

Cause for concern: Resource Management Act Reform 2013

An introduction to aspects
of the reforms most likely to
worsen environmental outcomes



Content

- **What is the Resource Management Act and why does it matter?**
- **A closer look at Part 2**
- **Submission and appeal rights**
- **Ministerial intervention**
- **Impact on environmental outcomes**
- **Where to from here**



What is the Resource Management Act and why does it matter?

- Our most important piece of domestic environmental law.
- Purpose: “**sustainable management**” of natural and physical resources:
 - 5(2) **sustainable management** means managing 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 wellbeing 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 of activities on the environment.
- Requires hard choices about what we prioritise, how we reconcile competing interests and values, and to what extent public values are retained at private cost.
- Recognises that those choices are best made at the local level, with public input, subject to guidance as to what is “nationally important”: **Part 2.**



A closer look at Part 2.

The existing law

WHAT DOES IT SAY?

Section 5: purpose.

Section 6: matters of national importance.

Section 6 contains our environmental imperatives: preservation of the **natural character** of the coast, rivers, lakes and wetlands, protection of outstanding natural **landscapes** and **features**, protection of significant **indigenous vegetation** and habitat of **indigenous fauna**, maintenance and enhancement of **public access**....

Section 7: other matters.

Includes amenity values, finite characteristics of natural resources, quality of the environment.....

Section 8: principles of the Treaty of Waitangi.

WHAT DOES IT MEAN?

- Parliament's intention: “**biophysical bottom lines**”.¹
- Courts: “**overall broad judgment**”. Weighting hierarchy s5 -> s6 -> s8 -> s7.

¹ Hon Simon Upton, RM Bill Third Reading



A closer look at Part 2

Are the proposed changes necessary?

- **WHY ARE THE CHANGES PROPOSED?**

“...after 20 years of RMA practice, there is concern that the predominance of environmental matters in section 6, and the hierarchy between sections 6 and 7, may result in an under-weighting of the positive effects (or net benefits) of certain economic and social activities”¹

“There is a concern the focus under the RMA has shifted too far towards avoiding effects on the environment... ”²



Changes to content and structure of Part 2 recommended

- **BASED ON ANALYSIS?**

Review of section 6 and 7 matters said to have included review of their

*“relevance and balance in regard to broader...**environmental outcomes**”³*

There has been **no analysis** of section 6 and 7 matters in terms of environmental outcomes.

¹ Discussion Paper, page 25

² Discussion Paper, page 12

³ Reform Summary, page 11



A closer look at Part 2

Are the proposed changes necessary? continued

• REFLECTED IN ENVIRONMENTAL OUTCOMES?

- Provision of habitat¹

Habitat type	Historic distribution (Mha)	Current Area (Mha)	Area lost between 1990-2008	Percent remaining
Indigenous forest	23.2	6.5	51,000	28 %
Tussock grassland	8.2	3.5	71,000	42 %
Freshwater wetland	2.4	0.2	?	10 %

- Loss of native ecosystem cover: 4,500 ha/year and accelerating.²
- Threatened species: lists continue to show direct correlation between land use change/human impacts, and the worsening conservation status of indigenous species.³

1 From *Provision of Natural Habitat for Biodiversity: Quantifying Recent Trends in New Zealand*, [Anne-Gaelle E. Ausseil](#), [John R. Dymond](#), [Emily S. Weeks](#), 11/2011; ISBN: 978-953-307-707-9 In book: *Biodiversity Loss in a Changing Planet*

2 Green (2006) *Sustaining New Zealand's Biodiversity – a Progress Report Office of the Parliamentary Commissioner for the Environment*, Wellington.

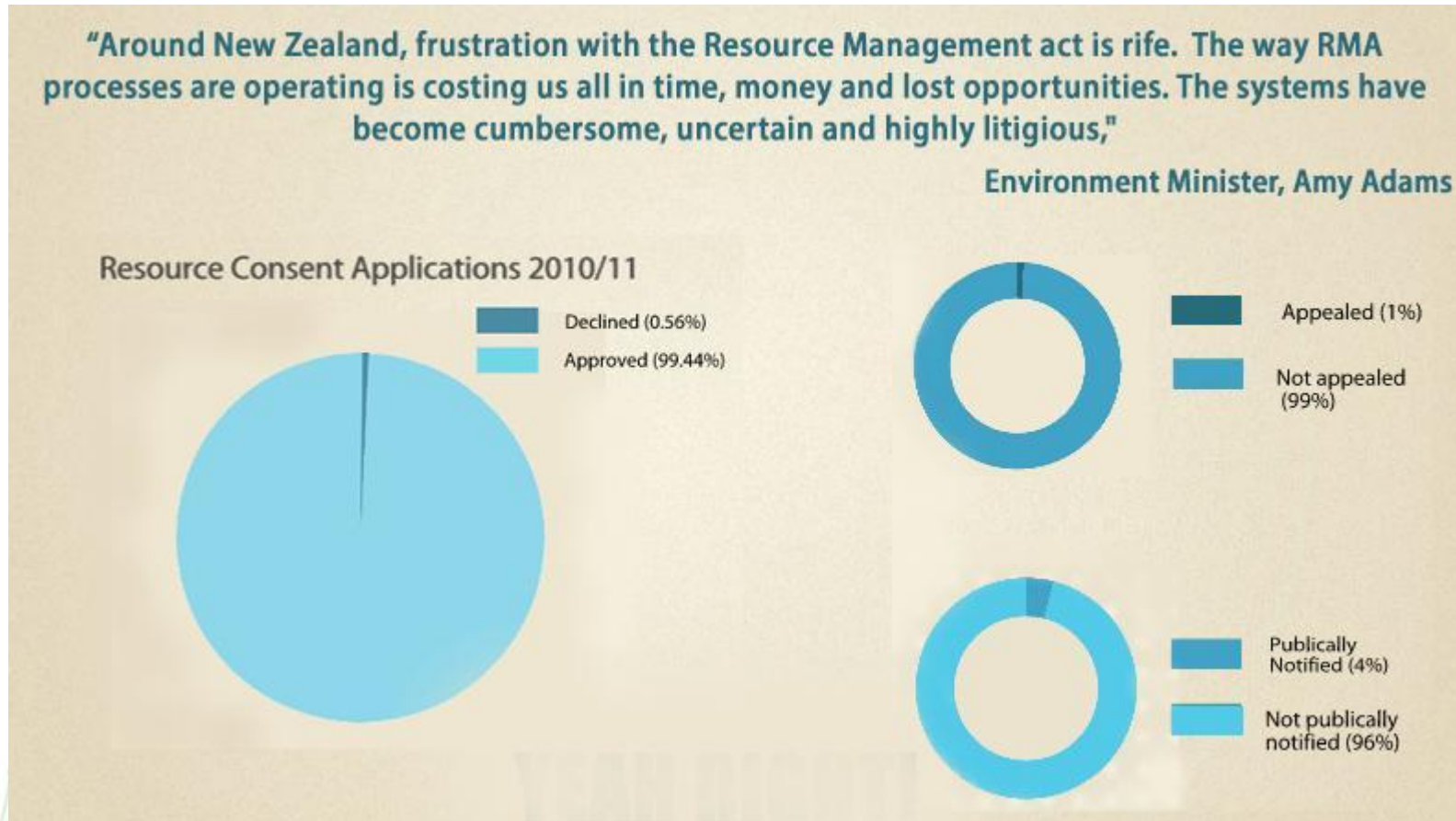
3 Eg. De Lange et al (2009), Miskelly et al (2008)



A closer look at Part 2

Are the proposed changes necessary? continued

• REFLECTED IN CONSENTING OUTCOMES?¹



¹ <http://www.mfe.govt.nz/publications/rma/annual-survey/2010-2011/key-facts-2010-11.pdf>



A closer look at Part 2

The proposed changes

- Section 6 now to begin “In making the **overall broad judgment...**”
- **No hierarchy**
- **Deletion** of environmentally-focussed provisions eg
 - maintenance and enhancement of the quality of the environment,
 - maintenance and enhancement of amenity values.
- **Watering down/limiting** of other provisions eg
 - outstanding natural features and landscapes must be “specified” to qualify under section 6 – but no responsibility for “specifying” has been allocated.
 - only “significant” trout and salmon habitat now recognised (trout and salmon habitat is often a touchstone for water quality).



A closer look at Part 2

The proposed changes

- New **development-focussed** provisions

- Effective functioning of the built environment, including the availability of land to support changes in population and urban development demand
- Efficient provision of infrastructure

- **Change to legal “onus”:**

Section 7(d) ...ensure that restrictions are not imposed under this Act on the use of private land except to the extent that any restriction is reasonably required to achieve the purpose of this Act

- Reverses existing onus
- Incompatible with s32 requirement to consider whether an objective is the most appropriate way to achieve the purpose of the Act, and whether a policy, rule or other method is the most appropriate way of achieving the relevant objectives.



Public participation – submissions and appeals

PLANS

- Currently:
 - all new plans and plan changes are publicly notified.
 - people can submit on the new/changed provisions, and submitters can appeal Council decisions to the Environment Court
- The reform proposal: **Three planning tracks -**

The status quo	Freshwater only – collaborative process, but then no submissions or appeals (except on points of law)	Joint planning process with no appeals (except on points of law)
----------------	---	--



Public participation

– submissions and appeals

RESOURCE CONSENTS

- Currently:
 - resource consent applications are **publicly notified** where the Council decides that the adverse effects of the activity will be more than minor (or applicant requests).
 - Resource consent applicants and submitters have the same appeal rights
- Reform proposals re notification include:
 - Further **restricting notification**: assessment against Plan's objectives and policies
 - All controlled activities to be **non-notified**
 - Limiting the scope of submissions to the **particular effects identified by Council only**
 - Power for Councils to **strike out submissions** considered lacking “evidential basis”
 - Alternative appeal to independent commissioner **for consent applicants only**
 - **Subdivision allowed** unless expressly restricted by rules in plans.
 - Subdivision applications anticipated by the zoning **non-notified**



Direct ministerial intervention

- Currently:
 - Minister can direct a council to **address an issue** in its plan¹
- Reform proposals:
 - Enable Ministers to intervene in a policy statement or plan where the Minister decides that it does not comply with national directions.
 - Also proposed to allow National Policy Statements to be directed at a specific geographical area or region

¹Section 25A



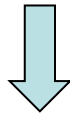
Impact on environmental outcomes

- **Part 2 changes**
 - Does the RMA achieve sustainable management now? Will these changes make it better or worse? Missed opportunity to check.
 - Together, Part 2 changes make it significantly harder to achieve good outcomes for the environment.
- **Public submission/appeal restrictions**
 - Less opportunities to advocate for environmental protection in plan-making.
 - Many more consents will be determined between applicant and council – no opportunity for public to raise environmental concerns.
 - New appeal process for applicants only – a shortcut to overturning Council decisions declining consent/imposing onerous conditions? More details needed.
- **Ministerial intervention**
 - Will depend entirely on how used, but potential for overriding environmental requirements in favour of development

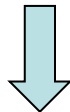


Where to from here

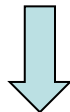
Discussion Paper March 2013



Consultation April 2013



Summary of reforms August 2013



Government is committed to a Bill in 2013 – likely to provide for submissions to select committee

- **MORE INFORMATION:**

<http://www.mfe.govt.nz/rma/reform/phase-two/2013-consultation.html>

<http://www.forestandbird.org.nz/savetheRMA>



A white albatross is the central focus, captured in mid-flight with its wings fully extended. The bird's plumage is predominantly white, with a distinctive pinkish-red beak and dark eyes. It is flying over a vibrant blue body of water, which is splashing with white foam. In the background, several other birds are visible, including a brown and white albatross in the lower foreground and a white bird in the upper background. The image is overlaid with three semi-transparent white circles of varying sizes, which serve as a design element for the text.

The RMA:
It's about
New
Zealand