



LOCAL GOVERNMENT NEW ZEALAND SUBMISSION

In the matter of Resource Management (Restricted Duration of Certain Discharge and Coastal Permits) Amendment Bill

To the Local Government and Environment Select Committee

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Introduction

1. *Local Government New Zealand* (LGNZ) welcomes the opportunity to submit on the Resource Management (Restricted Duration of Certain Discharge and Coastal Permits) Amendment Bill (the Bill).
2. *Local Government New Zealand* is a member based organisation representing all 78 local authorities in New Zealand. LGNZ's governance body is the National Council. The members of the National Council are:
 - Lawrence Yule, President, Mayor, Hastings District Council
 - John Forbes, Vice-President, Mayor, Opotiki District Council
 - John Bain, Zone 1, Deputy Chair, Northland Regional Council
 - Richard Northey, Zone 1, Councillor, Auckland Council
 - Meng Foon, Zone 2, Mayor, Gisborne District Council
 - Jono Naylor, Zone 3, Mayor, Palmerston North City Council
 - Adrienne Staples, Zone 4, Mayor, South Wairarapa District Council
 - Maureen Pugh, Zone 5, Mayor, Westland District Council
 - Tracy Hicks, Zone 6, Mayor, Gore District Council
 - Len Brown, Metro Sector, Mayor, Auckland Council
 - Dave Cull, Metro Sector, Mayor, Dunedin City Council
 - Stuart Crosby, Metro Sector, Mayor, Tauranga City Council
 - Brendan Duffy, Provincial Sector, Mayor, Horowhenua District Council
 - Stephen Woodhead, Regional Sector, Chair, Otago Regional Council
 - Fran Wilde, Regional Sector, Chair, Greater Wellington Regional Council.
3. This submission has been prepared under the direction of the National Council. Councils may choose to make individual submissions. The LGNZ submission does not derogate from these individual submissions.
4. The final submission was endorsed under delegated authority by Lawrence Yule, President, *Local Government New Zealand* and Fran Wilde, Chair, Regional Sector Group.
5. *Local Government New Zealand* wishes to be heard by the Local Government and Environment Select Committee.

Executive Summary

This Bill is unnecessary, will not resolve the issues it purports to address and will have unintended consequences. We consider it will undermine the certainty of investment for infrastructure providers.

Section 107(2) is a necessary tool which enables regional councils to perform their duties and functions under the Resource Management Act (RMA). It is used sparingly by regional councils and there is no evidence that it is used in any way other than intended, ie where there are "exceptional circumstances".

Recommendation

Local Government New Zealand recommends that:

- the Bill not proceed.

Our submission

Regional Councils (including Unitary Councils) are responsible for the sustainable management of resources within their region. These councils work to manage effects on freshwater, land, air and coastal water under the RMA (1991).

Regional Councils also have a broader responsibility of working with district councils in their region, for the economic, social and cultural well-being of their communities.

This Bill proposes that the maximum period for which a discharge permit or coastal permit may be issued pursuant to subsection 2(a) is five years from the date of commencement of the consent under s 116.

The speeches made at the time of the first reading of the Bill set out clearly that the reasons for its initiation are about one particular case - the Tasman Mill (the Mill) and discharges from the Mill into the Tawarea River.

Local Government New Zealand does not support this Bill for the following reasons:

- we generally do not support law change for "one-off" cases
- section 107(2)(a) in its present form is one of the tools Councils need to discharge their devolved responsibilities under the RMA
- many territorial authorities (as infrastructure providers) need this provision in 'exceptional circumstances'
- the provision is at odds with the need to provide certainty for investment in infrastructure
- case law has provided clear determinations of what comprises 'exceptional circumstances'
- there is no evidence that the provision is used any more than rarely by councils.

In relation to the specifics of the Tasman Mill, we are advised by the Bay of Plenty Regional council that:

- the Tasman Pulp and Paper Enabling Act 1954 provided the legislative framework for production to commence
- the joint venture applied to replace their consents to discharge in 2009, having achieved substantial reductions in contaminants in the period since 1995
- the requirements of section 107 now are not met only on the issue of colour and clarity
- the replacement consent was publicly notified and subject to appeal to the Environment Court and subsequently granted for a period of 25 years

- as part of the consent the Tasman Mill discharge has a sinking cap on discharge limits and the joint venture is required to undertake a substantial, and on-going, research programme.

If this Bill is enacted the existing discharge consent for Tasman Mill will not be affected because it has another 22 years to run. Our submission does not focus specifically on the Tasman Mill but on the wider ramifications, if it is enacted.

This Bill is unnecessary

Consent duration is one matter amongst a suite of conditions that may be applied to an activity to avoid, remedy and mitigate adverse effects and ensure that an activity is undertaken in a manner that meets the Purpose of the RMA ie:

Purpose

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

*(2) In this Act, **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 well-being 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.

We note there is considerable case-law regarding how the duration of a resource consent should be decided and the legally established principles are summarised in *Huntly Quarries v Waikato Regional Council A010/08*. The Waikato Regional Council granted a number of consents to Huntly Quarries to continue and expand their operations, which were granted with a term of 25 years. Huntly Quarries appealed requesting a term of 35 years, the maximum permitted by s 123(d). The Environment Court allowed the appeal. The decision was made on the basis that:

- the consent conditions would effectively manage the environmental effects over the term of the consent (while there have been instances of non-compliance in the past the applicant has demonstrated commitment to operate in accordance with the consent conditions)
- the receiving environment is not sensitive and is being managed to avoid adversely affecting the local community
- the applicant is entitled to reasonable certainty and security which should be reflected in the term of the consents.

Also taken into account was the applicant's past compliance record.

In *Royal Forest and Bird Protection Society of New Zealand Inc v Waikato Regional Council* [2007] NZRMA 439, the Court held that reducing the duration of the consent as a means of influencing public authorities to take action on related environmental issues was not appropriate. The duration of consent should be determined primarily by sound resource management practice and the RMA purpose.

This private members Bill assumes that a maximum duration of five years for a consent duration will always be appropriate for applications subject to s107(2)(a). We do not agree with this as we consider the existing RMA provisions provide for an appropriate process to set the duration for a consent which is specific to an activity. A challenge can be made, as a last resort, to the duration via an appeal to the Environment Court.

We consider there will be significant implications, particularly for consent holders with discharges associated with large fixed infrastructure that is difficult to upgrade. This applies particularly, but not solely to infrastructure owned and managed by territorial authorities. Many territorial authorities rely on 'exceptional circumstances', from time to time, to allow for the continuation of basic services, and the case law reflects this. The change proposed by this Bill will impact particularly on stormwater consents. Stormwater discharges from older reticulated networks can have 'first flush' effects that may cause conspicuous changes in the colour or clarity of the receiving waters after mixing in some circumstances (particularly localised intensive rainfall events and where receiving waters are relatively small). While the effect may be temporary until the 'first flush' clears, the discharge of stormwater is not. Often it is difficult to retro-fit measures to older systems to avoid such effects, particularly within a short time frame. Imposing five year periods in such circumstances will draw resources away from improvements that could otherwise be required in accordance with s 107(3) under a longer-term consent, in order to process consent renewals.

The provisions of s 104(2A) specifically require councils to consider the value of the investment for replacement consents. This Bill would appear to be contrary to that provision.

There is no evidence to demonstrate that the provision is either being abused, overused or is being relied on by consent holders to enable poor environmental practice. Regional councils need the full suite of tools available to them under the RMA and this provision is viewed as a 'last resort'. Regional councils advise this provision is rarely used.

The Bill is linked to the decision to approve a discharge rather than the ongoing performance of the consent holder. Limiting the consent duration will impose greater costs through the consent application process rather than providing for longer term consents with review provisions. The resource would be put to better use mitigating the effects of the discharge.

The RMA includes undefined terms of 'special circumstances' and 'exceptional circumstances'. We do not necessarily think this is a problem as, by proxy, definition has been provided by case law to define both these terms and to help establish practice. In the case of s 107(2)(a) there have been a number of substantial cases and principles have evolved. Councils typically rely on these cases in their consideration of subsequent applications for consent.

Submission by *Local Government New Zealand*

IN THE MATTER OF:

Resource Management (Restricted Duration of
Certain Discharge and Coastal Permits) Amendment Bill.

To the Local Government and Environment Select Committee
29 November 2012