Resource Legislation Amendment Bill

Submission by Climate Justice Taranaki Inc.

1. Climate Justice Taranaki Inc. (CJT)[1] is a community group dedicated to environmental health, sustainability and social justice including inter-generational equity. As such, we are extremely concerned about the way the New Zealand government has been systematically weakening the legislative and regulatory regimes needed to safeguard the health and sustainability of our environment and the public's rights to participate in decision-making processes.

2. The Resource Legislation Amendment Bill 2015[2] (RLAB) affects not only the RMA, but also the EEZ and Continental Shelf Act, EPA Act, Reserves Act and Public Works Act. It has wide ranging ramifications.

3. The Environmental Defence Society (EDS) highlighted the *"erosion of environmental bottom lines, enhanced ministerial powers and diminished public participation"* (EDS draft submission[3]), if the RLAB passes through parliament in the current form. CJT is in general agreement with the serious issues EDS pointed out in respect to specific clauses of the Bill and the relief sought.

4. CJT wish to present our proposed additions to the Bill and emphasize our support and objections in the following sections.

5. CJT wish to speak to our submission at any formal hearing.

Proposed Additions

Sustainable Management

6. CJT propose to add two new clauses which **amend RMA section 5(2)(a) and EEZ-CS Act section 10(2)(s)** by deleting *"(excluding minerals)*", so it reads: "*sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations…*" According to the Crown Minerals Act, minerals include all metallic minerals, non-metallic minerals, fuel minerals, precious stones, etc. These should not be excluded from the consideration of sustainability.

7. The French government recently announced that it would use its Energy Transition Act to stop all new hydrocarbon searches[4]. This reflects the country's desire to meet its target of cutting fossil fuels by 30 percent by 2030, and to redirect investments in clean energy and energy efficiency. Clearly the dependence on fossil fuels and other non-renewable minerals is not sustainable. This fact must be acknowledged and taken into account when implementing the RMA, and in the absence of a legislative tool similar to or better than France's Energy Transition Act in New Zealand.

Climate Change

8. CJT propose to: Add a new clause which inserts a new RMA section 7(bc) which reads: "***the effects on climate change***". This would allow all persons exercising functions and powers under the RMA, notably regional councils and territorial authorities, to have particular regard to the effects of the proposed activities on climate change.

9. Add a new clause: "***Repeal section 70A of the RMA***". This section prohibits regional councils from having regard to the effects of greenhouse gases on climate change.

10. Add a new clause which inserts into the EEZ-CS Act section 59(2) a new section 59(2)(ba) which reads *"the effects on climate change of discharging greenhouse gases into the air"*, and another new clause which repeals section 59(5)(b). The two new clauses will enable EPA to consider the effects of the activities on climate change in its decision making. For New Zealand to deliver its commitments made at the UNFCCC COP21[5] in Paris, the effects on climate change must be considered when assessing any activities.

11. Add a new clause to the Bill which repeals the EEZ-CS Act section 59(2)(f) "*the economic benefit to New Zealand of allowing the application*". CJT do not believe that economics should be a consideration for the EPA when assessing consent applications, unless a full, independent cost-benefit analysis including scenarios into the future, is provided.

Nutrient cap from farms

12. CJT propose to expand clause 103 of the Bill to add a new section under RMA s360 which enables the prescription of caps or maximum limits on leaching of nutrients from farms. Excluding stock from water bodies and riparian planting would not be enough to reduce nutrient runoffs and improve water quality significantly. The PCE explained[6], "*'Standard' mitigation techniques such as applying shed effluent as fertiliser on land, keeping stock out of waterways, and riparian planting all help reduce nitrogen losses, but are more effective at keeping phosphorus (and pathogens and sediment) out of waterways…. The complex nature of hydrological systems means that in some areas at least, the effects of land use change will not be fully seen for many years. The legacy of nitrate in groundwater has been termed 'the load to come'."*

Hydraulic Fracturing and Deepwell Injection

13. The US Environmental Protection Agency (EPA) has confirmed cases of groundwater contamination following a five-year study[7]. A panel of scientists[8] who reviewed the report pointed out that, "*Potential impacts on drinking-water resources are site specific, and the importance of local impacts needs more emphasis in the Report. … A conclusion made for one site may not apply to another site."*

14. Many states in the US, Canada and elsewhere have experienced extraordinary increase in seismic activity, linked to either/both fracking and deepwell injection. E.g. in Northeast British Columbia[9]: "*Scientists once thought that hydraulic fracturing wouldn't trigger anything more than microquakes. But now that the technology has set off magnitude 4.4 quakes in Alberta, scientists are grappling to determine what kind of hazard industrial tremors might pose to pipelines, dams and other infrastructure. …Due to limited monitoring, industry and government lack a full understanding of how the wave of quakes is changing the flow of groundwater in the region or the migration of gases such as methane, radon and carbon dioxide into the atmosphere throughout northeast B.C."*

15. In California, the link between deepwell injection and earthquakes has recently been confirmed[10]: "*Based on our empirical results, injection-induced earthquakes are expected to contribute marginally to the overall seismicity in California… However, considering the numerous active faults in California, the seismogenic consequences of even a few induced cases can be devastating."* This is also abundantly true for NZ, where we should adopt a precautionary approach given this evidence of hazard. A GNS report in 2012[11] stated clearly: ***"No seismic monitoring occurs in Taranaki specifically for hydraulic fracturing operations or any other operations associated with oil or gas exploration or production…"*** The report concluded that *"Within the limitations of the seismic monitoring system to detect and locate seismic activity, there is no evidence that hydraulic fracturing activities in Taranaki between 2000 and mid-2011 have triggered, or have had any observable effect on, natural earthquake activity."* A similar

conclusion was made on deepwell injection. How could there be "evidence" when there is no specific monitoring? Clearly a precautionary approach must be applied here.

16. Many jurisdictions, nations and states, notably France[12], New York State[13], Wales[14], Scotland[15], and Tasmania[16], have issued a ban or moratorium on fracking[17] due to concerns over water contamination, public health risks and induced earthquakes. Last year, Germany adopted a Bill which would allow strict fracking trials in geological strata below 3,000 meters and ban it in water supply catchments[18].

17. In New Zealand, at least 22 organisations, including Royal Forest and Bird Protection Society, ECO (Environment and Conservation Organisations Aotearoa), Greenpeace, Rongoa National Body and Ora Taiao (The NZ Climate and Health Council), have called for a nation-wide ban on fracking[19].

18. The Parliamentary Commissioner for the Environment's (PCE) report on Drilling for Oil and Gas[20] fell short of calling for a ban or moratorium on fracking. However, the report highlighted that whilst, "*The impacts of an individual well are generally small – it is the **cumulative effect** of many wells on the landscape, on the **risk to groundwater**, and so on, that matters most. The Resource Management Act has never been well-suited to managing cumulative effects because of the way precedents are created. The straw that breaks the camel's back generally receives consent more readily than the first straw. … Special care must be taken when drilling wells through or near aquifers*". Notably "*companies are not required to have any particular amount of public liability insurance for onshore wells, to cover the cost of any clean up needed if the well fails. Nor have councils required oil and gas companies to pay bonds as conditions in consents. … Under law, once a well has been abandoned and 'signed off' by the High Hazards Unit and the councils, any leaks from the well become the responsibility of the owner or occupier of the land*."

19. It is clear that the risks of drilling, fracking and deepwell injection of wastes, around aquifers, far outweigh the short-term financial gain which is volatile and largely benefit international corporations overseas. This calls for the Precautionary Principle to be applied. Although CJT advocate for a total ban on fracking[21], the new clauses we propose here below will be a step forward, until there is the political will to declare a ban. These are in line with the submission by Guardians of the Aquifer.

20. CJT propose to expand clause 103 of the Bill to add a new clause which enables the insertion of a new section in the RMA to the effect of prohibiting hydraulic fracturing (fracking) and deepwell injection of wastes in or near to aquifers and geological fault lines. Our recommendation is to insert, after the new RMA section 360(1)(hp) re stock exclusion, the following:

    *(hq) prescribing requirements that **Exclusion Zones** prohibiting hydraulic fracturing (fracking) and deepwell injection of wastes be declared—*

    (i) Around aquifers to minimize the possibility of contamination:

    (ii) In the vicinity of geological fault lines to minimize the possibility of induced seismicity:

Support

21. Bill clause 5: CJT support that the management of significant risks from natural hazards be inserted after RMA section 6(g). CJT propose to include the wording "climate change" in this clause to clearly acknowledge the link between the cause and increased frequency of many natural hazards and human induced climate change.

22. Bill clause 26: CJT support that a national environmental standard (NES) may specify how consent authorities must perform their functions in order to achieve the standard. This should provide greater assurance that the NES is indeed reached and achieve consistency across regions.

23. Bill clause 103(3): CJT support the amendment of RMA s 360(1)(bb) to insert $750 as a minimum infringement fee. However, CJT argue that repeated infringements should trigger higher than the usual fee of $750-$1000, and suggest insertion into 360(1)(bb) at the end: "and higher for repeated infringements to a maximum of $5,000". In Taranaki, oil and gas drilling, production and waste disposal (notably landfarming) activities, involving abatement or infringement notices resulting from breaches of resource consents, are common. However, fines are rarely issued and with the low costs of infringement fees, there is little, if any, deterrent from further or repeated non-compliance.

Objections

Slipping Environmental Baselines

24. Bill clauses 11 & 12: CJT strongly object to the repeal of RMA s 30(1)(c)(v) and 31(1)(b)(ii) and the edit of 30(1)(d)(v) which take away the function of regional councils and territorial authorities in "*the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances*".

25. The PCE pointed out in her 2014 report on drilling for oil and gas, "*Under law, the few highly trained inspectors in the High Hazards Unit are responsible for enforcing the controls on hazardous substances at well sites, although this role would be far more sensibly done by regional council staff… those who work in the High Hazards Unit have no mandate for protecting the environment."* While the EPA and High Hazard Unit have some level of control over import of hazardous substances and use within workplace, as well as well integrity, councils are the authorities that have to assess the placement of hazardous facilities, notably oil and gas installations and other heavy industries, in respect to their distances from homes and other sensitive landuse.

26. CJT has provided a detailed submission on the Proposed South Taranaki District Plan 2015, cautioning the inadequate (150-300 metres) or lack of separation distances between such hazardous facilities and sensitive landuse, Coastal Protection Area, Outstanding Natural Features and Landscapes or Significant Waterbodies, Wetlands or Natural Areas[22]. The proposed clauses 11 and 12 would threaten the integrity of these areas of environmental significance, by taking the responsibilities off councils and presumably precluding any opportunities for public participation in decision making.

27. Bill clause 27: CJT strongly object to the amendment of RMA s 43B, which allows a rule or resource consents to be more lenient than a national environmental standard (NES). This clause, if passed, defeats the purpose of the NES which is to set a nationally accepted environmental bottom line or the very minimum standard to be achieved.

28. Bill clause 121: CJT strongly object to the introduction of "fast-track application" by adding sections 87AAC-87AAD to the RMA. In the pursuit of expediency, the "*fast-track option that allows activities that breach a plan rule in a 'marginal or temporary' way to be treated as a permitted activity. A permitted activity is a clearly defined trigger point marking when it is no longer certain an activity will not compromise bottom lines and so requires consent. An exception for 'marginal or temporary' non-compliance erases this bottom line*" (EDS submission).

29. Bill clause 122: CJT object to the insertion of section 87BA to the RMA. Section 87BA does not require assessment of environmental effects (AEE) and applications are 'permitted' as long as the affected property owners have given their consent. Experience from Taranaki landowners[23] and occupiers shows time and time again that petroleum companies and their contractors rarely

provide complete, non-biased information about the activities they seek consent for; or they employ bullying tactics to get landowners and occupiers to consent. Without AEE, there is no basis for proper assessment of the application or assurance that environmental bottom lines are met. AEE must be a requirement in all such cases.

30. Bill clause 122: CJT object to the insertion of section 87BB to the RMA. Section 87BB(1)(c) stipulates that an activity is a permitted activity if "*any adverse effects of the activity on a person are less than minor…*" There is no statutory definition of "*less than minor*" in the RMA. This leaves the decision to open interpretation, subjectivity and easy influence by applicants. A clear definition of the term "minor" with objective indicators is needed to determine whether any adverse effects are less than minor.

31. Bill clause 125: CJT has serious concern over the revised RMA section 95B on limited notification of consent applications which is extremely narrow in who may be notified. Notably there is no mention of government bodies such as the Department of Conservation (DOC) who have the statutory responsibility for protecting threatened species. Excluding DOC from the limited notification process would rule out the specialised knowledge and expertise needed for objective assessment of any potential adverse effects on indigenous and threatened species. DOC itself has warned that the reform may prevent it from doing its job[24].

32. Bill clause 184(1)(c): CJT object to the deliberate exclusion of wastes relating to the exploration, exploitation and associated offshore processing of seabed mineral resources from the definition of dumping. CJT question the justification of this clause and indeed the original EEZ-CS Act section 4 (b)(ii) which excludes mining related wastes from the definition of dumping. CJT seek a clarification as to how this definition relates to the EEZ-CS (Environmental Effects—Discharge and Dumping) Regulations 2015 section 31(d) which classifies "*structures placed for the purpose of mineral exploration*" as a non-notified activity?

33. CJT object to seismic surveys (blasting) being permitted activities and ask that section 7 of the EEZ-CS (Environmental Effects—Permitted Activities) Regulations 2013[25] on seismic surveys be repealed, by way of a new clause in the RLAB. Reputed marine mammal experts have warned repeatedly of the harm and risks of seismic blasting on marine mammals, especially on rare and threatened species.

Authoritarianism, Government Corporatisation & Public Disempowerment

34. Bill clause 52: While CJT support the concept of Collaborative Planning Process (CPP), we are unsure of its effectiveness in delivering a democratic process, and the purpose of the RMA. EDS, in their submission, spelled out their concerns over the shortfalls of the CPP, which we share. As a case in point, CJT was denied stakeholder status and excluded from the regional freshwater and land plan review by the Taranaki Regional Council, despite our request and demonstrable knowledge and concern over the health of our waterways and land degradation. All too often, so-called stakeholder committees are dominated by corporations and those pushing for economic growth, resulting in 'regulatory capture' such as the case of the Crown Minerals Bill amendment[26] and the new MPA Act[27].

35. Bill clause 105: CJT strongly object to the introduction of section 360D to the RMA which gives the Minister power that over-rides local authorities' rules and decisions. This challenges the basic Rule of Law and separation of powers. To give an example, if a local council develops specified rules over fracking, based on local specific information such as local hydrological data, information on geological connectivity, or sensitive landuse, the Minister could potentially use section 360D to override council's decision. Likewise, if a council[28] decides to disallow the release or field trial of genetically modified organisms (GMOs)[29], the Minister could potentially override council's decision.

36. Bill clause 120: CJT strongly object to the introduction of section 41D to the RMA which gives a hearing authority the power to strike out submissions that it considers lacking factual basis, evidence, or that the effects submitted were not the reason of notification. This seriously limits submitters' rights to identify and raise issues and effects that may have been omitted, either inadvertently or deliberately, during consent application or review. The absence of evidence (of effects) is not equal to the evidence of absence (of effects), when applying the Precautionary Principle. The onus of demonstrating the lack of harm or effects should be on the applicants.

37. Bill clause 151: CJT strongly object to the introduction of sections 360F and 360G to the RMA which give the Minister power to fast-track applications, preclude public or limited notification of resource consent applications, and limit who may be considered an affected person. In the Taranaki context, such a clause could potentially enable fast-tracking of petroleum landuse and discharge consents (e.g. for establishing multiple well sites, fracking, flaring, deepwell injection and other forms of contaminant discharge into the environment), to meet corporate demands, to the detriment of environmental safeguards, human health and safety, and public participation.

38. In her 2014 Drilling for Oil and Gas report, the PCE pointed out the issue of 'regulatory capture' in Taranaki, as none of the consent applications associated with drilling for oil and gas are being publicly notified. The proposed clause would exacerbate this situation further, especially if applied to other regions where oil and gas drilling is yet to be established or is in its infancy.

39. The EEZ-CS Act, with the amendments made to date, is far too lenient in respect of the notification, permitting, regulation and management of fossil fuel activities in the EEZ-CS. Because of its major impacts on climate, sea level and ocean chemistry, the era of fossil fuels is rapidly coming to a close. And, as elsewhere, this activity must be phased out in New Zealand's EEZ as a matter of urgency. This can best be achieved through legislation. Yet the Act, as presently written, and with the proposed amendments including herein, actually provides a perverse form of subsidization to this heavily polluting, non-sustainable industry.

40. Bill clause 188: CJT strongly object to the new EEZ-CS Act section 53 which introduces mandatory boards of inquiry to be appointed by the Minister, for publicly notifiable section 20 activities. Under the new section 53(2), the "*Minister may, as the Minister sees fit, set terms of reference for the board of inquiry*". This gives the Minister too much power over the process and undermines the role of the EPA.

41. CJT strongly object to the exclusion of exploratory drilling for petroleum from public notification. The EEZ-CS (Environmental Effects—Non-notified Activities) Regulations 2014[30] should be repealed by way of a new clause in the RLAB, and any relevant sections edited such that exploratory drilling and associated activities are publicly notified.

42. CJT strongly object to the amendment to the Crown Minerals Bill with the new ss101A to 101C tabled as a Supplementary Order Paper (SOP)[31]. These new sections make previously lawful protest at sea a new offence punishable by maximum $10,000 fine; any interference with mining structures punishable by maximum 12 months of imprisonment or fine of $50,000-$100,000; and give the police and Defence Force powers to detain and arrest people and ships from entering so-called non-interference zones. CJT ask that a new clause be introduced to the RLAB which repeals the above amendments in the Crown Minerals Bill. Peaceful protest on land or sea should be an inalienable right in a democratic society.

43. Instead of systematic legislative reform (notably RLAB, ETS and MPA Act) designed to facilitate unsustainable, extractive and polluting activities at the expense of human rights and our life-supporting environment, we need a major paradigm shift which accepts the limits of our planet to provide, and rejects the fallacy of infinite economic growth.

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