SUBMISSION ON THE THAMES-COROMANDEL DISTRICT COUNCIL AND HAURAKI DISTRICT COUNCIL MANGROVE MANAGEMENT BILL 2017

TO: Governance and Administration Committee
ga@parliament.govt.nz

Submission on behalf of the

Resource Management Law Association of New Zealand Inc

Introduction

1. This Submission is made by the Resource Management Law Association of New Zealand Inc (**RMLA**).

2. The RMLA is concerned to promote within New Zealand:

   a. An understanding of Resource Management Law and its interpretation in a multi-disciplinary framework

   b. Excellence in resource management policy and practice

   c. Resource management processes which are legally sound, effective and efficient and which produce high quality environmental outcomes.

3. The RMLA has a mixed membership. Members include lawyers, planners, judges, environmental consultants, environmental engineers, local authority officers and councillors, central government policy analysts, industry representatives and others. Currently the Association has some 1,100 plus members. Within such an organisation there are inevitably a divergent range of interests in views of members.

4. As is generally the case for RMLA submissions, this submission does not seek to advance any particular policy position other than to ensure that the proposed legislation:

    a. is consistent with the general framework of existing laws and policies of relevance, and the Resource Management Act 1991 ("**RMA**");

    b. is practicable and workable; and

    c. will assist in promoting best practice.

SUBMISSION

Integrated and coherent policy for New Zealand's coastal environment

5. The RMA provides for protection of the natural character of the coast as a matter of national importance (s 6(a)). The RMA requires that there be a national Coastal Policy Statement which sets out objectives and policies to achieve the RMA's purpose in the coastal environment. All regions must give effect to the Coastal Policy Statement in their local planning instruments.

6. The RMLA is concerned that, if policy consistency is considered desirable, mangrove management in the coastal environment of the Thames Coromandel and Hauraki Districts should occur within the framework of the RMA and the Coastal Policy Statement, and the Waikato Regional Coastal Plan, which became operative in 2014.[1] Mangrove management has been considered in a number of Environment Court decisions, where the various competing interests have had to be considered within the framework of the RMA.[2]

7. As drafted, the Bill would exempt the District Councils from any requirement to align with the RMA and national objectives applicable to the coastal environment of the rest of New Zealand (Clause 8). Such exemptions are unusual. Previous enactments that empower activities and processes in a way that does not require full RMA compliance have generally related to disaster recovery (eg Hurunui/Kaikōura Earthquakes Recovery Act 2016, Canterbury Earthquake recovery Act 2011), include relatively stringent provisions to ensure that they are only exercised for the narrow purpose for which the powers are conferred, and still require consistency with the key environmental outcomes sought under the RMA.[3] RMLA questions whether further consideration should be given to whether the exemption in Clause 8 of the Bill is adequately justified by specific local circumstances.

8. Under the RMA, the coastal marine area falls within the regional council's jurisdiction and a regional coastal plan is a mandatory requirement. Waikato Regional Council will remain responsible for integrated management of the coastal marine area in its region. By vesting control over mangrove management in the two District Councils, without any provision for how the exercise of that power integrates with regional council duties and powers, the Bill may be

[1] Waikato Regional Council is presently reviewing its regional planning instruments.
[2] For example in *Graeme v Bay of Plenty Regional Council* [2013] NZEnvC 173 at [50] and *Mangrove Protection Society v Bay of Plenty Regional Council* [2016] NZEnvC 239 at [19].
[3] See Hurunui/Kaikōura Earthquakes Recovery Act 2016, s 8.

setting up potential for conflict. A possible example of the potential for conflict is if the regional coastal plan identifies areas of mangroves as significant habitat of indigenous fauna which must be protected under the RMA, but the District Councils' Mangrove Management Plans provide for the clearance of these same areas.

9. RMLA recommends that the Committee consider whether the Bill adequately provides for integration and policy coherence with the RMA and subordinate instruments, avoids unnecessary policy conflict, and whether existing RMA processes provide for the outcomes sought by the Bill in a more effective way.

Integration with other legislation

10. In addition to the RMA, a number of other enactments would normally apply to the District Councils' mangrove management activities. These enactments include:

    a. Conservation Act 1987.

    b. Reserves Act 1977.

    c. Wildlife Act 1953.

    d. Health and Safety at Work Act 2015.

11. None of those Acts appear to expressly override the council's powers under the Bill and as a result their operation is likely to be excluded under Clause 8 of the Bill.

12. RMLA recommends that the Committee consider whether the effect of clause 8, in providing that councils are not required to comply with any enactment that would otherwise regulate or apply to its mangrove management activities unless the other enactment expressly overrides the councils powers under the Bill, is intentional or warranted.

13. In addition, the Marine and Coastal Area (Takutai Moana) Act 2011 provides for the exercise of customary interests in the common marine and coastal area and establishes a process for groups to apply for recognition of customary marine title to those areas. The RMA requires that if people are applying for resource consent, permit or approval in the common marine and coastal area, it is necessary to notify and seek the views of any group that has applied for recognition of customary marine title in the area. RMLA recommends that the Committee consider whether the Bill adequately provides for input from or consultation with affected parties, not only under this Act but also under other legislation (for example the Department of Conservation and the New Zealand Fish and Game Council are regularly treated as interested parties for the purpose of RMA processes, as a result of their statutory roles).

Certainty of provisions and terms

14. With reference to Clauses 4 and 5, it is unclear whether the Bill intends to recognise and provide for the ecosystem and amenity values of mangroves. If it is intended to do so, it does not provide a mechanism to retain mangroves where necessary to provide for those values.

15. Clause 4 uses the term “amenity values”. RMLA notes that “amenity values” is not defined in the Bill (this term is defined in the RMA).

16. Clause 4 and 5 refer to “appropriate levels” of mangrove vegetation. RMLA considers that it may assist the Bill’s implementation if further guidance as to the meaning of this term is provided.

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