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Local Government and Environment Select Committee

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Resource Management Reform Bill 2012

Submissions from ECO

1.0 INTRODUCTION

The Environment and Conservation Organisations of NZ (ECO) is the national alliance of 55 groups with a concern for the environment. ECO has been involved in issues of resource management and land-use policy since its formation over 40 years ago. We were actively involved in processes and policy discussions that led to the RMA and in the debates about the law and the various discussions since then on amendments, and on the performance of the Act. This submission has been prepared by members of ECO Executive and is in line with ECO Policy.

ECO is still trying to follow the detail of the changes in the Bill to the Principal Acts. In cases where we are silent on a provision, we may be still "digesting" the meaning and implications of the changes, though sometime we agree with the changes, but that cannot be assumed from our silence. Sometimes that silence is simply because it is not of primary concern to ECO.

In this submission we have looked at the Bill's own overview of the Bill, and we have made comments on those matters. Then we dive into the clause–by-clause analysis of the Bill.

ECO wishes to be heard in support of this submission. Please contact the ECO office at eco@eco.org.nz on 04-385-7545.

2 An overview of the Bill as from the description of the Bill

Resource Management Reform Bill 2012

"The Bill is an omnibus bill that amends several Acts. As described in the Explanatory notes to the Bill "The Bill amends the Resource Management Act 1991 (the RMA), the Local Government (Auckland Transitional Provisions) Act 2010,and the Local Government Official Information and Meetings Act 1987. It is intended to divide the Bill at the committee of the whole House stage so that—

- Part 1 becomes the Resource Management Amendment Bill:
- Part 2 becomes the Local Government (Auckland Transitional Provisions) Amendment Bill:
- Part 3 becomes the Local Government Official Information and Meetings Amendment Bill."

P2 of the Explanatory Notes also says:

"The objectives of the Bill are to—

- further streamline the resource consent regime:
- streamline the delivery of Auckland's first combined plan:
- improve the quality of local decision-making:
- improve the workability of the RMA through minor and technical amendments."

In ECO's view some of the proposed changes are genuinely an improvement, but others will disadvantage potential submitters and affected communities and /or damage environmental outcomes.

We note that there is a further RM Reform Bill planned for 2013 and that this proposes to remove obligations to maintain the quality of the environment, amenity values and stewardship, all of which we are deeply concerned about. In essence, we disagree with the view of the TAG group that the RMA should be changed to simply rank environmental protection as a matter to be balanced against other considerations such as economic growth, particularly since the environment is the natural systems, services and natural capital on which the continuance of the well being of people and society depend. We urge the Committee to keep this in mind, since there are serious irreversibilities in the functions and services from the environment and human-made capital is not substitutable for natural systems and capital. These are vital concepts which underpin modern thinking about the environment and environment and natural resources policy and which also are the foundation of the idea of environmental bottom lines.

The Main Measures in the Bill and our reactions to these.

In the section below, we address in broad terms our responses to the list of measures recorded in the description of the Bill. Our arguments and detailed submissions follow this section.

The main measures in the Bill are also recorded as to —

1 introduce a 6-month consent time frame for medium-sized projects, with other related improvements (sic) to consent processes.

Summary Submission: ECO's view is that 6 months does not allow sufficient time to consider such projects and that anyway the size in spending and other such measures is not the point. It is environmental impacts that are the point. We have further concerns about the so-called improvements to the consent process

2 to address the remaining inefficiencies following the 2009 amendments that improved consenting processes for small and large projects.

Summary Submission: We have further concerns about the so-called improvements to the consent process

3 require a consent authority to agree to a request for direct referral if regulations are made that establish an investment threshold and if the proposal meets that threshold, unless there are exceptional circumstances.

Summary Submission: The size in spending and other such measures are not the point. It is environmental impacts that are the point. We oppose this provision of direct referral and the foreshadowed criterion for direct referral.

4 make other improvements *(sic)* to the direct referral provisions.

Summary Submission: Many of these so-called improvements consist of further titling of the processes to favour applicants. We consider this unfair to other participants.

5 introduce a one-off streamlined process to assist with delivering the first combined plan for Auckland following the recent governance reforms.

Summary Submission: ECO would like to see greater provision for the Auckland Council to control the appointments of the Board of Inquiry.

6 introduce the ability for regulations to be made that require local authorities to monitor the environment according to specified priorities and methodologies so as to improve the quality of local decision-making.

Summary Submission:

The critical issues here are what the priorities and methodologies may be. Having some degree of uniformity to allow national comparability, usefulness and diligence in environmental reporting would be great, but we can see that these provisions and regulations could be used to suppress monitoring and reporting that a government found unwelcome or embarrassing. Given what we understand of the government's objectives for expanded irrigation, and the apparently intended removal of critical principles in the RMA, we cannot take it for granted that these provisions would be an improvement in the environmental monitoring and reporting.

It will be essential that any regulation is additional to not displacing regional and local reporting.

7 clarify the requirements on local authorities for the analysis that underpins plans and policy statements (as well as regulations), including placing greater emphasis on the need for quantitative assessment of costs and benefits and the need to consider regional economic impact and opportunity costs.

Summary Submission:

In ECO's view any quantitative assessment should require that non-financial and non-economic impacts are also considered, including the opportunity costs for the environment. Such analysis should be required to accompany any economic cost analysis and that qualitative assessments should accompany any quantitative assessments. Many economic assessments fail to capture non-market costs and benefits and yet it is these which are often critical either because the services from the environment are non-rival and non-excludable, or because the costs of projects are often externalised. Conversely, sometimes benefits are externalised.

In previous considerations of Section 32, there has been consideration and rejection of proposals to require more formal assessments of costs and benefits on the grounds that:

a) such studies are often subject to mis-placed concretness,
b) that to do them to professional standards the analysis may be demanding of data and analysis and
c) that the time frames for making these and reporting them may extend time frames for processing the measures.
d) the benefits of such quantitative assessments may be far less than their costs and may bog down this processing, contrary to the objectives of "streamlining".
e) This proposal will marginalise from consideration important qualitative matters.
f) The proposals will be make-work for economists with inadequate value to the community.

8 improve decision-making by local authorities to ensure it is based on adequate, relevant, and robust evidence and analysis, and to increase the level of transparency of decision- making.

Summary Submission: ECO agrees with these goals but as with other situations, not only should the information and evidence and analysis be right, but they need to be of the right kind. The insistence on short time frames, restrictions on grounds for submissions and prescriptions of lop-sided grounds for consideration may undermine the goal of improved decision making.

9 clarify and improve the workability of the RMA through a number of technical changes, including—

• extending access to the emergency provisions under the RMA to all lifeline utilities to enable action to save life and prevent injury or damage to property or the environment without first gaining resource consent.

Summary Submissions: We agree with the sense of rapid emergency response action , but we are concerned that this provision could be exploited to allow by-passing of proper process when "property" may be at risk. We have already supported Catherine Delahunty's Bill to limit the time for "exceptional circumstances" – though we consider that the reduction from five to one year in that case is an inadequate reduction. In our view the "emergency" period should be no more than 30 days, and less in some situations, with any extension needing the approval of Parliament, so that major disasters such as the earthquakes in Christchurch can be accommodated, but other "emergencies" that are one off events are not allowed to exploit the situation.

10 improving *(sic)* the processing of proposals of national significance.

Summary Submissions:

ECO supports greater use of national policy statements and National Environmental Standards, so long as these do not limit the ability of Councils to have higher environmental standards. We can see sense in templates, so long as these are not excessively restrictive.

We do not support central government directing councils what objectives or outcomes to provide for in their Regional or local plans. We have mixed feelings about the provisions for combining plans, but agree this may make things easier for communities and others.

11 clarifying that a tree protection rule can only apply to a tree or group of trees that is specifically identified in a schedule to a plan by street address or legal description of the land, and that a group of trees means a cluster, grove, or line of trees that are located on the same or adjacent allotments identified by precise location:

Summary Submissions: ECO opposes this provision on the grounds that it is designed to make the protection of trees more difficult and expensive and indeed in effect to remove tree protection. As such it fails to account for the environmental contribution of trees and sets of trees, for the amenity values provided by trees and sets of trees, and that this proposed provision will make the transactions costs of retaining trees (deliberately) excessive, unwieldy, and unusable. We know the government wants to get rid of the amenity values principles in the RMA but we oppose that move too. Amenity matters, it is vital to the liveability of a place. Trees also contribute historical depth to a place, as well as their vital ecological functions.

12 removing the requirement for boards of inquiry hearing proposals of national significance and special tribunals hearing applications for water conservation orders under the RMA to comply with the meeting requirements under the Local Government Official Information and Meetings Act 1987.

Summary Submissions: ECO strongly opposes this provision on the grounds that it diminishes open government and transparency. We ask that it be withdrawn.

Part 3 of our Submissions : Clause by Clause Submissions

Part 1 – the RMA

Cl 7 Section 35 amended (Duty to gather information, monitor, and keep records)

(1) Replace section 35(2)(a) with:

"(a) the state of the whole or any part of the environment of its region or district—

"(i) to the extent that is appropriate to enable the local authority to effectively carry out its functions under this Act; and

"(ii) in addition, by reference to any indicators or other matters prescribed by regulations made under this Act, and in accordance with the regulations; and".

Submission: ECO supports this amendment.

Cl 9 9 Section 39 amended (Hearings to be public and without unnecessary formality) 20

After section 39(2), insert:

"(3) Despite subsection (2), nothing in paragraph (c) or (d) of that subsection applies to a board of inquiry appointed under section 149J."

ECO Submission: ECO is concerned that the moves for direct referral and for Boards of Inquiry to be established without prior local or regional council hearings will mean that the parties will not be able to resolve matters prior to the formality of Board of Inquiry hearings. This will in effect "burn off" submitters who have concerns but cannot face the formality of a BoI hearing and do not have the resources for lawyers and expert witnesses.

Cl 10 10 Section 42A amended (Reports to local authority) Replace section 42A(1) with:

"(1) At any reasonable time before a hearing or, if no hearing is to be held, before the decision is made, a local authority (as local authority is defined in section 42(6)(b)) may require preparation

of a report on information provided on any matter described in section 39(1) by the applicant or any person who made a submission.

ECO supports this provision.

Clause 11 Section 53 amended (Changes to or review or revocation of national policy statements)

In section 53, insert as subsection (2): 5

"(2) The Minister may, without using a process referred to in subsection (1), amend a national policy statement to correct minor mistakes or defects in the statement."

ECO can see that such a power may be useful, but we think it also is open to abuse. We have seen within the RMA the debasement of judgements of "significant" to suit applicants and councils who want a quite life, and we can see that ministers may well be tempted to misuse this power. We consider that there should be checks and balances against such misuse, such as a requirement to serve on all the parties involved in the development or submissions on and NPS to be informed of the Minister's intention and to have the opportunity to submit on the question of whether there is

indeed a mistake or defect or not and whether such is or is not minor. There should be some form of appeal or process if there is disagreement on this matter.

Clause 12 Section 76 amended (District rules)

(1) Replace section 76(4A)(a) with: 10 "(a) specifically identified in a schedule to the plan by street

address or legal description of the land, or both, regardless of whether the tree or group of trees is also identified

on any map in the plan; or".

(2) Replace section 76(4B) with: "(4B) In subsection (4A),—

"group of trees means a cluster, grove, or line of trees that are located on the same or adjacent allotments

"urban environment means an allotment no greater than

3 000 m2
4 "(a) that is connected to a reticulated water supply system and a reticulated sewerage system; and

"(b) on which there is—

"(i) a building used for industrial or commercial purposes; or

"(ii) a dwellinghouse.

"(4C) To avoid doubt, each of the following descriptions of a group of trees does not satisfy the identification requirements of subsection (4A)(a):

"(a) all trees of 1 or more named species in a defined area or zone of the plan (for example, all cabbage trees in coastal areas x, y, and z):

"(b) all trees in a class with defined characteristics in a defined area or zone of the plan (for example, all exotic trees over 5 metres high or 800 millimetres in girth in 35 residential zones x, y, and z):

"(c) all trees in a named ecosystem (whether natural or artificial), habitat or landscape unit, or ecotone (for example, all native trees located on the valley floor of the district)."

ECO opposes these provisions because they are designed to raise the transactions costs for tree and ecosystem protection. Trees are vital for well being in cities and towns; they contribute to the historic and amenity character of place; they have vital ecological and biophysical functions and they provide shade and texture in landscapes. Particular species are also important for preservation and protection and we reject the approach in this amendment which seems designed

to look after the interests of developers but no one else. We also oppose moves to remove consideration of amenity values, which we consider are hugely important to people's well being.

Clause 13 Section 87E amended (Consent authority's decision on request)

(1) After section 87E(6), insert:

"(6A) Despite the discretion to grant a request under subsection (5) or (6), if regulations have been made under section m360(hm),

"(a) the consent authority must grant the request if the value of the investment in the proposal is likely to meet or exceed a threshold amount prescribed by those regulations;

ECO opposes clause 13's approach (and that in s 87E and section 360) that process should depend on the level of investment not on environmental and other effects. The RMA is an effects-based Act and it is not fair to others or to the future, to make the choice of process contingent on the investment. Natural capital and biophysical processes may well be impacted, as well as social and cultural impacts, so to make the process dependent on investment is to apply a single criterion, which disregards the primary purpose of the Act and the effects based approach.

It is ECO's view that the foundation of the RMA is about strong sustainability: the idea that we need to maintain the environment and its qualities and functions, and that the pursuit of our wellbeing goals must by the nature of both biophysical limits and good ethics to the future, be contained within these limits. The approach of the TAG group and the Government seems to be to privilege economic growth over the maintenance of the quality and functions of the environment and we reject this. The reasons for our position are that the environment and its biophysical systems are both vital and irreplaceable. It is wishful thinking that we can endlessly convert natural capital into human-made capital. That is neither possible nor ethical and we urge the Select Committee to reject the weak sustainability approach behind the TAG reports recommendations and the Government's approach.

On this basis, ECO recommends that clause 13 and s87E(6)A be deleted from the Bill.

Clause 17 Section 104 amended (Consideration of applications)

"In section 104(2B), after "the scope of a planning document", insert "prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act

2011".

This amendment seems to remove from consideration all planning documents except for those prepared by marine title groups. This seems to be a mistake? It is a major amendment with sweeping effect, and it is not clear to us that this is intended.

We suggest that the language following "insert" above be indeed inserted, but with the words "including any planning document" be inserted before the words prepared by a customary marine title groups..". If such an amendment is not done, then all other planning documents will be disregarded which we doubt is the intention.

Clause 19 Section 133A amended (Minor corrections of resource consents)

In section 133A, replace "15" with "20".

ECO supports this change. We think it reasonable to allow 20 working days.

Clause 28 Section 149R amended (Board to produce final report)

ECO supports these changes to accommodate deadlines for reporting in relation to the holiday period.

Clause 30 Section 149S amended (Minister may extend time by which board must report)

ECO supports this provision.

Clause 33 Section 165ZFE amended (Processing of affected 30 applications)

(1) After section 165ZFE(4), insert:

"(4A) Despite the discretion to grant a request under subsection (4), if regulations have been made under section 360(hm),—

"(a) the regional council must grant the request if the value of the investment in the proposal is likely to meet or exceed a threshold amount prescribed by those regulations;

Clause 38 Section 198C amended (Territorial authority's decision on request)

(1) After section 198C(5), insert:

"(5A) Despite the discretion to grant a request under subsection (text is similar to 33 re 165ZFE (1)(4A(a))

41 Section 198I amended (Territorial authority's decision)

After section 198I(1), insert:..(text is similar to 33 re 165ZFE (1)(4A(a))

Submission: ECO opposes these and all such clauses and asks that they be withdrawn since they undermine the effects-based approach of the RMA, and set investment levels as the basis for deciding process.

44 Section 269 amended (Court procedure)

After section 269(1), insert:

"(1A) However, the Environment Court must regulate its proceedings in a manner that best promotes their timely and cost-effective resolution."

ECO submits that the Government needs to provide more resources for the Environment Court and that fairness and consistency with the Act must be primary requirements.

Trade competitors, surrogates and those who accept funding from trade competitors.

Clauses:

45 Section 274 amended (Representation at proceedings)

48 Section 308A amended (Identification of trade competitors and surrogates)

49 New section 308CA inserted (Limit on representation atproceedings as party under section 274)

50 Section 308D amended (Limit on appealing under this Act)

51 Section 308E replaced (Prohibition on using surrogate)

52 Section 308F amended (Surrogate must disclose status)

ECO submits that these and the other changes that have been made to this and related sections are now so diabolically obscure that with the best will in the world, they cannot be followed. We think the requirements for trade competitors to not be part of the proceedings are fine, but the problems for 3rd parties who may accept funding or help from actual or potential trade competitors simply as part of normal sponsorship or help means that this is too onerous. We submit this needs major reconsideration and that the provisions be made both simple and understandable, neither of which they now are, and this is further complicated by the changes in this Bill.

Clause 61 Section 360 amended (Regulations)

Replace section 360(1)(hk) with:

"(hk) prescribing, for the purposes of section 35(2)(a)(ii),—

"(i) indicators or other matters by reference to which a local authority is required to monitor the state of the environment of its region or district:

"(ii) standards, methods, or requirements applying to the monitoring, which may differ depending on what is being monitored:

"(hl) requiring local authorities to report information gathered under sections 35 and 35A to the Minister, and prescribing the manner and content of, and the time limits for, reporting:

"(hm) prescribing, for the purposes of sections 87E, 165ZFE, 198C, and 198I, threshold amounts and matters to which an authority is required to have regard in determining whether exceptional circumstances exist:".

Generally ECO supports there regulations so long as they do not limit the ability of Councils to monitor matters that the Govenrment has not prescribed, as well.

Clause 69 Section 32 replaced (Consideration of alternatives, benefits, and costs)

Replace section 32 with:

"32 Requirements for preparing and publishing evaluation reports Section 32 replaced (Consideration of alternatives, benefits, and costs)

"(1) An evaluation report required under this Act must

"(a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and

"(b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by

"(i) identifying other reasonably practicable options for achieving the objectives; and

"(ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and

"(iii) summarising the reasons for deciding on the provisions; and

"(c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

"(2) An assessment under subsection (1)(b)(ii) must—

"(a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for

"(i) economic growth that are anticipated to cease to be available; and

"(ii) employment that are anticipated to be provided or reduced; and

"(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and

"(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

"(3) If the proposal will amend an existing standard, statement, regulation, or plan, the examination under subsection (1)(b) must examine the objectives of both the proposal and the existing standard, statement, regulation, or plan.

"(4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of the region or district that is the subject of the evaluation.

"(5) The person who must have particular regard to the evaluation report must make the report available for public inspection

"(a) as soon as practicable after the proposal is made; or

"(b) at the same time as the proposal is publicly notified.

ECO considers that far from "steamlining" the RMA, this puts a huge burden on councils and others. Cath Wallace, Co-chair of ECO is an professional economist, specialising in the economics of resources management and the environment.

There are methods for investigating and assessing the dollar values of non-market values, just as there are methods for assessing environmental impacts. There is considerable work involved in understanding social and environmental impacts and still more in converting these into a cost-benefit framework. The estimate of effects may need to be done over a longish time period often more than one year because of seasonal effects, so to be done well, these kinds of study need a lot of data, time series and work. We think that these requirements are onerous and that there are relatively few contractors with the capacity to do the work well.

We suggest that the requirement for regional assessments is even more difficult than national cost-benefit analyses, since the structure ofCBA is national welfare, so sorting out regional welfare effects is more difficult.

The economic analyses that are often done tend to give excessive weight to market price values and to ignore the many non-excludable benefits from the environment and amenity, and to disregard externalities. These faulty analyses tend to have a concreteness and precision that beguiles decision makers. Many analyses tend to over-state the benefits of particular projects or industries by implicitly assuming that the resources used would have not other use, and that people would not find other employment in other activities.

We strongly recommend that this modified section 32 be withdrawn and that section 32 A be withdrawn or deleted. We also thus suggest that consequential changes to the Bill be made in accordance with our submission.

ECO recommends that if the provisions for Evaluations and Further Evaluations are retained, then the provision that these be able to be challenged in court be removed as well as the many consequential amendments contained in this Bill. These provisions will bog down all parties in endless arguments about the quality of evaluations. This will drag councils down and others.

Clause 74 Section 52 amended (Consideration of recommendations and approval or withdrawal of statement)

Replace section 52(1) with:

"(1) The Minister—

"(a) first, must consider a report and any recommendations made to him or her by a board of inquiry under section 51; and

"(b) secondly, may—

> "(i) make any changes, or no changes, to the proposed national policy statement as he or she thinks fit; or
>
> "(ii) withdraw all or part of the proposed national policy statement and give public notice of the withdrawal, including the reasons for the withdrawal; and

"(c) thirdly, must undertake a further evaluation of the proposed national policy statement in accordance with section 32AA and have particular regard to that evaluation when deciding whether to recommend the statement."

ECO considers that the Board of Inquiry report should stand and the Minister should not have the right to make changes in the way envisaged here. We do not agree with the on-going concentration of powers in Ministers and especially the failure to require that any changes that the Ministers make be consistent with the Act.

Clause 75 Section 61 amended (Matters to be considered by regional council (policy statements))

76 Section 66 amended (Matters to be considered by regional council (plans))

77 Section 74 amended (Matters to be considered by territorial authority)

We recommend that the sub-sections that refer to Ministerial directions be removed.

RE Schedule 1 – the many consequential amendments relating to the requirements for evaluations that should also be deleted.

Time limits

ECO has considerable concern that the many changes to time limits and the requirements for hearings to be completed within 45 or 75 days, etc of notices of application means that the quality of decisions will be compromised, and that particularly the non-professional players, such as affected people and communities will be unable to participate in these tight time frames. We have not had the capacity to work through the full tangle of changes to the time frames in this part of the Bill but observe that community members and associations will find participation is effectively squeezed out.

99 Section 101 amended (Hearing date and notice)

Replace section 101(2) with:

"(2) If the application was not notified, the date for the commencement of the hearing must be within 35 working days after the date the application was first lodged with the consent authority.

ECO suggests that the hearing should be started not completed by this date.

100 Section 103A replaced (Time limit for completion of adjourned hearing)

Replace section 103A with:

"103A Time limit for completion of hearing for notified application

ECO suggests that the hearing should be started not completed by this date.

Clause 100 "103B Requirement to provide report and other evidence before hearing

ECO considers that submitters should have the opportunity to see the Briefs of evidence of the applicant for at least 20 working days before they have to submit their own evidence. Otherwise the time frame is too short to secure experts and to give those experts the opportunity to consider the evidence.

Part 2 of the Bill,

Local Government (Auckland Transitional Provisions) Act 2010

ECO submits that the Auckland Council should determine both the process and the membership of the Board relating to this.

"submission—

"(a) means a written or electronic submission received by

the Auckland Council on the proposed plan; and

"(b) includes a further written or electronic submission on

the proposed plan.

We wonder if there should be provision for oral submissions in this definition?

Clause "122 Audit of evaluation report on proposed Auckland combined plan.

ECO submits that it is the Parliamentary Commissioner for the Environment who should do the audits of the s32 reports, NOT the Ministry for the Environment which lacks the necessary independence of Ministerial influence. The PCE has already made the point to Parliament that she needs more funding and we support this. Extra funding would be needed for this audit task, but that task would have to be funded whomever were to do it, and it is the expertise and independence of the PCE that should be applied here. Such an arrangement would also be consistent with the Environmental Protection and Enhancement Procedures 1987.

Clauses 125-128 Meetings, Hearings, Penalties

ECO is concerned that the time frame for submitters is too tight and the penalties for non-appearance are too harsh. People have jobs and family and other commitments and cannot necessarily rearrange their lives within 10 days, or less if the meetings are convened before the hearings. We urge the Committee to relax these time lines and penalties and to bear in mind that what may work for professionals whose lives focus on these processes will not work for members of the public. People need a bit more time to arrange time off with employers or to find substitute carers, and still more time to find and hire expert witnesses.

Clauses 152-153

ECO considers that submitters and others should be able to take the Board of Inquiry recommendations and the Auckland Council decisions to the Environment Court for *de novo* consideration. We do not accept that ministerially-appointed Boards of Inquiry should displace the Environment Court.

Clause 155 Appointment of the Members of the Board of Inquiry

We reject the insertion of Ministerial power to appoint the members and Chair of the Board of Inquiry. We consider that the Auckland Council should be the BoI or at least have the power to appoint the members and chair of the BoI. The Council is, after all, the elected representative body, and the Ministers should not have this power.

If the committee does leave the power in Ministerial hands, then we support that the Ministers for the Environment and Conservation have this joint power.

Clause "157 When member ceases to hold office

ECO is very wary of the powers in subsection 2 for the Ministers to remove members of Boards of Inquiry and considers that ministers might use these powers to stack the cards in favour of the outcome that the government wants.

Continued..

Part 3

Local Government Official Information and Meetings Act 1987

126 Principal Act

This Part amends the Local Government Official Information and Meetings Act 1987 (the principal Act).

ECO opposes the exceptions to the application of the LGOIMA in this Part.

Schedule 1
New Schedule 4 of Resource Management Act 1991
Schedule 4,
Schedule 1 Information required in application for resource consent

Information required in all applications
In subsection 1(g) the language used is this:

(g) an assessment of the activity against any relevant provisions of a document referred to in section 104(1)(b).

In subsequent subsections there is simply a reference to provisions or rules etc found in "a document".

ECO imagines that the references are really to documents as referred to in S104(1)(b), but the looseness of the language of "a document" is obscure and confusing and may lead to outcomes not envisaged by Parliament.

Assessment of environmental effects

5 Information required in assessment of environmental effects
(1) An assessment of the activity's effects on the environment must include the following information:
(a) if it is likely that the activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity:

ECO submits that the probability of the environmental effects should be estimated, as well as the range of possible effects and separately, the significance of each. The assessment should not be only done if it is likely – because low probability but high impact consequences are very significant too, as are cumulative impacts.

This schedule seems to dilute the RMA's definition of effects.

Schedule 1 re Sched 4
Monitoring and Reporting
1(g) if the scale or significance of the activity's effects are such that monitoring is required, a description of how and by whom the effects will be monitored if the activity is approved:

ECO recommends that 1(g) be amended to include the words "and publicly reporting" after the word "monitored", so that the public has information as well.

(c) any effect on ecosystems, including effects on plants or animals and any physical disturbance of habitats in the vicinity:

ECO recommends two amendments to this subsection.
First, we recommend that the words "in the vicinity" be deleted, since any effects matter and should be considered.
Further, we suggest adding to (c) before the word ecosystems, the words: "environmental processes, natural capital and"

Schedule 2
New Schedule 12 of Resource Management Act 1991

Schedule 12
Transitional provisions for amendments made on or after 1 January 2013

4 Existing rules providing for protection of trees

In ECO's view the existing rules providing for the protection of trees should not be changed, hence we do not support any element of this Bill that changes those rules.

There are many matters in this Bill on which ECO has not commented. Our silence on these matters sometimes reflects the fact that we are still trying to follow what the Bill is doing and the many, many cross references or are still trying to digest the implications of the changes proposed. We may have supplementary submissions on this Bill.

Silence on any matter is not to be taken as assent to that matter.

Finally, ECO would like to be heard in support of this submission. Please contact eco@eco.org.nz or Debby Rosin on 04-385-7545.