SUBMISSION TO THE ENVIRONMENT SELECT COMMITTEE
ON THE RESOURCE MANAGEMENT AMENDMENT BILL 2019

ENVIRONMENTAL DEFENCE SOCIETY

SUBMITTER DETAILS

FULL NAME:	Environmental Defence Society Incorporated
ADDRESS FOR SERVICE:	PO Box 91736, Victoria Street West, Auckland 1142
CONTACT:	Gary Taylor
TELEPHONE:	09 302 2972
EMAIL:	gary@eds.org.nz
DATE:	5 November 2019

1. Introduction

1.1. This is a submission by EDS on the Resource Management Amendment Bill 2019 (**Bill**).

1.2. EDS is a not-for-profit, non-government national environmental organisation. It was established in 1971 with the objective of bringing together the disciplines of law, science, and planning in order to promote better environmental outcomes in resource management.

EDS involvement in current resource management reform programme

1.3. EDS has undertaken extensive work that has informed and is relevant to the Government's current programme to reform the Resource Management Act 1991 (**RMA**) and overall resource management system.

1.4. This work began with our project to explore whether the RMA has delivered desired environmental outcomes for New Zealand. The project was undertaken in consultation with the Employers and Manufacturers Association (Northern), the Property Council of New Zealand and Infrastructure New Zealand. It involved the following three successive stages:

- Stage 1: The state of the environment and a framework for RMA evaluation;
- Stage 2: The environmental outcomes of the RMA; and
- Stage 3: Addressing the key issues: recommendations for the future – due for completion in December 2019.

1.5. Stage 2 of this project examined the influence of the RMA on the state of the environment. It resulted in the report 'Evaluating the environmental outcomes of the RMA', published in June 2016[1]. The two key outcomes reached in the June 2016 report were that:

- The weight of evidence available points to serious implementation issues with the RMA; and

[1] *Evaluating the environmental outcomes of the RMA: A report by the Environmental Defence Society*, June 2016.

- Prior reform of the RMA has often proceeded with limited evidentiary basis to the demise of the overall coherence of the system.

EDS submission on the Resource Legislation Amendment Bill 2015

1.6. Shortly prior to the release of the June 2016 report, EDS made a submission on the Resource Legislation Amendment Bill 2015 (**2015 Bill**). Our submission was informed by and reflected the outcomes of the work we had completed regarding the effectiveness of the RMA. As a result, our submission was critical of several aspects of the 2015 Bill.

1.7. As well as providing a clause-by-clause analysis of the 2015 Bill, EDS's position on the Bill was summarised in the following four themes:

- A number of the 2015 Bill's individual changes erode environmental bottom lines, which compromises both protection and use of the environment.

- In pursuit of expedient outcomes, the 2015 Bill significantly extends Ministerial discretion and decision-making powers and simultaneously reduced public participation in RMA processes.

- The amendments proposed in response to planning issues in the urban environment have contaminated the balance of the RMA's processes and the 2015 Bill's proposed amendments.

- The inappropriateness of providing two new processes for plan making (the Streamlined Planning Process and Collaborative Planning Process) and using the new National Planning Template to direct policy content, not just process matters.

1.8. While some of the concerns raised and amendments suggested in our submission on the 2015 Bill were addressed via the Select Committee process, many were not. The 2015 Bill subsequently received royal assent as the Resource Legislation Amendment Act 2017 (**RLAA 2017**).

EDS response to the RLAA 2017

1.9. The RLAA 2017 contained close to 40 amendments and included positive changes such as making the management of significant risks from natural hazards a s 6 matter of national importance. However, consistent with our submission on the 2015 Bill, EDS considers that the RLAA 2017 also introduced a number of problematic changes. It was these "objectionable changes" which the Labour Party Manifesto (Environment) 2017 made a clear commitment to reverse, in order to improve the RMA's workability.

1.10. In part in response to that Manifesto, in early 2018 EDS partnered with Berry Simons to prepare a detailed analysis of the changes to the RMA that we considered were required to remove the worst aspects of the RLAA 2017 and improve the Act's workability (**2018 Analysis**), at least until a wider review of the RMA could be undertaken. A copy of that analysis is **attached** as **Annexure A**.

1.11. We identified a total of 32 potential amendments, grouped under a range of headings including:

- Remove ministerial powers to inappropriately influence the content of RMA planning instruments and processes;

- Remove objectionable limits to public notification and participation;
- Ensure RMA practices and procedures are fair and robust and subject to sufficient safeguards;
- Restore the proper role and scope of jurisdiction of the Environment Court; and
- Remove novel, uncertain and confusing concepts.

1.12. This analysis was then sent to the Minister for the Environment (**Minister**), the Ministry for the Environment and a range of key stakeholders. EDS and Berry Simons recommended that the Minister consider a two-stage approach to enacting these amendments by making two separate "tranches" of changes. The first tranche would be limited to the more straightforward, less contentious amendments and specifically designed to reverse the most objectionable provisions from the RLAA 2017.

1.13. EDS is very pleased that the Bill has now been introduced, consistent with this recommendation. We welcome the opportunity to comment on the Bill, which we do under the following headings:

- Amendments from 2018 Analysis included in the Bill.
- Amendments from 2018 Analysis not included in the Bill.
- Provisions included in the Bill not addressed in 2018 Analysis.
- Further amendments to the Bill to address climate change.

2. Overall submission

2.1. EDS is broadly supportive of the changes to the RMA proposed by the Bill. In our view, some of the amendments made to the RMA by the RLAA 2017 resulted in changes which rendered the Act unnecessarily complex, reduced public participation, limited the role and scope of the Environment Court and inappropriately aggregated significant power to the Minister for the Environment. The amendments to roll-back those particular changes are welcomed. EDS also strongly supports the proposals for improving freshwater management included in the Bill.

2.2. As outlined in Annexure A, we have identified a number of other changes that we consider should also be made in order to further improve RMA processes. In particular, EDS still supports all of the amendments identified as "Tranche 1" in Annexure A being included in the Bill, if they are likely to receive cross-party support.

2.3. Where this cannot be achieved (or it is considered that an amendment should not be included in the Bill for other reasons), EDS maintains the view that all the remaining amendments included in Annexure A should still be pursued at the appropriate time. This may be either via the Government's current review of the overall resource management system, or another amendment Bill in advance of that review being completed.

3. Amendments from 2018 Analysis included in the Bill

3.1. The Government has stated that the Bill not only seeks to repeal some of the changes made by the RLAA 2017 but that its objectives include reducing complexity, increasing certainty, restoring public participation opportunities, and improving RMA processes.

3.2. Consistent with that objective and for the reasons outlined in the 2018 Analysis, EDS supports the inclusion of the following proposed changes in the Bill:

- Reversing the change to the subdivision presumption in s 11 (clause 6).
- Renaming the "Principal Environment Judge" to "Chief Environment Judge" (clause 7, clauses 39 to 45 and clauses 47 to 52).
- Repealing the current restrictions in s 95A precluding notification of certain applications for subdivision and residential activities (clauses 24 and 25).
- Repealing the current restrictions in s 120(1A) and s 120(1B) precluding appeal rights for applications relating to certain subdivision or residential activities (clause 26).
- Enabling acting Maori Land Court Judges and acting District Court Judges to be appointed as alternate Environment Judges (clauses 37 and 38).
- Enabling retired Environment Judges (who are not already Maori Land Court Judges or acting Maori Land Court Judges, District Court Judges or acting District Court Judges) to be appointed as alternate Environment Judges (clauses 37 and 38).
- Repealing ss 360D, 360G and 360H (clause 71).

4. Amendments from 2018 Analysis not included in the Bill

4.1. Not all of the amendments identified as "Tranche 1" in the 2018 Analysis have been included in the Bill. EDS still considers that all 32 amendments identified in that Analysis would improve the RMA's effectiveness and workability. We also consider that collectively, these changes will help ensure that the RMA finally delivers on its promise to achieve better environmental outcomes.

4.2. That said, EDS acknowledges that there may be several reasons why it is not appropriate or possible for a particular amendment to be included in the Bill (whether that amendment was identified as "Tranche 1" or "Tranche 2" in the 2018 Analysis). For example, we anticipate that some of the "Tranche 1" amendments (and likely all of those identified as "Tranche 2") have rightly not been included in the Bill, as it is considered that more work needs to be done in order for the amendment to be passed with cross-party support.

4.3. While we accept that outcome, EDS maintains the view that all the remaining amendments included in Annexure A should still be pursued at the appropriate time. This may be either:

- As part of the Government's current review of the overall resource management system, or
- Via another bill to amend the RMA, in advance of that review being completed.

4.4. Either way, it is important that those further suggested amendments from the 2018 Analysis are not forgotten and set aside, simply because they were not progressed via the Bill. They should be allocated for consideration in another workstream, to ensure that they do not "fall off the radar".

4.5. We comment further on the key suggested amendments from the 2018 Analysis which have not been included in the Bill as follows.

Repeal s 360(da) (Annexure A, line 5)

4.6. Section 360(da) provides for the Minister to prescribe the content (including conditions) of water permits and discharge permits. EDS considers this provision should be repealed, as it is an inappropriate aggregation of power in the Minister that was introduced by the RLAA 2017. It is also unnecessary in light of the programme of freshwater reforms that the Government is now pursuing.

Repeal s 41D(1)(d) (Annexure A, line 6)

4.7. This provision limits public participation in the resource management process, by enabling a submission to be struck out (either before, during or after a hearing) on the basis that it is not supported by sufficiently independent, expert evidence.

4.8. Public participation is a fundamental cornerstone of the RMA. If purported expert evidence is not sufficiently independent nor prepared by an expert, EDS considers this should go to the weight that the evidence is given, rather than providing a ground for the whole submission to be struck out. In this way, persons taking the time to prepare a submission will retain the right to have their submission considered, save for the other exceptions already contained in s 41D(1).

Amend s 120 and/or s 310 (Annexure A, line 15)

4.9. As currently drafted, the RMA does not provide for the Environment Court to hear challenges to notification decisions. The RMA was previously amended to enable the Court to determine such challenges, from a date to be introduced by Order in Council. However, this provision was revoked by the RLAA 2017 before such an Order In Council was ever made.

4.10. EDS considers that the Environment Court should be empowered to determine issues regarding notification decisions, in order to:

- Ensure RMA decision making processes follow constitutional norms and include standard appeal rights;
- Restore the proper role and scope of jurisdiction of the Environment Court; and
- Ensure the quality of first-instance decision making.

4.11. EDS notes that the Minister sought Cabinet approval to introduce such an amendment[2], on the basis that once it was agreed to in principle, the details would then be considered by the Cabinet Legislation Committee prior to introduction of the Bill. EDS considers that if it is not possible for this amendment to be progressed through the Bill, it should instead be advanced at the next available opportunity.

Repeal ss 87AAB, 87BA and 87BB (Annexure A, line 16)

4.12. These sections unnecessarily complicate the administration of the Act with the inclusion of "deemed permitted boundary activities" and "deemed permitted marginal or temporary activities". Both concepts were introduced into the RMA by the RLAA 2017.

[2] *Cabinet paper 1 – Proposed Resource Management Amendment Bill: Stage 1 of a resource management system review,* at page 11.

4.13. EDS considers that these are novel, uncertain and confusing concepts, which give consenting authorities an inappropriate level of discretion and add complexity to the Act. Further, the inclusion of these provisions limits public participation, because a consent authority can effectively "override" the rights of potentially affected parties by determining that an activity does not require consent, even though it infringes a plan rule.

4.14. We note that the Minister sought Cabinet approval to amend Part 3 of the RMA[3], to at least partly address the uncertainty that these provisions have created. His proposal was to clarify the status of "deemed permitted boundary activities" and "deemed permitted marginal or temporary activities".

4.15. In our view, while such clarification would be useful, the better solution is to repeal these provisions entirely. If there is insufficient support to achieve that outcome via the Bill, EDS considers that this proposal should nevertheless also be progressed at the next available opportunity.

5. Provisions included in the Bill not addressed in 2018 Analysis

5.1. The Bill includes a number of amendments to address matters that were not included in the 2018 Analysis. EDS wishes to comment on two of those matters in detail, being the proposals to introduce increased enforcement measures and improve freshwater management.

Increased enforcement measures

5.2. EDS supports the following proposals from the Bill:

- Strengthening the current enforcement regime, in particular by empowering the Environmental Protection Agency to initiate, assist with and intervene in enforcement action.
- Requiring Councils to report on enforcement actions taken.
- Providing that convicted defendants can be ordered to contribute towards the costs of prosecution.
- Increasing the statutory limitation period from 6 to 12 months and raising maximum infringement fees.

5.3. EDS is aware from its own experience and reports that it has undertaken[4] that enforcement of the RMA and resource consents varies markedly between Councils. This undermines the integrity of the RMA. Outsourcing compliance, monitoring and enforcement to an independent national agency will improve first, the number of enforcement actions and basis on which those are brought and, second, the effectiveness and transparency of that enforcement. This, combined with the other proposals outlined above, will assist to deter breaches of the RMA.

5.4. However, EDS considers that these amendments could go further. For example, EDS would support the RMA requiring that resource consent applications (including to re-consent a proposal) be declined where the applicant or associated party has a history of RMA offending. This would allow Councils to consider the likelihood that conditions of consent would be

[3] Ibid, at pages 9 to 10.

[4] See for example Dr Marie Brown's report *Last Line of Defence: compliance, monitoring and enforcement of New Zealand's environmental law*, February 2017.

complied with when processing applications. It would also act as a deterrent for recidivist offenders, who would find themselves unable to obtain further consents should they intentionally and repetitively breach the RMA.

Improving freshwater management

5.5. EDS welcomes the progress being made by the Government in improving freshwater management. EDS strongly supports the inclusion of a new planning process for freshwater in the RMA as proposed in the Bill, in conjunction with several of the measures included in the Ministry for the Environment's *Action for Healthy Waterways* (**Discussion Document**)[5]. We consider that these are both positive steps towards making the nationwide improvements in freshwater quality that are so urgently required.

5.6. More specifically, EDS supports all aspects of the new planning process for freshwater that are included in the Bill, including the following:

- Councils being required to notify changes to their regional policy statements and regional plans (**freshwater planning instruments**) to implement the refreshed National Policy Statement on Freshwater Management by 31 December 2023 and make final decisions on those changes by 31 December 2025.

- The Minister appointing a current or retired Environment Court Judge as the Chief Freshwater Commissioner (**CFC**).

- The CFC determining the timing and composition of freshwater hearings panels, as appropriate to the freshwater planning instrument in respect of which submissions are to be heard.

- Freshwater hearings panels (**Panels**) comprising up to five freshwater hearings commissioners, with the ability to direct conferencing of experts, appointing of special advisors, cross-examination and mediation.

- Panels being required to provide recommendations to the relevant council on submissions and any related freshwater planning matters and being able to recommend changes to the freshwater planning instrument, including changes which are out of scope.

- Councils being required to make decisions on the Panel's recommendations within 20 working days and being able to accept or reject those recommendations, with reasons.

- Restricted rights of appeal from the Council's decision on the Panel's recommendations, with a merits appeal to the Environment Court only available where the recommendation is rejected and appeal to the High Court (on points of law only) where the recommendation is accepted.

- The repeal of the Collaborative Planning Process, as introduced by the RLAA 2017, which would still allow councils to engage in bespoke collaborative processes at their discretion.

5.7. EDS considers that a further important amendment should be included in the Bill, to ensure that the relevant Minister (currently the Minister for the Environment) has jurisdiction to "call

[5] As outlined in EDS's detailed submission on the Discussion Document, 31 October 2019.

in" a request for the preparation of or change to a regional policy statement as a proposal of national significance and refer this to a Board of Inquiry or the Environment Court for determination. This is currently precluded as a result of the definition of "matter" in section 141 RMA and has arisen as a direct issue in respect of Plan Change 2 to the Horizons Regional Council's One Plan.

5.8. We also consider that in conjunction with the proposals for improving freshwater management included in the Bill, there is an urgent need for a Freshwater Commission to be established as a stand-alone entity focused on assisting regional councils to implement the reforms by providing scientific advice, support funding, plan-making advice and (where required) direct Ministerial interventions. This is addressed in more detail in our submission on the Discussion Document.

6. Further amendments to the Bill to address climate change

6.1. EDS considers that the following amendments should also be included in the Bill, in order to ensure that local authorities can properly consider and address climate change issues:

- Add "the mitigation of effects on climate change arising from discharges of greenhouse gasses into air" (or words to similar effect) as a matter of national importance to be recognised and provided for in s 6.

- Repeal ss 70A and 104E, both of which currently exclude local authorities from having regard to the effects of greenhouse gas discharges on climate change, when making plan rules or considering applications for discharge or coastal permits. These provisions were both introduced by the Resource Management (Energy and Climate Change) Amendment Act 2004.

6.2. It is now well accepted within the scientific and wider community that human activity has already had irreversible effects on climate change. New Zealand's Prime Minister memorably described climate change as her generation's "nuclear free moment" in the lead-up to the 2017 general election.

6.3. In response, the Government has introduced a range of measures designed to reduce New Zealand's greenhouse gas emissions and increase our resilience to climate change. This has included the introduction of the Climate Change Response (Zero Carbon) Amendment Bill (**Zero Carbon Bill**), which (among other matters):

- Provides a framework for reducing emissions by 2050; and

- Establishes an independent Climate Change Commission.

6.4. As identified in EDS's submission on the Zero Carbon Bill, the amendments noted in paragraph 6.1 above are necessary in order to ensure that the RMA is consistent with the Zero Carbon Bill, once that is enacted. Ensuring that appropriate climate change mitigation and targets/budgets are embedded in the RMA involves[6]:

> "*considering the insertion of climate change mitigation into Part 2 of the Act, clarifying the ability to create national policy statements on the climate, and the creation of national environmental standards. In particular, the Bill could remove*

[6] See EDS's submission on the Zero Carbon Bill, 12 July 2019, at page 8.

the decision-making restrictions on local government in ss 70A and 104E of the RMA. At present, the Bill provides generally that targets and budgets are able to be (but do not have to be) considered under other frameworks, but under ss 70A and 104E of the RMA (for local government, at least) they explicitly cannot *be considered. This will create an anomalous situation that requires reconsideration and amendment. One of the key rationales for the RMA restrictions on local government jurisdiction was that there was no national level plan/policy in place to create local consistency. With targets, budgets, and emissions reduction plans, that will no longer be the case. A meaningful response to climate change is urgent, and legislative impediments to councils addressing mitigation need to be removed.*"

7. Concluding statements

7.1. We again thank the Environment Select Committee for the opportunity to submit on this Bill. We are pleased to see that the Government is taking action to improve the workability and coherence of the RMA, in advance of the outcomes of the wider review of the overall resource management system that is currently underway. We also welcome the chance to further contribute to a constructive debate about potential improvements. We wish to be heard in relation to our submission.

ANNEXURE A

2018 ANALYSIS OF REQUIRED RMA REFORMS BY EDS AND BERRY SIMONS

BERRY SIMONS / EDS ANALYSIS OF RESOURCE MANAGEMENT AMENDMENTS TO REMOVE OBJECTIONABLE CHANGES AND IMPROVE WORKABILITY

19 February 2018

	RMA Provision	Purpose of proposed amendment	Rationale	Category[7]
Remove Ministerial power to inappropriately influence content of RMA planning instruments and processes				
1.	Repeal section 360D	Remove the Ministerial power to override council functions and plan provisions by regulation.	This amendment: • Delivers on Labour's promise to repeal this "draconian" power. • Prevents significant power being aggregated in the Minister for the Environment.	
2.	Amend sections 58B to 58J and consequential amendments	Rename "national planning standards" as the "national planning template".	This amendment: • Delivers on Labour's promise to stop the instrument "extending inappropriately to the content and substantive provisions of plans." • More appropriately reflects what the scope of the instrument should be, i.e. truly a "template" document that provides consistency and clarity both within and between planning documents.	

[7] The proposed amendments are colour coded according to priority into one of three categories as follows:

Tranche 1 Reforms: which represent relatively straightforward amendments which can be passed following minimal consultation and likely with little opposition in order that the worst RLAA provisions can be reversed as soon as possible and the potential damage of those amendments can be minimised; The majority of these reforms involve removing objectionable changes made to the RMA and other legislation as a result of the Resource Legislation Amendment Act 2017 ("RLAA"). They can be progressed without the need for significant debate or discussion, on the basis that they fall into one (or more) of the following categories:

- They remove RLAA amendments that are so objectionable they should be immediately reversed (the low-hanging "rotten" fruit");
- The Government clearly has a mandate to make the amendment, based on Labour's Manifesto;
- The amendment will not affect the architecture of the RMA or pre-empt the form of any future reform; or
- The amendments does not carry any significant political risk and there is no reason for delay.

Tranche 2 Reforms: which address more controversial or complex amendments requiring more consideration by officials, consultation and political engagement.

	RMA Provision	Purpose of proposed amendment	Rationale	Category[7]
			• Avoids having "national policy statements" and "national planning standards" within the RMA, both of which would be referred to as "NPS" and would inevitably create confusion. • Is consistent with earlier advice to the Minister from the Land and Water Forum.	
3.	Repeal sections 58C(2), (3) and (4)	Remove the ability for national planning standards to: (a) Duplicate or stand in the place of National Policy Statements. (b) Specify objectives, policies, methods (including rules) and provisions (other than definitions) to be included in plans. (c) Specify objectives, policies and methods (but not rules) to be included in regional policy statements. (d) Direct local authorities to include specific provisions in their policy statements and plans (other than definitions).	These amendments: • Deliver on Labour's promise to stop the instrument "extending inappropriately to the content and substantive provisions of plans." • More appropriately reflect what the scope of the instrument should be, i.e. truly a "template" document that provides consistency and clarity both within and between planning documents. • Appropriately preserve the ability for decision making at a local level, which was one of the cornerstones of the RMA as first enacted.	
4.	Repeal sections 87AAC(1)(a)(ii) and 360G	Remove the Ministerial power to make regulations identifying activities (in addition to controlled activities) that are to be subject to the fast-track consent process.	This amendment: • Prevents significant power being aggregated in the Minister for the Environment. • Avoids the potential for activities to be inappropriately fast-tracked, i.e.; fast decisions at the expense of good decisions. • Avoids the potential for a lower level of information requirements to be prescribed and therefore impact on the quality of decision making.	

	RMA Provision	Purpose of proposed amendment	Rationale	Category[7]
5.	Repeal section 360(da)	Remove the Ministerial power to prescribe the content (including conditions) of water permits and discharge permits.	This amendment: • Prevents significant power being aggregated in the Minister for the Environment. • Appropriately preserves the ability for decision making at a local level, which was one of the cornerstones of the RMA as first enacted.	
Remove objectionable limits to public notification and participation				
6.	Repeal section 41D(1)(d)	Remove the ability for an authority to strike out a submission on the basis that it is supported only by evidence that, though purporting to be independent expert evidence, has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert evidence on the matter.	This amendment: • Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, by ensuring that consent authorities consider all evidence before them and apply appropriate weighting to that evidence, depending upon the particular circumstances. • Avoids creating further uncertainty and complexity within the RMA, through the introduction of novel legal concepts that will undoubtedly have to be tested via the Courts.	
7.	Amend sections 95A to 95E and consequential amendments	Remove the restrictions on notifying applications for Boundary Activities, Residential Activities and Subdivision.	This amendment: • Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, by ensuring resource consent applications can be notified for submission where this is appropriate.	
8.	Repeal section 360H and consequential amendments	Remove the ability to introduce regulations prescribing: (a) Activities which must be processed without notification; and (b) Who may be considered an "affected party" for the purposes of notification.	This amendment: • Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, by ensuring resource consent applications can be notified for submission where this is appropriate. • Prevents significant power being aggregated in the Minister for the Environment.	
Ensure RMA practices and procedures are fair and robust, and that they are subject to sufficient safeguards				
9.	Repeal section 80A and Part 4, First	Remove the Collaborative Planning Process ("CPP") as an alternative	This amendment:	

	RMA Provision	Purpose of proposed amendment	Rationale	Category[7]
	Schedule	plan making process.	• Delivers on Labour's promise to rectify the current lack of safeguards to ensure that single-step processes are fair and robust, when appeal rights are abrogated. • Avoids unnecessary complexity and duplication of processes within the RMA, as the current Schedule 1 process contains sufficient flexibility to follow a similar process to that outlined for the CPP, without that being set out in additional statutory provisions. • Ensures that the plan making process cannot be "captured" by vested interests / "the loudest voices", as could currently occur under the CPP.	
10.	Repeal sections 80B and 80C and Part 5, First Schedule	Remove the Streamlined Planning Process ("SPP") as an alternative plan making process.	This amendment: • Delivers on Labour's promise to rectify the current lack of safeguards to ensure that single-step processes are fair and robust, when appeal rights are abrogated. • Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, which were cornerstones of the RMA as first enacted, by ensuring there is sufficient time for parties to participate and be heard in plan making processes. • Avoids unnecessary complexity and duplication of processes within the RMA, as the current Schedule 1 process contains sufficient flexibility to follow a similar process to that outlined for the SPP, without that being set out in additional statutory provisions. • Prevents significant power being aggregated in the Minister for the Environment, as would currently occur under the SPP.	
11.	Repeal or amend Part 6AA (Sections 140 to 150AA), in particular sections 149J(3)(b) and 149R(1)	Remove Part 6AA: Proposals of National Significance, or in the alternative and, as a minimum: (a) Require Boards of Inquiry appointed under Part 6AA to be chaired by a current, former or retired Environment Court Judge; (b) Reinstate the requirement for	This amendment: • Delivers on Labour's promise to rectify the current lack of safeguards to ensure that single-step processes are fair and robust, when appeal rights are abrogated. • Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, by ensuring that there is sufficient time for parties to participate and be heard on applications for proposals of national significance (rather than being subject to a nine month time frame).	

	RMA Provision	Purpose of proposed amendment	Rationale	Category[7]
		Boards of Inquiry to produce draft reports; and (c) Repeal (or extend) the 9 month time frame that applies to Boards of Inquiry.	• Avoids unnecessary complexity and duplication of processes within the RMA, as such proposals are more appropriately heard by the Environment Court. • Ensures the RMA decision making processes follow constitutional norms / include standard appeal rights – i.e. a first instance decision followed by the right to a full merits appeal. • Restores the proper role and scope of jurisdiction of the Environment Court, by appropriately recognising its value and institutional knowledge, capabilities and experience as a specialist Court. • Restores the proper role of the Environment Court, by requiring that Boards of Inquiry must be chaired by a current, former or retired Environment Court Judge, if they are maintained (rather than the Minister having the discretion to appoint a High Court Judge as chair, or even a chair who has no legal qualifications at all).	
Restore the proper role and scope of jurisdiction of the Environment Court				
12.	Amend section 120(1A) and consequential amendments	Remove the restrictions on appealing against decisions regarding Boundary Activities, Residential Activities and Subdivision.	This amendment: • Delivers on Labour's promise to reverse appeal rights being curtailed to the detriment of adversely affected private parties, councils, communities and the environment. • Delivers on Labour's promise to rectify the current lack of safeguards to ensure that single-step processes are fair and robust, when appeal rights are abrogated. • Ensures the RMA decision making processes follow constitutional norms / include standard appeal rights – i.e. a first instance decision followed by the right to a full merits appeal. • Restores the proper role and scope of jurisdiction of the Environment Court, by appropriately recognising its value and institutional knowledge, capabilities and experience as a specialist Court. • Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, by ensuring parties (including applicants) have access to appropriate appeal rights.	
13.	Repeal section	Repeal the restriction on appealing	As for (12) above.	

	RMA Provision	Purpose of proposed amendment	Rationale	Category[7]
	120(1B)	matters not raised in an original submission.		
14.	Amend section 251 and consequential amendments	Rename the "Principal Environment Judge" to "Chief Environment Judge".	This amendment: • Recognises that the head of the Environment Court performs the same role and should be acknowledged in the same manner as the heads of other Courts (for example, the Chief Employment Court Judge, Chief District Court Judge and Chief High Court Judge). • Restores the proper role of the Environment Court, by appropriately recognising the status and role of its head Judge.	
15.	Amend sections 120 and / or 310	Provide the Environment Court with jurisdiction to hear challenges to notification decisions by way of a merits appeal.	This amendment: • Ensures the RMA decision making processes follow constitutional norms / include standard appeal rights – i.e. a first instance decision followed by the right to a full merits appeal. • Restores the proper role and scope of jurisdiction of the Environment Court, by recognising that it is the most appropriate forum for considering challenges to notification decisions. • Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, by ensuring that there is an accessible and lower-cost avenue for challenging notification decisions.	
Remove the introduction of novel, uncertain and confusing concepts				
16.	Repeal sections 87AAB, 87BA and 87BB and consequential amendments	Remove: (a) Deemed Permitted Boundary Activities; and (b) Deemed Permitted Marginal or Temporary Activities.	This amendment: • Avoids creating further uncertainty and complexity within the RMA, through the introduction of novel legal concepts that will undoubtedly have to be tested via the Courts. • Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, by ensuring resource consent applications can be notified for submission where this is appropriate.	
Protect environmental bottom lines				
17.	Amend section 11	Reinstate the presumption that subdivision can only be undertaken if expressly allowed by rule in a	This amendment: • Ensures that environmental bottom lines or limits can be maintained by	

	RMA Provision	Purpose of proposed amendment	Rationale	Category[7]
		District Plan or a resource consent.	appropriately regulating subdivision and development activity. • Appropriately restores the presumption that subdivision applications require a resource consent. • Ensures that the effects of subdivision are addressed strategically and as an integrated whole, not on a piecemeal basis.	
18.	Amend sections 30 and 31 and consequential amendments	Reinstate the previous sections 30(1)(c)(v), 30(1)(d)(v) and 31(1)(b)(ii), which provided for regional council and territorial authority functions relating to the control of hazardous substances.	This amendment: • Ensures that environmental bottom lines or limits can be maintained by appropriately regulating the storage and use of hazardous substances. • Addresses a potentially unintended consequence of the RLAA amendments, which would leave local authorities unable to control any effects arising from the storage and use of hazardous substances.	
19.	Amend section 44A	Remove the ability for a national environmental standard ("NES") to provide that a plan rule can be more lenient than an NES standard.	This amendment: • Provides for environmental bottom lines or limits to be set and maintained through NES. • Ensures that NES remain effective and cannot be undermined by plan provisions. • Ensures plans restrict development to within sustainable limits, consistent with the RMA's sustainable management purpose.	
20.	Amend section 104	Insert a requirement that in considering a resource consent application, decision-makers must "give effect to" or "implement": (a) A national environmental standard; (b) Other regulations; (c) A national policy statement; (d) The New Zealand Coastal Policy Statement;	This amendment: • Addresses the lacuna in the implementation and application of environmental bottom lines in the RMA, whereby resource consents can be granted for activities that will breach environmental bottom lines set through national planning documents. It is especially significant in the context of water consents where at present decision-makers need only "have regard" to the NPS-FWM.	

	RMA Provision	Purpose of proposed amendment	Rationale	Category[7]
		(e) A regional policy statement; and (f) A plan.		
Protect Urban Trees				
21.	Amend section 76(4C)	Insert the following into the definition of "group of trees": (a) All trees of an identified indigenous species in a defined area or specific planning zone (for example, all Pohutakawa with the coastal environment line); and (b) All trees in a named ecosystem, habitat or landscape unit, or ecotone (for example, all indigenous trees lining a stream corridor).	This amendment: • Delivers on Labour's promise to allow Council's on behalf of their communities, to choose how they protect their own significant local trees, especially against development pressures. • Delivers on Labour's promise to ensure that significant urban trees have a proper level of protection.	
Miscellaneous RMA amendments				
22.	Amend sections 30 and 31 and consequential amendments	Insert the following into sections 30 and 31: "*(aa) The establishment implementation and review of objectives, policies and rules to achieve the reductions in carbon emissions required to contribute to a target of holding the increase in global average temperature below 2 degrees above*	This amendment: • Ensures local authorities are able to contribute to the global effort to maintain a safe climate through their planning and decision-making roles. • Allows for the effects of an activity on climate change to be taken into account when considering whether the activity should be authorised under the RMA.	

	RMA Provision	Purpose of proposed amendment	Rationale	Category[7]
		pre-industrial levels."		
23.	Amend section 36	Insert: (a) A power to charge for monitoring permitted activities to any permitted activity; and (b) Criteria for determining when or which persons carrying out permitted activities will be subject to the costs of permitted activity monitoring.	This amendment: • Allows local authorities to ensure that the permitted activity standards set in their plans are being complied with.	
24.	Amend section 43A	Require that rules and standards in an NES must give effect to any relevant national policy statement.	This amendment: • Ensures there is consistency between the objectives and policies that are established for nationally significant issues, and the rules that are intended to implement those objectives and policies. This is consistent with the relationship that exists between regional policy statements and regional and district plans at a local government level.	
25.	Amend sections 104(1)(ab), 168A(3A) and 171(1B)	Define the terms "offset" and "compensate" in (a) a biodiversity context and (b) in other circumstances, as they are used in these provisions.[8]	This amendment: • Assists to clarify the amendments introduced by the RLAA, which require decision makers under the RMA to consider any measure offered by an applicant to offset or compensate for the environmental effects of a proposal. • Ensures that the RLAA amendments are applied in a consistent manner by all local authorities.	
26.	Repeal sections 360A to 360C	Remove the ability for the Minister to recommend the promulgation of regulations that amend regional plans in relation to aquaculture activities.	This amendment: • Prevents significant power being aggregated in the Minister for the Environment. • Delivers on Labour's promise to preserve rights of public participation	

[8] For completeness it is noted that the meaning of these terms in the biodiversity context will potentially be addressed in the draft Biodiversity National Policy Statement produced by the current Biodiversity Collaborative Group.

	RMA Provision	Purpose of proposed amendment	Rationale	Category[7]
			and access to environmental justice, which were cornerstones of the RMA as first enacted, by ensuring that parties have an appropriate opportunity to be heard in respect of aquaculture activities. • Appropriately preserves the ability for decision making at a local level, which was one of the cornerstones of the RMA as first enacted. • Avoids unnecessary complexity and duplication of processes within the RMA, as such proposals should go through the normal resource consent procedures.	
27.	Repeal or amend clause 5A, 6A and amend clause 7, First Schedule	Either: (a) Remove the ability for a proposed change or variation to a policy statement or plan to be limited notified, where all "directly affected" persons can be identified; or (b) Provide appropriate safeguards as to the use of the limited notification procedure, by providing a definition of "directly affected" and setting criteria for local authorities to use in applying that definition.	This amendment: • Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, which were cornerstones of the RMA as first enacted, by ensuring that parties have an appropriate opportunity to be heard in respect of all plan changes. • Assists to clarify the amendments introduced by the RLAA, which provide for a proposed change or variation to a policy statement or plan to be limited notified, where all "directly affected" persons can be identified. • Ensures that the RLAA amendments are applied in a consistent manner by all local authorities.	
Regulations to be introduced under the RMA				
28.	Activate sections 87E(6A) and 360(1)(hm)	Set the threshold investment amount for a proposal, above which the consent authority must grant a request for direct referral.	This amendment: • Restores the proper role and scope of jurisdiction of the Environment Court, by ensuring applicants can automatically access that forum with proposals that require investment above a specified threshold amount.	
Remove RLAA amendments made to the Conservation Act 1987				
29.	Amend section 49 of the Conservation Act 1987	Increase the time frame for interested party comments on concession applications from 20 to	This amendment: • Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, by allowing sufficient time for	

	RMA Provision	Purpose of proposed amendment	Rationale	Category[7]
		30 working days.	parties to comment on concession applications.	
Remove RLAA amendments made to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 ("EEZ")				
30.	Amend sections 37A to 37G of the EEZ	Amend the process for initiating preparation of a national policy statement under the EEZ to mirror that for preparing a national policy statement under the RMA.	This amendment: • Delivers on Labour's promise to preserve rights of public participation and access to environmental justice, by providing appropriate opportunity for public input on the development of national policy statements under the EEZ. • Prevents significant power being aggregated in the Minister for the Environment	
31.	Repeal or amend section 52 and associated provisions of the EEZ	Require publicly notifiable section 20 applications under the EEZ to be heard by the Environment Court rather than a Board of Inquiry, or in the alternative and at a minimum: (a) Require Boards of Inquiry appointed under section 52 of the EEZ to be chaired by a current, former or retired Environment Court Judge.	This amendment: • Restores the proper role and scope of jurisdiction of the Environment Court, by recognising that it is the most appropriate forum for considering EEZ applications. • Restores the proper role of the Environment Court, by requiring that Boards of Inquiry must be chaired by a current, former or retired Environment Court Judge, if they are maintained (rather than the Minister having the discretion to appoint a High Court Judge as chair, or even a chair who has no legal qualifications at all).	
Amendments to be made to other legislation				
32.	Urban Development Authority proposal	Ensure that any resulting Bill contains appropriate rights to submit and be heard and appropriate rights of appeal (or direct referral to the Environment Court)	Such provisions would: • Deliver on Labour's promise to preserve rights of public participation and access to environmental justice, by ensuring parties (including applicants) have access to appropriate opportunities to be heard on proposals to develop urban land. • Deliver on Labour's promise to reverse appeal rights being curtailed to the detriment of adversely affected private parties, councils, communities and the environment.	