



## Resource Management Law Association of New Zealand Inc.

**TO:** Local Government and Environment Select Committee

### **SUBMISSION ON THE HERITAGE NEW ZEALAND POUHERE TAONGA BILL**

**21 June 2012**

**on behalf of the  
Resource Management Law Association of New Zealand Inc**

---

#### **INTRODUCTION**

1. This Submission is made on behalf of 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 etc.
4. Currently the Association has in order of 1,100 members. Within such an organisation there are inevitably a divergent range of interests and views. While the membership has been consulted in preparing this submission, it is not possible for the RMLA to form a single universally accepted view on the proposed reforms.

5. It should also be noted that a number of members may be putting in their own submissions and those may represent quite different approaches than the views expressed here.
6. For these reasons, this submission does not seek to advance any particular policy position in relation to the proposed reforms, but rather is made with a view to ensure that the reforms:
  - a. Are consistent with the general framework of existing laws and policies of relevance, and work alongside the Resource Management Act 1991 ("**RMA**") where relevant.
  - b. Are practicable and workable.
  - c. Will assist in promoting best practice.
7. In summary the RMLA supports the intent of the Bill, particularly in regards to provisions that:
  - a. Improve efficiency when processing applications for archaeological authorities.
  - b. Impose statutory timeframes.
  - c. Introduce discretionary powers to provide discounts on administrative charges.
  - d. Improve alignment with the RMA and other legislation.
8. RMLA seeks changes with regards to:
  - a. Identification of parties who have rights to appeal.
  - b. Public participation in the process for amending statements of general policy.
  - c. Clarification around the definition of "owner".
  - d. Clarifying the requirement for owner approval to an authority application.
  - e. Minor amendments.

### **Efficiency when processing archaeological authority applications, or reviewing conditions of archaeological authorities**

9. The RMLA supports clause 44 which sets out statutory timeframes for the processing of applications for authorities.
10. The RMLA supports clause 48 which sets out statutory timeframes within which applications for archaeological authorities are to be determined.
11. The RMLA supports clause 50 which sets out statutory timeframes for the review of conditions of archaeological authorities.
12. The RMLA supports clause 97 which enables Heritage NZ to prescribe administrative charges for processing applications, and for providing discounts on administrative charges when processing is not dealt with in accordance with statutory timeframes.

### **Terminology**

13. The RMLA supports the consistency in use of terminology and definitions between the Bill and the RMA, Marine and Coastal Area (Takutai Moana) Act 2011 and the Local Government Act 2002.

### **Streamlined information requirements with RMA**

14. Information previously provided under the RMA for either a resource consent or designation can be forwarded on to Heritage New Zealand Poutere Taonga ("**Heritage NZ**") to meet the authority application information requirements (cl 43(4)). The streamlining intent of this provision is supported.

### **Rights of Appeal**

15. Clause 56 gives "any person who is directly affected" the right to appeal a decision of Heritage NZ. The decisions that may be appealed are set out in clause 56 (2) and include:
  - a. The power to make a declaration (cl 40 (1) (b)).
  - b. The power to approve a person to carry out an activity under an authority (cl 45).
  - c. The power to grant an authority (cl 46).

- d. The power to require a scientific investigation (cls 49 and 92).
- e. The power to review conditions (cl 50).
- f. The power to specify the duration of an authority (cl 52 (3)).
- g. The powers to conduct an exploratory investigation (cls 54 and 55).

16. RMLA consider this provision is uncertain, and that the Bill should specify the actual parties who have standing to appeal.

*Submission*

- 17. The RMLA submits the Bill should specify who may have standing to appeal.
- 18. In the alternative, clause 56 (3) sets out the information that must be contained in a notice of appeal. The RMLA submits a clause be added to 56 (3) requiring an appellant to specify in what manner the appellant is "directly affected" by the decision.

**Notification to territorial authorities and regional councils**

19. Clause 78 gives Heritage NZ the discretion to give notice to territorial authorities of particulars of any registered historic place, historic area, or waahi tapu in sufficient detail to be included in land information memoranda or project information memoranda. The RMLA submits that if such information is considered of sufficient importance to include in land and project information memoranda, then perhaps consequential amendments to the RMA and Local Government Act are required to ensure councils include such information provided by Heritage NZ in all land and project information memoranda. RMLA submits that this information could also be used by territorial authorities in their district plans and regional councils in their regional plans.

*Submission*

- 20. The RMLA submits that clauses 77 and 78 be amended so that regional councils are provided with the same information as territorial authorities.
- 21. The RMLA submits that a new clause (c) be added to clause 78 (2) as follows:

*Any district or regional plan prepared by the territorial authority or regional council under the Resource Management Act 1991*

22. Consequential amendments to the RMA and/or Local Government Act.

### Statements of General Policy

23. Clauses 14 and 15 provide procedures for adopting "statements of general policy" for the "*management, administration, control and use of historic places owned by, or controlled by, or vested in*" Heritage NZ. The statement of general policy may also be in respect of "*the administration of subparts 3 and 4 of Part 3*". Subpart 3 of Part 3 sets out new processes for obtaining "emergency authorities" in the event of a national or local emergency. However, there is no "subpart 4 of Part 3 of the Bill". It seems likely that the cross reference should read "the administration of subparts 2 and 3 of Part 3". Subpart 2 of Part 3 relates to "archaeological sites" and sets out the process for applications for archaeological authorities.

### Submission

24. The RMLA submit this error in cross referencing requires correction.

### Process – Statements of General Policy

25. Statements of General Policy prepared in accordance with the Bill may be relevant to regional and district councils when preparing regional policy statements, regional and district plans, in accordance with sections 61 (2) (i), 66 (2) (c) (i) and 74 (2) (b) (i) of the RMA. The process set out in clause 15 includes a public submission process. The RMLA supports the requirement for a public process in the development of Heritage NZ's statements of general policy.
26. At subclause 15 (6) it states "*Heritage New Zealand Pouhere Taonga may amend a statement in the manner and by any process that it thinks fit.*" The breadth of this amendment provision could undermine the public process used to create the original document. Any amendment should follow the same public process as required for the creation of the original Statement of General Policy.

### Submission

27. RMLA submits that cl 15(6) should be amended to read:

*"Heritage New Zealand Pouhere Taonga may amend a statement ~~in the manner and by any process it thinks fit~~ using the same process detailed in clauses 15(2) and (3)."*

## Owner

28. While the Bill includes a definition of “owner” in clause 37 that is particular to Heritage covenants, there is no general definition of owner in clause 6 (the interpretation section) of the Bill. The term “owner” is used throughout the Bill and the RMLA considers that a definition is appropriate to ensure clear application of the Bill’s provisions.

## Submission

29. Given the consistency in use of terminology and definitions between the Bill and the RMA in other areas, we recommend the RMA definition, or similar, is adopted:

***owner,—***

- (a) *in relation to any land, means the person who is for the time being entitled to the rack rent of the land or who would be so entitled if the land were let to a tenant at a rack rent; and includes—*
- (i) *the owner of the fee simple of the land; and*
  - (ii) *any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land,*
- or to take a lease of the land, while the agreement remains in force; and*
- (b) *in relation to any ship or offshore installation or oil transfer site, has the same meaning as in section 222(2) of the Maritime Transport Act 1994*

And the definition of owner in clause 37 be deleted.

## Owner’s approval

30. A number of clauses of the Bill include a requirement for owner approval or cross refer to a requirement for owner approval, namely:
- a. Clause 43(b) - Information that must be provided with applications for authority.
  - b. Clause 54 – Exploratory investigation of site or locality.
  - c. Clause 59 – Application for emergency authority
31. The RMLA supports the need for owner approval in general but considers that it is currently uncertain who the owner is (unless the RMA definition is adopted) and that recognition should be given to:

- a. The potential to streamline the process further by allowing an application for an authority to be granted (but not works/activities) prior to obtaining the necessary landowner approval.
- b. That in the case of interests in land (eg easements) acquired under the Public Works Act 1981 it is not clear whether the relevant owner would be the freehold owner or the grantee of the easement.
- c. That in states of national or local emergency (declared under the Civil Defence Emergency Management Act 2002), it would be perverse if a fast tracked approval process was held up because the landowner's approval could not be obtained.

### *Submission*

32. RMLA recommends the following changes to clauses 43 and 59:

#### **43 Information that must be provided with application for authority**

...

- (2) *An application must include the following information:*

- (a) *a legal description of the land adequate to identify the land to which the application relates; and*
- (b) *if the applicant is not the owner of the relevant land either:*
  - (i) *proof of the owner's consent to the proposed activity; or*
  - (ii) *proof that the applicant has already acquired the necessary registered interest to allow the activity to occur; or*
  - (iii) *agreement that no works will be carried out without the consent of the owner [Drafting note – this is similar to s54(5)]*

...

#### **59 Application for emergency authority**

...

- (2) *Application for an emergency authority must—*

- (a) *be made in the form and manner prescribed by regulations made under this Act or approved for the purpose by Heritage New Zealand Pouhere Taonga; and*
- (b) *include the information—*
  - (i) *required by **section 43(2)** except that section 43(2)(b) shall not apply; or*
  - (ii) *that Heritage New Zealand Pouhere Taonga thinks appropriate in the circumstances.*
- (3) *Before Heritage New Zealand Pouhere Taonga grants an emergency authority it must be satisfied that the person specified under **section 43(2)(e)** to carry out an activity under the emergency authority, if granted, meets the requirements of **section 45(2)**.*
- (4) *After having regard to all the circumstances, Heritage New Zealand Pouhere Taonga, if it thinks that it is not necessary to use its emergency powers under this*

*subpart, may decline to consider an application under this subpart, but determine it under **subpart 2**.*

**Minor amendments**

- 33. In Clause 56(3)(d) the reference to “applicant or owner” should be “applicant and owner” as these may be different people.
  
- 34. The drafting style of clause 48(2) is inconsistent with the preceding clauses. For consistency it could be amended to read:
  - (2) *An application under section 42(1)(b) must be determined not later than 20 working days after it is accepted under section 44(2) by Heritage New Zealand Pouhere Taonga ~~under section 44(2)~~.*
  
- 35. Amend clause 49(1) to read:
  - (1) *~~Applications~~Authorities granted under section 46....*
  
- 36. The RMLA wishes to be heard in support of its submission.



.....

Signed by:  
Maree Baker-Galloway  
On behalf of RMLA

Date: 21 June 2012