Draft Submission for the Methodist Church of New Zealand Te Haahi Weteriana o Aotearoa on the Resource Legislation Amendment (RLA) Bill

Introduction

The purpose of the Resource Management Act 1991 (RMA) is
"*to promote the sustainable management of natural and physical resources"* mean(ing) "*manageing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety while-*

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations and
(b) Safeguarding the life supporting capacity of air, water, soil and ecosystems and
(c) Avoiding, remedying, or mitigating any adverse effects activities on the environment.

It is worth noting that in the Departmental Disclosure Statement for the RLA Bill, the overarching purpose of the RLA Bill is "*to create a resource management system that achieves the sustainable management of natural and physical resources in an efficient and equitable way."* Nowhere else in the document is *sustainable* resource management mentioned again, rather, many suggested changes in the Bill cite efficiency for planning and development (especially housing) purposes.

The Methodist Church of New Zealand Te Haahi Weteriana o Aotearoa is committed to ecological sustainability and responsibility for sound environmental stewardship. Many proposals made in the RLA Bill, undermines this responsibility in several ways. Firstly, many of its provisions lower environmental bottom lines set out in the RMA, allowing for further degradation of our natural and built environment and irresponsible management of natural resources. Secondly, it undermines the ability of citizens to participate in good environmental stewardship by reducing the criteria under which citizens are notified of resource management processes and reducing the entry points at which they can provide input towards those processes.

Much of the proposed changes in the RLA Bill blatantly attempt to address the burgeoning issue of housing shortage and accessibility in New Zealand. It can then be interpreted that legislation designed to protect the environment from harmful effects of economic development is being eroded in order to facilitate easier housing developments. The Bill provides for faster decision-making but not necessarily better decision-making processes. There is insufficient analysis to show that the RMA in its current form is inadequate to allow for economic development while providing for sustainable resource management and whether implementation processes can be improved without amending the Act so significantly. The current government has so far failed to address the systemic issues of inequality when it comes to accessing affordable housing in New Zealand. Even if the RLA Bill is conducive to increased supply of housing, it will still not be accessible to those most in need of it, if systemic issues of economic inequality are not addressed.

Suggested Submission Points by Topic

Erosion of Environmental Bottom Lines and Principles of Environmental Stewardship

-Under the proposed amendments to the consenting process in section104, there is no requirement to ensure activities avoid exceeding limits, only have to "have regard to" them.
Alternatives – limits set out in Regional Policy Statements or plans must or at least should not be exceeded. Justification for exceeding of limits must be considered in the consenting process.

-Consent authority *must* have regard to positive effects including offsets, however, does not stipulate that deleterious environmental effects must be avoided. For example, the extinction of a species or contamination from release of genetically modified crops can be avoided by not permitting an activity, but it cannot be "offset" by a positive activity conducted elsewhere.
Alternatives – Consent authority must have regard to positive effects including offsets but must also consider where deleterious effects can be avoided if a consent is not approved or is approved conditional to deleterious effects being avoided. This is provided for in new section 108AA inserted, but not consistent with amendments to section 104(1). Offsets should only be made where positive and negative environmental impacts are of comparable nature.

-Under Clause 122, activities that breach a Plan rule in a "marginal or temporary" way can be treated as permitted activities by local authorities. This strips the rule of its gravitas
Alternatives – no insertion to section 87 be made and breaches of Plans remain as such, regardless of their nature

-The RLA Bill proposes a streamlined "fast-track process for simple consent applications and allows councils to treat certain minor plan breaches as permitted activities." Controlled activities can have potential adverse effects on the environment and a fast tracked process may not allow for adequate consideration of such effects and leniency on minor breaches may have similarly deleterious effects.
Alternatives – a fast track process may be used for permitted activities only and criteria around fast tracked applications be made clearer so that consented activities are given due consideration based on their potential impacts on the environment.

-Clause 12 of the RLA Bill proposes to amend sections 30 and 31 of the RMA to make it a function of regional councils and territorial authorities to ensure sufficient residential and business development capacity to meet long-term demand. Furthermore, section 43B proposes to allow council rules which are more lenient than National Environmental Standards to override those NESs. This is in conflict with the purpose of the RMA to ensure sustainable resource management and ensure that it is not predominated by economic development.
Alternatives – these proposals should be discarded as they are in conflict with the purpose of the RMA

<u>Reduction of Public Input Entry Points and Poorly Designed Proposed Collaborative Process</u>

- Currently, only 3% of resource consent applications are publicly notified (with percentages for subdivision and land use consents even lower), and less than 1% of resource consents appealed. Proposed changes in the RLA would further reduce entry points for public participation, and narrow criteria for notification of proposed activities and rights of appeal. Under the streamlined planning process for which the criteria are ill-defined, for example, to meet a "significant community need", the Minister may decide the extent to which a Plan is notified, or not. For some plan changes, notification would be limited to "directly affected" people only, eroding public knowledge and opportunities for input for issues which may have impact on public interest.
Alternatives – remove amendments where criteria for public notification and rights of appeal are reduced. Make notifications accessible online rather than in print only to increase visibility to the public.

-Provisions for collaboration in policy or planning making processes are proposed to be used for all processes, not just freshwater management and the resulting design may not be fit for purpose. Furthermore, although iwi must be represented in collaborative planning processes, councils are not

required to consult iwi when deciding whether a plan making process should be collaborative. Furthermore, there is no ability to appeal to the council that parties have been excluded from appointment to the collaborative process. This raises doubt that the design of the proposed collaborative proposes are fit for purpose for all proposes covered by the RMA.
Alternatives: addition of provisions for collaborative process are deferred until further deliberation is given to the design and structure of such processes so that they are fit for purpose for different areas of resource management and planning scales.

Increased Ministerial Power and Politicization of Resource Management Processes

-The RLA Bill creates provisions for the Minister for the Environment to make regulations which prohibit or override rules in district and regional plans which restrict use of land for residential development in a way that is not "reasonably required" to achieve the purpose of the RMA and to permit specified land uses to avoid "unreasonable restrictions" on use of land.
Alternatives - The conflict of interest between the current Minister for the Environment and his other portfolio as Minister of Housing should be recognized in the risk of adopting this amendment in undermining the purpose of the RMA for expansion of housing developments.

-The Bill proposes the use of National Plan Templates to be used for regional and district plans. While this may reduce duplication or consistencies between national regulations and regional plans, it may also be seen as a way of disempowering local authorities in natural resource management. This can have either positive or negative effects on the environment depending on how it is exercised.
Alternatives – that better mechanisms are used to align national regulation and regional and district plans to avoid undermining of local authorities.

- The proposed provisions in the EEZ Act allow the government to propose national direction to support decision making on applications for marine consents. The Bill also amends all of sections 35-58 of the EEZ & CSA Act. This removes the EPA's authority to appoint decision-making panels and instead allows the Minister to appoint a Board of Inquiry. This raises concern over the current government's tendency towards approving permits for oil exploration in New Zealand's EEZ, the adverse effects that potential accidents will have on our environment and the contribution to climate change that fossil fuel exploration will make.
Alternatives – discard amendments which remove the EPA's authority in independent decision making

Questionable increase in efficiency

- New section 34B inserted allows a consent authority to fix fees payable to hearings commissioner. A fixed fee structure does not provide for the range of complexities and therefore time and cost required to process different consent applications. A risk lies in the inadequate consideration of applications due to the fixed fee not being sufficient to cover the cost of more complex hearings.
Proposed action – do not adopt provisions for consent authorities to fix fees. Rather review the current fee structure and examine and remedy where inefficiencies lie.

-In the Ministry for the Environment's own Regulatory Impact Statement, concerns are raised that there has been no public consultation on several actions, including some that are identified as being the most significant. According to this RIS "*this means that there is little evidence as to how stakeholders are likely to respond to new incentives and opportunities provided by the proposed reforms. It is therefore unclear*

how far the reform package is likely to deliver its objective of robust and durable resource management decisions"

Furthermore, the Treasury's Regulatory Impact Analysis (RIA) on the EEZ Amendments state that the cost benefit analysis was not weighed up against the objectives of the Act nor supported by empirical evidence, therefore is it difficult to ascertain whether the most effective options have been proposed.

The RIA also states that the proposed decision-making model for Nationally Significant Proposals and Notified Discretionary Marine Consents is not supported by the analysis, especially in the proposed reduction in appeal rights.

This raises the concern that the proposed changes intended to increase efficiency are not supported by sound analysis and have not been consulted with implementers and users. Therefore it is unclear whether the proposed changes will actually be effective in practice while environmental bottom lines and entry points for public input and rights of appeal are reduced, having deleterious effects for both natural resource management and participatory democracy.
Alternatives – further analysis and consultation with end users to determine improvements in delivery mechanisms for the RMA.

Commendations

-New section 360(1) creates provisions for stock exclusion from waterways, including provisions for regulations for infringement offences. Implementation of this section will lead to national improvements in water quality and it is recommended that this new section be adopted in full.

-Provisions for iwi participation are strengthened in proposed section 58. Iwi will have the discretion to enter into "Iwi participation agreements" with councils under the proposed provisions. However, the provisions do not stipulate that all iwi with a stake in an issue or process are involved.

References

- The Resource Legislation Amendment Bill 2015 http://www.legislation.govt.nz/bill/government/2015/0101/latest/whole.html#contents
- The Resource Legislation Amendment Bill Departmental Disclosure Statement, 25 November 2015, Ministry for the Environment http://disclosure.legislation.govt.nz/assets/disclosures/bill-government-2015-101.pdf
- Review of the Resource Legislation Amendment Bill 2015, February 2016, A Paper Prepared for the Land and Water Forum Secretariat by Martin Jenkins
- Resource Legislation Amendment Bill Key Issues and Responses, March 2016, Forest and Bird
- ECOlink Nov-Dec 2015 http://www.eco.org.nz/uploads/ECOLink/ECOlink%20Nov-Dec%202015%20finale1.pdf
- Environmental Defense Society Media Statement: http://www.eds.org.nz/our-work/policy/media-statements/media-statements-2015/eds-cautiously-welcomes-resource-legislation/
- Resource Management Law Association Media Statement http://www.rmla.org.nz/news/view/id/158