judge" to "Chief Environment Judge".	<p>This amendment:</p> <ul style="list-style-type: none"> <li>Recognises that the head of the Environment Court performs the same role and should be acknowledged in the same manner as the heads of other Courts (for example, the Chief Employment Court Judge, Chief District Court Judge and Chief High Court Judge).</li> </ul>	

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			<ul style="list-style-type: none"> <li>Restores the proper role of the Environment Court, by appropriately recognising the status and role of its head Judge.</li> </ul>	
15.	Amend sections 120 and / or 310	Provide the Environment Court with jurisdiction to hear challenges to notification decisions by way of a merits appeal.	<p>This amendment:</p> <ul style="list-style-type: none"> <li>Ensures the RMA decision making processes follow constitutional norms / include standard appeal rights – i.e. a first instance decision followed by the right to a full merits appeal.</li> <li>Restores the proper role and scope of jurisdiction of the Environment Court, by recognising that it is the most appropriate forum for considering challenges to notification decisions.</li> <li>Delivers on Labour’s promise to preserve rights of public participation and access to environmental justice, by ensuring that there is an accessible and lower-cost avenue for challenging notification decisions.</li> </ul>	
<b>Remove the introduction of novel, uncertain and confusing concepts</b>				
16.	Repeal sections 87AAB, 87BA and 87BB and consequential amendments	<p>Remove:</p> <p>(a) Deemed Permitted Boundary Activities; and</p> <p>(b) Deemed Permitted Marginal or Temporary Activities.</p>	<p>This amendment:</p> <ul style="list-style-type: none"> <li>Avoids creating further uncertainty and complexity within the RMA, through the introduction of novel legal concepts that will undoubtedly have to be tested via the Courts.</li> <li>Delivers on Labour’s promise to preserve rights of public participation and access to environmental justice, by ensuring resource consent applications can be notified for submission where this is appropriate.</li> </ul>	
<b>Protect environmental bottom lines</b>				
17.	Amend section 11	Reinstate the presumption that subdivision can only be undertaken if expressly allowed by rule in a District Plan or a resource consent.	<p>This amendment:</p> <ul style="list-style-type: none"> <li>Ensures that environmental bottom lines or limits can be maintained by appropriately regulating subdivision and development activity.</li> <li>Appropriately restores the presumption that subdivision applications require a resource consent.</li> <li>Ensures that the effects of subdivision are addressed strategically and as an integrated whole, not on a piecemeal basis.</li> </ul>	

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18.	Amend sections 30 and 31 and consequential amendments	Reinstate the previous sections 30(1)(c)(v), 30(1)(d)(v) and 31(1)(b)(ii), which provided for regional council and territorial authority functions relating to the control of hazardous substances.	This amendment: <ul style="list-style-type: none"> <li>Ensures that environmental bottom lines or limits can be maintained by appropriately regulating the storage and use of hazardous substances.</li> <li>Addresses a potentially unintended consequence of the RLAA amendments, which would leave local authorities unable to control any effects arising from the storage and use of hazardous substances.</li> </ul>	
19.	Amend section 44A	Remove the ability for a national environmental standard ("NES") to provide that a plan rule can be more lenient than an NES standard.	This amendment: <ul style="list-style-type: none"> <li>Provides for environmental bottom lines or limits to be set and maintained through NES.</li> <li>Ensures that NES remain effective and cannot be undermined by plan provisions.</li> <li>Ensures plans restrict development to within sustainable limits, consistent with the RMA's sustainable management purpose.</li> </ul>	
20.	Amend section 104	Insert a requirement that in considering a resource consent application, decision-makers must "give effect to" or "implement": <ul style="list-style-type: none"> <li>(a) A national environmental standard;</li> <li>(a) Other regulations;</li> <li>(b) A national policy statement;</li> <li>(c) The New Zealand Coastal Policy Statement;</li> <li>(d) A regional policy statement; and</li> <li>(e) A plan.</li> </ul>	This amendment: <ul style="list-style-type: none"> <li>Addresses the lacuna in the implementation and application of environmental bottom lines in the RMA, whereby resource consents can be granted for activities that will breach environmental bottom lines set through national planning documents. It is especially significant in the context of water consents where at present decision-makers need only "have regard" to the NPS-FWM.</li> </ul>	
<b>Protect Urban Trees</b>				
21.	Amend section 76(4C)	Insert the following into the definition of "group of trees":	This amendment: <ul style="list-style-type: none"> <li>Delivers on Labour's promise to allow Council's on behalf of their</li> </ul>	

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		<p>(f) All trees of an identified indigenous species in a defined area or specific planning zone (for example, all Pohutakawa with the coastal environment line); and</p> <p>(g) All trees in a named ecosystem, habitat or landscape unit, or ecotone (for example, all indigenous trees lining a stream corridor).</p>	<p>communities, to choose how they protect their own significant local trees, especially against development pressures.</p> <ul style="list-style-type: none"> <li>• Delivers on Labour’s promise to ensure that significant urban trees have a proper level of protection.</li> </ul>	
<b>Miscellaneous RMA amendments</b>				
22.	Amend sections 30 and 31 and consequential amendments	<p>Insert the following into sections 30 and 31:</p> <p><i>“(aa) The establishment and review of objectives, policies and rules to achieve the reductions in carbon emissions required to contribute to a target of holding the increase in global average temperature below 2 degrees above pre-industrial levels.”</i></p>	<p>This amendment:</p> <ul style="list-style-type: none"> <li>• Ensures local authorities are able to contribute to the global effort to maintain a safe climate through their planning and decision-making roles.</li> <li>• Allows for the effects of an activity on climate change to be taken into account when considering whether the activity should be authorised under the RMA.</li> </ul>	
23.	Amend section 36	<p>Insert:</p> <p>(a) A power to charge for monitoring permitted activities to any permitted activity; and</p> <p>(b) Criteria for determining when</p>	<p>This amendment:</p> <ul style="list-style-type: none"> <li>• Allows local authorities to ensure that the permitted activity standards set in their plans are being complied with.</li> </ul>	

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		or which persons carrying out permitted activities will be subject to the costs of permitted activity monitoring.		
24.	Amend section 43A	Require that rules and standards in an NES must give effect to any relevant national policy statement.	<p>This amendment:</p> <ul style="list-style-type: none"> <li>Ensures there is consistency between the objectives and policies that are established for nationally significant issues, and the rules that are intended to implement those objectives and policies. This is consistent with the relationship that exists between regional policy statements and regional and district plans at a local government level.</li> </ul>	
25.	Amend sections 104(1)(ab), 168A(3A) and 171(1B)	Define the terms "offset" and "compensate" in (a) a biodiversity context and (b) in other circumstances, as they are used in these provisions. <sup>2</sup>	<p>This amendment:</p> <ul style="list-style-type: none"> <li>Assists to clarify the amendments introduced by the RLAA, which require decision makers under the RMA to consider any measure offered by an applicant to offset or compensate for the environmental effects of a proposal.</li> <li>Ensures that the RLAA amendments are applied in a consistent manner by all local authorities.</li> </ul>	
26.	Repeal sections 360A to 360C	Remove the ability for the Minister to recommend the promulgation of regulations that amend regional plans in relation to aquaculture activities.	<p>This amendment:</p> <ul style="list-style-type: none"> <li>Prevents significant power being aggregated in the Minister for the Environment.</li> <li>Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, which were cornerstones of the RMA as first enacted, by ensuring that parties have an appropriate opportunity to be heard in respect of aquaculture activities.</li> <li>Appropriately preserves the ability for decision making at a local level, which was one of the cornerstones of the RMA as first enacted.</li> <li>Avoids unnecessary complexity and duplication of processes within the RMA, as such proposals should go through the normal</li> </ul>	

<sup>2</sup> For completeness it is noted that the meaning of these terms in the biodiversity context will potentially be addressed in the draft Biodiversity National Policy Statement produced by the current Biodiversity Collaborative Group.

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			resource consent procedures.	
27.	Repeal or amend clause 5A, 6A and amend clause 7, First Schedule	<p>Either:</p> <p>(a) Remove the ability for a proposed change or variation to a policy statement or plan to be limited notified, where all "directly affected" persons can be identified; or</p> <p>(b) Provide appropriate safeguards as to the use of the limited notification procedure, by providing a definition of "directly affected" and setting criteria for local authorities to use in applying that definition.</p>	<p>This amendment:</p> <ul style="list-style-type: none"> <li>Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, which were cornerstones of the RMA as first enacted, by ensuring that parties have an appropriate opportunity to be heard in respect of all plan changes.</li> <li>Assists to clarify the amendments introduced by the RLAA, which provide for a proposed change or variation to a policy statement or plan to be limited notified, where all "directly affected" persons can be identified.</li> <li>Ensures that the RLAA amendments are applied in a consistent manner by all local authorities.</li> </ul>	
<b>Regulations to be introduced under the RMA</b>				
28.	Activate sections 87E(6A) and 360(1)(hm)	Set the threshold investment amount for a proposal, above which the consent authority must grant a request for direct referral.	<p>This amendment:</p> <ul style="list-style-type: none"> <li>Restores the proper role and scope of jurisdiction of the Environment Court, by ensuring applicants can automatically access that forum with proposals that require investment above a specified threshold amount.</li> </ul>	
<b>Remove RLAA amendments made to the Conservation Act 1987</b>				
29.	Amend section 49 of the Conservation Act 1987	Increase the time frame for interested party comments on concession applications from 20 to 30 working days.	<p>This amendment:</p> <ul style="list-style-type: none"> <li>Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, by allowing sufficient time for parties to comment on concession applications.</li> </ul>	
<b>Remove RLAA amendments made to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 ("EEZ")</b>				
30.	Amend sections 37A to 37G of the EEZ	Amend the process for initiating preparation of a national policy statement under the EEZ to mirror that for preparing a national policy statement under the RMA.	<p>This amendment:</p> <ul style="list-style-type: none"> <li>Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, by providing appropriate opportunity for public input on the development of national policy statements under the EEZ.</li> </ul>	

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			<ul style="list-style-type: none"> <li>Prevents significant power being aggregated in the Minister for the Environment</li> </ul>	
31.	Repeal or amend section 52 and associated provisions of the EEZ	<p>Require publicly notifiable section 20 applications under the EEZ to be heard by the Environment Court rather than a Board of Inquiry, or in the alternative and at a minimum:</p> <p>(a) Require Boards of Inquiry appointed under section 52 of the EEZ to be chaired by a current, former or retired Environment Court Judge.</p>	<p>This amendment:</p> <ul style="list-style-type: none"> <li>Restores the proper role and scope of jurisdiction of the Environment Court, by recognising that it is the most appropriate forum for considering EEZ applications.</li> <li>Restores the proper role of the Environment Court, by requiring that Boards of Inquiry must be chaired by a current, former or retired Environment Court Judge, if they are maintained (rather than the Minister having the discretion to appoint a High Court Judge as chair, or even a chair who has no legal qualifications at all).</li> </ul>	
<b>Amendments to be made to other legislation</b>				
32.	Urban Development Authority proposal	Ensure that any resulting Bill contains appropriate rights to submit and be heard and appropriate rights of appeal (or direct referral to the Environment Court)	<p>Such provisions would:</p> <ul style="list-style-type: none"> <li>Deliver on Labour's promise to preserve rights of public participation and access to environmental justice, by ensuring parties (including applicants) have access to appropriate opportunities to be heard on proposals to develop urban land.</li> <li>Deliver on Labour's promise to reverse appeal rights being curtailed to the detriment of adversely affected private parties, councils, communities and the environment.</li> </ul>	