Resource Legislation Amendment Bill 2015

Te Ātiawa o Te Waka-a-Māui Trust Submission

The view of Te Ātiawa

Te Ātiawa is the mandated iwi organisation that represents the Te Ātiawa people who whakapapa to Te Tau Ihu (the top of the South Island). Te Ātiawa hold manawhenua manamoana across Te Tau Ihu and specifically the Marlborough Sounds.

Te Ātiawa has commercial and customary interests throughout the entire Marlborough Marine area, and Tasman and Golden Bays. These interests involve resources of both the terrestrial and marine environments.

Te Ātiawa has interests in the aquaculture industry across Marlborough and Tasman Districts. These interests are currently represented in physical sense in a number of marine farm consents allowing for the marine farming of various species, including mussels, oysters and salmon. The aquaculture industry provides a significant opportunity for Te Ātiawa economic development over time.

Te Ātiawa also has commercial forestry and land holdings, urupa and other sacred sites (some owned by Te Ātiawa, others not). These sacred sites are not registered on any council or government database and they are unlikely to be provided to any government body in the future. These sites are central to the cultural and spiritual wellbeing of Te Ātiawa members.

Development and developers, by and large, have ignored the cultural values of Te Ātiawa despite legislation and government policy directing all persons developing and/or using resources, to take account of our values, beliefs and practices.

Te Ātiawa has a historical understanding of the workings, sensitivities and issues of this area and contributes to its management (as best as the authorities allow) in its role as kaitiaki. Kaitiaki is not wholly protection and not wholly development but is the sustainable management of protection and development issues to ensure the long-term integrity of the resources and environs.

Te Ātiawa is of the opinion that the proposed resource management changes will only further degrade our social, spiritual, and cultural beliefs. Again marginalising Te Ātiawa input into resource management issues, compromising manawhenua manamoana, and compromising kaitiakitanga.

The Resource Management Act 1991 is the principal legislation governing development of land and resources. It has one purpose, to promote the sustainable management of natural and physical resources. Since the RMAs enactment, in 1991, it has been amended by 110 separate pieces of legislation and there are 42 separate versions of the Act. A large number of these

amendments have sought (amongst other things) to improve understanding, promote development, streamline process, and reduce cost.

The 2015 amendment bill is yet another change made by the National lead government principally aimed at reducing costs and process. The bill has a stated purpose of creating a resource management system that achieves the sustainable management of natural and physical resources. The amendment bill has three stated objectives being:

- Better alignment and integration across the resource management system;
- Proportional and adaptable resource management processes; and
- Robust and durable resource management decisions.

Better alignment and integration are discussed in terms of establishing new tools in making/amending of plans and processing of resource consent applications. Duplication with the resource management system is sought to be reduced and consideration of the workings of other related legislation is to be aligned with the (improved) resource management process (i.e. Reserves Act, Public Works Act, Conservation Act and the Exclusive Economic Zone Act).

Proportional process changes, as to be expected, are discussed in terms of cost and specific changes are sought to reduce the overall cost for applicants and developers. These changes sought are significant, not just in terms of process but in terms of the participation provisions.

The decision improvements are sought through new upfront requirements for engaging with iwi, participation of iwi, and representation of iwi in most planning decisions. On first blush, this sounds commendable but the detail of the changes reduces overall iwi involvement.

It is the opinion of Te Ātiawa that the Resource Management Amendment Act 2015 raises significant concerns about the involvement of iwi within the RMA process and iwi's ability to undertake kaitiakitanga. In summary, the purpose of the amendment is to speed up and reduce costs for developers under the RMA. To achieve this goal, the government is seeking to reduce, restrict and completely remove the communities (including iwi) participation rights that are currently provided under the existing act (a core tenet of the legislation). These will have significant impacts on any iwi's ability to participate and effect change in their respective rohe and concerns need to be raised.

Concerns

The main area of concern for Te Ātiawa regards any provisions that remove the rights for our involvement in the RMA process and those provisions that directly impact on our capacity to be involved. Specific concerns are discussed below.

The amendment seeks to limit and restrict the ability of Council's to impose charges. This proposal will have a direct impact on the capacity of iwi to participate. The changes will mean that Council's will be limited in what they can charge and for what purpose. Te Ātiawa has been working with MDC in the hope that consultation charges from Te Ātiawa could be levied through MDC to the

applicant. Whilst these charges are still being discussed, the proposal (if successful) would mean that such charges would not be within the ability of a Council to levy.

The government is of the opinion that the structure of plans is a barrier to development and developers. It proposes that a national planning template be prepared by government (to be completed within 2 months of assent) and to be adopted by Councils (within 12 months' years of being released). This tight frame will impact on the capacity of many iwi to adequately participate in any planning process. As we can appreciate, if the current Marlborough Plan is released before the amendment takes effect (probably likely), then this Plan will need to be reviewed in terms of the national template. Some would say this would be structural but structural changes can have profound impacts on the content and effect of objectives, policies and rules.

The government is seeking to have the ability to provide for a number of 'national interest' initiatives to override local plans. The risk is that a government can provide a permitted activity that may raise significant issues or risks to local environments. There is no opportunity to have input into these national initiatives and they may be imposed on political whim rather than sound community reasons.

The requirement to participate in an Alternative Dispute Resolution process is fraught. ADRs are a process of concession and not a process where the issues are examined on their merit. By imposing such, perverse outcomes will arise, further time delays in processing will result, and greater costs will be incurred. The current decision to undergo an ADR lies with the judiciary. This is appropriate because ADR may not be appropriate for all cases. It is the view of Te Ātiawa that there should be no such requirement.

Any person may make a submission on a notified application and any identified person may make a submission on limited notified application. This is the participation process afforded under the RMA and provides the community an opportunity to identify effects, risks, problems or issues that may have not been considered. In doing so, the community can be confident that decision makers are being fully informed. The changes proposed will provide councils the ability to strike out some submissions and a requirement to strike out certain submissions. On the face of it, the proposed change appears logical. Sometimes submissions can be wayward, off topic, and purely personal. Councils should have the ability to strike out submissions or at least parts of submissions which are not about effects and are not relevant. However, when looking at this power in the wider context of the other changes, there is a significant risk that the community's ability to participate will be severely curtailed.

Section 104 is the decision making engine for all resource consents. It requires a decision maker to consider effects, statutory documents and any other matter they consider relevant. One change proposed is to insert a new element into this decision making process being, the codification of offsets. The new element would require decision makers to take account of any offset adverse effects. This is unnecessary and will lead to perverse outcomes. The decision makers have the

ability to consider 'other matters' which could include offsets. It is not believed the codification is necessary or appropriate.

A lot of the changes regard restricting processes purely in the interest of speed. In doing so, the restrictions will place more pressures on iwi to respond where they are not adequately resourced to deal with the processes as they currently are. This may be different if provisions were made so that iwi had the ability to on charge, or the requirements of Section 88 were strengthened to ensure that iwi are consulted at the front end of the process, but there are no such proposals. The logical outcome will be that iwi will be unable to respond, but the councils will say that iwi has the opportunity to respond but choose not to.

A step-by-step notification process is to be included into the RMA. This process is to restrict the amount of public notification (which currently lies at less than 1% of all applications received) and reduce the number of people to be identified as affected. Importantly, the language to be applied to cultural aspects is not consistent with the Settlement legislation and restricts consideration to only land. The government is trying to supplant a more restrictive interpretation of the settlement legislation through the RMA. Iwi rights are being impinged and their ability to participate in relevant processes, removed.

The government is seeking to provide developers with easier rules to subdivide land. In doing so, the risk is that more iwi land, sacred sites, or traditional lands may come under pressure to be developed. The impetus is to provide the opportunity for towns to expand. The changes imposed in other areas of the RMA will be sufficient to force council to better plan and provide for future growth. Legislative amendments should not be made to improve the profit margins of developers.

The government is seeking to provide for certain effects to be disregarded. Specifically, it is seeking to provide for some boundary effects to be permitted. A boundary effect is regarded as those activities that have a direct effect on neighbours. The proposed change is sought to minimise process for land owners/developers that are seeking to modify an element of their property where affected approvals have been provided by all neighbours. However, there is a proviso that a developer need not provide the affected party approval of a neighbour if the effects are less than minor. The issue with that is, iwi are not in a position to disclose all cultural information and values, and the cultural paradigm is not part of this process. Hence decisions can be made by an authority without iwi knowing which may compromise cultural values. While Te Ātiawa accept the first proposed change is good, the implications of the second raise concern.

The notification processes are simplified meaning that a notice can be just published on a website and in a paper. In most circumstances, this will be insufficient for most persons to be able to act on the notification.

The amendment will restrict what conditions can be imposed on resource consents to those conditions which the applicant accepts and can be directly connected to a rule or an effect. In our experience we have not found a condition

that an applicant would accept. Conditions are imposed to manage adverse effects, maintain ongoing compliance, require monitoring and reporting (which is not generally linked to a rule or effect), or to mitigate or offset some effects. This change would undermine council authority and process. It should be removed.

The proposed changes would require councils to recognise registered iwi sites. This is a double edged sword as the majority of cultural sites are not registered and it would not be in the interest of iwi to register them. Hence, the assessment of cultural matters will be curtailed and consideration of effects on iwi, reduced.

The amendment adds some criteria for a person to be considered eligible, for an affected person. The prescription provided is narrow and has no regard for manawhenua, cultural significance, rohe, or any other cultural considerations.

Significant changes are sought in the right to appeal a resource consent decision. The government is seeking to remove the ability to wholly appeal a decision and limit it to matters in the appellant's submission. This is counterintuitive as an appeal is a *de novo* hearing (i.e. new process starting at the beginning). Removal of this right is sought to reduce the number of appeals at the cost of people's judicial right to seek higher authority on decisions. This should be opposed as it does not account for matters that may arise during a hearing, and severely restricts the judiciary in its process and decision making.

Iwi agreements are to be required between councils and iwi. A formally process is set out where, if there are delays, a minister can step in and force the process. Whilst it is commendable, there are a number of issues. Firstly, the definitions around iwi authority are not clear in the amendment and are not consistent across other pieces of legislation. The agreements are to set out process and requirements for iwi to achieve. There is nothing requiring remuneration and there is uncertainty about failing to achieve agreement on issues. It may be that the minister can determine the outcome, overriding iwi concerns, and yet provide validation of iwi consultation. There is much uncertainty in this area.

What is the problem?

Te Ātiawa has significant concern for our capacity to participate in these required processes. Funding of our participation is not part of the amendments and it would appear that the changes proposed will limit the council in what charges they can pass on. This issue must be raised.

The amendment disregards the recent settlements in using inconsistent language and supplanting definitions in the RMA to be applied to the settlement acts.

National overriding of local rules assumes that government knows best and regional concerns are not important. Rules that may be appropriate for one region will be completely inappropriate in another region. Communities should decide their own destinies rather than central government dictating outcomes on purely political and economic lines. Further, local involvement in determining national rules will be ineffective.

It is inappropriate to require councils to only regard registered iwi sites of significance. In many cases, an iwi will not submit to a registering of sites for fear of vandalism. Instead there should be a requirement that applicants consult with iwi.

The post-settlement issues facing iwi are significant along with their commitments to other government departments. The amendments are seeking to place more responsibilities on iwi within very tight timeframes. As a result, some iwi may not be able to service these existing and new responsibilities and will miss out on putting important issues forward.

There is a heavy emphasis on iwi involvement in the early development of plans. However, this should be across the board (i.e. Resource consent applications, bylaws, regulations, LTP) but it is only the plan process which is given credence. This is insufficient.

Summary
Whilst lofty, the changes are directed at reducing overall costs to developers by limiting/restricting participation in the process.

While some of these maybe well founded, there are a number of issues with the proposed changes that will impact on the ability of Te Ātiawa ability, to participate in local and regional processes.

Te Ātiawa believe these matters are of significant concern and should not be promulgated in the new legislation.