

## **RESOURCE MANAGEMENT AMENDMENT BILL (NO. 3)**

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AS REPORTED FROM THE TRANSPORT AND ENVIRONMENT  
COMMITTEE

### **COMMENTARY**

#### **Recommendation**

We have considered the Resource Management Amendment Bill (No. 3) and recommend that it be passed as amended.

#### **Reports previously presented by Planning and Development Committee**

The Resource Management Amendment Bill (No. 3) was referred to the Planning and Development Committee on 14 December 1995. Supplementary Order Paper No. 179, which relates to the bill, was referred by the House on 8 May 1996, with the instruction that the committee have the power to adopt the amendments set out on the supplementary order paper.

On 16 August 1996, the Planning and Development Committee presented a report on a number of clauses divided from the Resource Management Amendment Bill (No. 3) to form what was later enacted as the Resource Management Amendment Act 1996.

The Planning and Development Committee's report on the rest of the bill was presented on 30 August 1996. In that report, a number of amendments were recommended by the committee by majority.

#### **Bill referred back to select committee**

On 5 November 1997, the House referred the Resource Management Amendment Bill (No. 3) to the Transport and Environment Committee for further consideration.

Having considered the Resource Management Amendment Bill (No. 3), we have decided to divide the bill. Many of the provisions in the bill as introduced form the basis of this report, but a number of clauses have been retained by this committee for further consideration.

### **Provisions contained in this bill**

We have decided that a number of provisions of the Resource Management Amendment Bill (No. 3) were fully discussed by the Planning and Development Committee and should not be delayed by further select committee consideration. These provisions are contained in this report. Other provisions relating to marine pollution have also been included, which are derived from Supplementary Order Paper No. 17. They have been amended as recommended in our separate report on that supplementary order paper, which was presented to the House on 4 July 1997.

### **Details of consideration set out in previous reports**

Details of the consideration of these provisions are set out in previous reports presented to the House. The provisions which were considered by the Planning and Development Committee are discussed in the commentary attached to that committee's report on the bill. Our report on Supplementary Order Paper No. 17 sets out the details of our consideration of the marine pollution provisions.

### **Continuation of certain leases and licences**

Two new provisions have been added which correct an error that was made at the time the bill was originally divided in 1996.

Section 23 (2) of the Resource Management Amendment Act 1996 deleted a cross reference from section 418 (6) of the principal Act and, as a result, removed the saving for existing permitted uses in the case of leases and licences under the Marine Farming Act 1971.

That amendment did not affect leases and licences that have been renewed or extended since the enactment of the Resource Management Act 1991, as these are catered for by section 426 of that Act. It did, however, adversely affect the position of those persons who have failed to renew or extend an expired lease or licence and who were relying solely on section 418 to allow them to continue their marine farming activities.

The provision that was enacted as section 23 (2) of the Resource Management Amendment Act 1996 was part of a package of amendments relating to the grandparenting of leases and licences issued under the Marine Farming Act 1971. It was not intended to be passed until the enactment of the rest of the marine farming package.

Accordingly, new subclauses (2) and (3) have been inserted into proposed new clause 67A. These subclauses repeal that provision and provide that section 418 (6) is to continue to apply to leases and licences as if section 23 (2) of the Resource Management Amendment Act 1996 had never been enacted.

### **Marine farming and heritage protection provisions still before committee**

We have divided a number of provisions from the Resource Management Amendment Bill (No. 3) and retained them for further consideration. The clauses which are still before this committee are those which amend the provisions of the Resource Management Act 1991 relating to marine farming and some provisions relating to heritage protection. They now form the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill.

These provisions, which have been divided from the bill as introduced (bill number 141-1), are clauses 16, 32 to 36, 62, 72, 74 and 82. In addition, proposed new clauses 18A, 26A, 83C and 84 to 102, and the proposed new Schedule are also

still before the committee. While clauses 27, 76 and 83 have not been retained for further consideration by the committee, they have been affected by the division of the bill. Those elements of these clauses which related to marine farming, either in the bill as introduced or as proposed to be amended by the previous committee, have now been omitted.

### **Provisions divided to form Resource Management Amendment Act 1996**

Last year, when the Planning and Development Committee divided the Resource Management Amendment Bill (No. 3), clauses 3, 5, 43 to 48, 56, 59, 61, 68, 69, 71 and 75, were divided to form the Resource Management Amendment Bill (No. 4). A number of new provisions were also added. This bill (subsequently enacted as the Resource Management Amendment Act 1996) contained provisions which required urgent enactment and were found by that committee not to be controversial in nature.

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KEY TO SYMBOLS USED IN REPRINTED BILL  
AS REPORTED FROM A SELECT COMMITTEE

*Struck Out (Unanimous)*

Subject to this Act,

Text struck out unanimously

*New (Unanimous)*

Subject to this Act,

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Denotes clauses that now form Resource Management Amendment Act 1996 or Resource Management (Marine Farming and Heritage Provisions) Amendment Bill

**RESOURCE MANAGEMENT AMENDMENT (NO. 3)**

ANALYSIS

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## A BILL INTITULED

**An Act to amend the Resource Management Act 1991**

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Resource Management Amendment Act (No. 3)

1995, and is part of the Resource Management Act 1991\* (“the principal Act”).

(2) This Act comes into force on the day on which it receives the Royal assent.

\*R.S. Vol. 32, p.131

Amendments: 1994, No. 105; 1994, No. 139; 1996, No. 160

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PART 1

INTERPRETATION AND APPLICATION

**2. Interpretation**—(1) Section 2 (1) of the principal Act is amended by repealing the definition of the term “district”, and substituting the following definition:

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“ ‘District’, in relation to a territorial authority,—

“(a) Means the district of the territorial authority as defined in accordance with the Local Government Act 1974 but, except as provided in paragraph (b) of this definition, does not include any area in the coastal marine area:

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“(b) Includes, for the purposes of section 89, any area in the coastal marine area.”.

*New (Unanimous)*

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(1A) Section 2 (1) of the principal Act is amended by inserting in the definition of the term “district rule”, after the words “district plan”, the words “or proposed district plan”.

(1B) Section 2 (1) of the principal Act is amended by omitting from the definition of the term “industrial or trade premises”, the words “and includes any factory farm;”.

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(2) Section 2 (1) of the principal Act is amended by repealing the definition of the term “kaitiakitanga”, and substituting the following definition:

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“ ‘Kaitiakitanga’ means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship (*based on the nature of the resource itself*):”.

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(3) Section 2 (1) of the principal Act is amended by repealing the definition of the term “non-complying activity”, and substituting the following definition:

“ ‘Non-complying activity’ means an activity which (*is allowed only if a resource consent is obtained in respect of that activity and*)—

(a) Is provided for, as a non-complying activity, by a rule in a plan or proposed plan; or

(b) Contravenes a rule in a plan or proposed plan—

*New (Unanimous)*

and is allowed only if a resource consent is obtained in respect of the activity.” 5

*Struck Out (Unanimous)*

(4) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “person”, and substituting the following definition: 10

“ ‘Person’, however described or referred to, includes the Crown, a corporation sole, and a body of persons (whether corporate or unincorporate); and includes the successor in title of a person.”

*New (Unanimous)* 15

(4) Section 2 (1) of the principal Act is amended by repealing the definition of the term “Planning Tribunal”.

(4A) Section 2 (1) of the principal Act is amended by omitting from paragraph (b) of the definition of the term “production land”, the words “or used for factory farming;”. 20

*New (Unanimous)*

(5A) Section 2 (1) of the principal Act is amended by inserting in the definition of the term “regional rule”, after the words “regional plan”, the words “or proposed regional plan”. 25

(5B) Section 2 (1) of the principal Act is amended by repealing the definition of the term “dumping”, and substituting the following definition:

“ ‘Dumping’ means,—

“(a) In relation to waste or other matter, its deliberate disposal; and 30



*New (Unanimous)*

5 “(b) In relation to a ship, an aircraft, or an offshore installation, its deliberate disposal or abandonment;—  
 10 but does not include the disposal of waste or other matter incidental to, or derived from, the normal operations of a ship, aircraft, or offshore installation, if those operations are prescribed as the normal operations of a ship, aircraft, or offshore installation, or if the purpose of those operations does not include the disposal, or the treatment or transportation for disposal, of that waste or other matter; and ‘to dump’ and ‘dumped’ have corresponding meanings:”.

15 (6) Section 2 (14) of the Resource Management Amendment Act 1993 is consequentially repealed.

*New (Unanimous)*

PART 1A

PURPOSE AND PRINCIPLES

20 **2B. Other matters**—Section 7 of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(aa) The ethic of stewardship:”.

PART 2

DUTIES AND RESTRICTIONS UNDER THIS ACT

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**4. Restrictions on use of coastal marine area—**

30 (1) Section 12 (2) of the principal Act (as substituted by section 10 (2) of the Resource Management Amendment Act 1993) is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Occupy any part of the coastal marine area; or”.

(2) Section 12 (4) of the principal Act is amended by omitting the words “In this section”, and substituting the words “In this Act”.

35 (3) Section 12 (4) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) ‘Occupy’ means the activity of occupying any part of the coastal marine area—

“(i) Where that occupation is reasonably necessary for another activity; and

“(ii) Where it is to the exclusion of (*other*) all or any class of persons who are not expressly allowed to occupy that part of the coastal marine area by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or by a resource consent; and

“(iii) For a period of time and in a way that, but for a rule in the regional coastal plan and in any relevant proposed regional coastal plan or the holding of a resource consent under this Act, a lease or licence to occupy that part of the coastal marine area would be necessary to give effect to the exclusion of other persons, whether in a physical or legal sense;—  
and ‘occupation’ has a corresponding meaning:”.

*New (Unanimous)*

(3A) Section 12 (6) of the principal Act (as inserted by section 4 of the Resource Management Amendment Act 1994) is amended by inserting, after the expression “15A”, the words “or 15B”.

(4) Section 10 (4) of the Resource Management Amendment Act 1993 is consequentially repealed.

*New (Unanimous)*

**4A. Discharge of contaminants into environment—**Section 15 (2) of the principal Act is amended by inserting, after the words “a resource consent”, the words “, or regulations,”.

**4B. Discharge of harmful substances from ships or offshore installations—**The principal Act is amended by repealing section 15B (as inserted by section 6 of the Resource Management Amendment Act 1994), and substituting the following section:

*New (Unanimous)*

5 “15B. (1) No person may, in the coastal marine area, discharge a harmful substance or contaminant, from a ship or offshore installation into water, onto or into land, or into air, unless—

“(a) The discharge is permitted or controlled by regulations made under this Act, a rule in a regional coastal plan, proposed regional coastal plan, regional plan, proposed regional plan, or a resource consent; or

10 “(b) After reasonable mixing, the harmful substance or contaminant discharged (either by itself or in combination with any other discharge) is not likely to give rise to all or any of the following effects in the receiving waters:

15 “(i) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:

“(ii) Any conspicuous change of colour or visual clarity:

20 “(iii) Any emission of objectionable odour:

“(iv) Any significant adverse effects on aquatic life; or

25 “(c) The harmful substance or contaminant, when discharged into air, is not likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have a significant adverse effect on the environment.

30 “(2) No person may, in the coastal marine area, discharge water into water from any ship or offshore installation, unless—

“(a) The discharge is permitted or controlled by regulations made under this Act, a rule in a regional coastal plan, proposed regional coastal plan, regional plan, proposed regional plan, or a resource consent; or

35 “(b) After reasonable mixing, the water discharged is not likely to give rise to any significant adverse effects on aquatic life.

40 “(3) Where regulations are made under this Act permitting or controlling a discharge to which **subsections (1) or (2)** apply, no rule can be included in a regional coastal plan, proposed regional coastal plan, regional plan, or proposed regional plan, or a resource consent granted relating to that discharge unless

*New (Unanimous)*

the regulations provide otherwise; and regulations may be made prohibiting the making of rules or the granting of resource consents for discharges.

“(4) No person may discharge a harmful substance or contaminant in reliance upon **subsection (1) (b) or (c) or subsection (2) (b)**, if a regulation made under this Act, a rule, or a resource consent applies to that discharge; and regulations or rules may be made prohibiting a discharge which would otherwise be permitted in accordance with **subsection (1) (b) or (c) or subsection (2) (b)**.

“(5) A discharge authorised by **subsection (1) or subsection (2)**, regulations made under this Act, a rule, or a resource consent may, despite section 7 of the Biosecurity Act 1993, be prohibited or controlled by that Act to exclude, eradicate, or effectively manage pests or unwanted organisms.”

**4c. Duty to avoid unreasonable noise**—Section 16 (2) of the principal Act is amended by omitting the expression “and 15A” (as inserted by section 7 of the Resource Management Amendment Act 1994), and substituting the expression “15A, and 15B”.

**6. Certain existing lawful activities allowed—***Struck Out (Unanimous)*

(1) Section 20 (1) of the principal Act is hereby amended by omitting the words “restricted by sections 9 (3), 12 (3), 13 (2), 14 (2), or 15 (2)”, and substituting the words “that is a permitted activity or which otherwise is lawfully carried out without a resource consent”.

*New (Unanimous)*

(1) Section 20 (1) of the principal Act is amended by omitting the words “restricted by sections 9 (3), 12 (3), 13 (2), 14 (2), or 15 (2) that contravenes a rule in a proposed regional plan”, and substituting the words “that formerly was a permitted activity or which otherwise could have been lawfully carried out

*New (Unanimous)*

without a resource consent as a result of a rule in a proposed plan”.

5 (2) Section 16 (1)(a) of the Resource Management Amendment Act 1993 is consequentially repealed.

PART 3

FUNCTIONS, POWERS, AND DUTIES OF CENTRAL AND LOCAL GOVERNMENT

*Struck Out (Unanimous)*

10 **7. Administrative charges**—Section 36 (2) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

15 “(b) After adopting the special consultative procedure set out in section 716A of the Local Government Act 1974; and”.

**8. Authorisation and responsibility of enforcement officers**—(1) Section 38 (1) (b) of the principal Act is amended by inserting, after the words “Department of Conservation,” the words “or (*any maritime safety inspector of*) the Maritime Safety Authority of New Zealand,”.

20 (2) Section 38 (2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

25 “(b) Employed by a person authorised under paragraph (a) and who is—

“(i) The holder of a certificate of approval issued under section 40 of that Act; or

“(ii) A person in respect of whom permission granted under section 37 of that Act is in force—”.

30 *Struck Out (Unanimous)*

**9. Persons who may be heard at hearing**—Section 40 of the principal Act is hereby amended by adding the following subsections:

*Struck Out (Unanimous)*

“(4) If any person who made a submission and stated they wished to be heard at a hearing on a resource consent application—

“(a) Fails, without reasonable excuse, to appear at any hearing of which that person was notified in accordance with section 101 (3); and 5

“(b) Fails, without reasonable excuse, to give reasonable notice to the consent authority of their intention not to attend the hearing— 10

the consent authority may charge that person a fee not exceeding \$200.

“(5) Before imposing any fee under **subsection (4)**, the consent authority shall have regard to—

“(a) Whether any extra costs were incurred by the consent authority because the person failed to appear and failed to give reasonable notice of intention not to appear; and 15

“(b) Any reasons given by the person for those failures.

“(6) Sections 357 and 358 (which deal with rights of objection and appeal) shall apply in respect of any fee charged by the consent authority under **subsection (4)**.” 20

**10. Reports to local authorities**—Section 42A of the principal Act (as inserted by section 30 of the Resource Management Amendment Act 1993) is hereby amended by repealing subsection (3), and substituting the following subsection: 25

“(3) A copy of any report prepared under subsection (1) shall be sent to the applicant, the person who made a requirement for a designation or heritage order (as the case may be), or any person who made a submission and stated they wished to be heard at the hearing, so that— 30

“(a) Where it relates to a matter described in section 39 (1) (a), it is received at least 5 working days before the hearing; and 35

“(b) Where it relates to any matter described in section 39 (1) (b) to (g), it is received at least 3 working days before the hearing.”

*New (Unanimous)*

5      **10. Reports to local authorities**—Section 42A (3) of the principal Act (as inserted by section 30 of the Resource Management Amendment Act 1993) is amended by omitting the expression “2”, and substituting the expression “5”.

PART 4

STANDARDS, POLICY STATEMENTS, AND PLANS

10      **11. Matters to be considered by regional council (policy statements)**—Section 61 of the principal Act is amended by adding the following subsection:

    “(3) In preparing or changing any regional policy statement, a regional council shall not have regard to trade competition.”

15      **12. Imposition of coastal-occupation charges**—The principal Act is amended by inserting, after section 64, the following section:

*Struck Out (Unanimous)*

    “64A. (1) In preparing or changing a regional coastal plan a regional council shall consider, after having regard to—  
20      “(a) The extent to which public benefit, including potential benefit, from the coastal marine area is lost; and  
    “(b) The extent to which private benefit is obtained from the occupation of the coastal marine area—  
whether or not a coastal-occupation charging regime applying to persons who occupy any part of the coastal marine area  
25      should be introduced.

*New (Unanimous)*

30      “64A. (1) Unless a regional coastal plan or proposed regional coastal plan already addresses coastal-occupation charges, in preparing or changing a regional coastal plan or proposed regional coastal plan, a regional council must consider, after having regard to—  
    “(a) The extent to which public benefits from the coastal marine area are lost or gained; and

*New (Unanimous)*

“(b) The extent to which private benefit is obtained from the occupation of the coastal marine area,— whether or not a coastal-occupation charging regime applying to persons who occupy any part of the coastal marine area (relating to land of the Crown in the coastal marine area or land in the coastal marine area vested in the regional council) should be included. 5

“(2) Where the regional council considers that a coastal-occupation charging regime should not be *(introduced)* included, a statement to that effect must be included in the regional coastal plan. 10

“(3) Where the regional council considers that a coastal-occupation charging regime should be *(introduced)* included, the council must, after having regard to the matters set out in **paragraphs (a) and (b) of subsection (1)**, specify in the regional coastal plan— 15

“(a) The circumstances when a coastal-occupation charge will be imposed; and

“(b) The circumstances when the regional council will consider waiving (in whole or in part) a coastal-occupation charge; and 20

“(c) The level of charges to be paid or the manner in which the charge will be determined; and

“(d) In accordance with **subsection (5)**, the way the money received will be used. 25

“(4) No coastal-occupation charge may be imposed on any person occupying the coastal marine area unless the charge is *(imposed in accordance with the provisions of)* provided for in the regional coastal plan. 30

“(5) Any money received by the regional council from a coastal-occupation charge must only be used for the purpose of promoting the sustainable management of the coastal marine area.”

**13. Matters to be considered by regional council (plans)**—Section 66 of the principal Act is amended by adding the following subsection: 35

“(3) In preparing or changing any regional plan, a regional council shall not have regard to trade competition.”



**14. Regional rules**—Section 68 of the principal Act is amended by repealing subsection (6).

**15. Matters to be considered by territorial authority**—  
5 (1) Section 74 (2) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

*Struck Out (Unanimous)*

10 “(a) Any proposed regional policy statement, or any proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part IV; and”.

*New (Unanimous)*

15 “(a) Any—  
“(i) Proposed regional policy statement; or  
“(ii) Proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part IV; and”.

20 (2) Section 74 of the principal Act is amended by adding the following subsection:

“(3) In preparing or changing any district plan, a territorial authority shall not have regard to trade competition.”

*New (Unanimous)*

25 **15A. Contents of district plan**—Section 75 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

30 “(2) A district plan must not—  
“(a) Be inconsistent with any national policy statement or New Zealand coastal policy statement; or  
“(b) Be inconsistent with any water conservation order; or  
“(c) Be inconsistent with—  
“(i) The regional policy statement; or

*New (Unanimous)*

“(ii) Any regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part IV.”

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**15B. Types of resource consents**—Section 87 of the principal Act is amended by omitting from paragraph (c) the expression “and 15A” (as inserted by section 11 of the Resource Management Amendment Act 1994), and substituting the expression “15A, and 15B”.

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## PART 5

## RESOURCE CONSENTS

**17. Description of type of activity to remain the same**—The principal Act is amended by inserting, after section 88, the following section:

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*Struck Out (Unanimous)*

“88A. Where an application for a resource consent has been made under section 88, that application shall continue to be processed and completed as an application for the type of activity (being controlled, discretionary or non-complying) specified in the plan existing at the time the application was made, notwithstanding that the type of activity may be changed as a result of the notification of a proposed plan or decision made on a proposed plan, or otherwise, before a decision is made on the application.”

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*New (Unanimous)*

“88A. (1) Where—

“(a) An application for a resource consent has been made under section 88; and

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*New (Unanimous)*

5 “(b) The type of activity (being controlled, discretionary, or non-complying) for which the application was made is altered after the application was made as a result of—

“(i) A proposed plan being notified; or

“(ii) A decision being made under **clause 10 (3)** of the First Schedule; or

“(iii) Otherwise—

10 the application continues to be processed and completed as an application for the type of activity specified in the plan or proposed plan existing at the time the application was made.

“**(2)** Notwithstanding **subsection (1)**, any plan or proposed plan which exists when the application is considered must be had

15 regard to in accordance with section 104.”

**18. Further information may be required—**

(1) Section 92 of the principal Act is amended by adding the following subsection:

20 “(5) Sections 357 and 358 (which deal with rights of objection and appeal) apply in respect of a request by a *(local) consent* authority for further information under subsection (1) or subsection (2).”

*New (Unanimous)*

25 (2) Section 92 (2) (b) of the principal Act is amended by inserting, after the words “of contaminants”, the expression “or **15B**”.

*New (Unanimous)*

**18B. Applications not requiring notification—**

30 Section 94 (3) of the principal Act is amended by omitting the expression “and 15A” (as inserted by section 13 of the Resource Management Amendment Act 1994), and substituting the expression “15A, and **15B**”.

**19. Matters to be considered—***New (Unanimous)*

(A1) Section 104 (3) of the principal Act (as substituted by section 54 of the Resource Management Amendment Act 1993) is amended by inserting, after the expression “15”, the expression “or 15B”.

(1) Section 104 (5) of the principal Act (as substituted by section 54 of the Resource Management Amendment Act 1993) is amended by omitting the expression “108 (1) (g)”, and substituting the expression “108 (2) (f) (g)”.

(2) Section 104 of the principal Act (as so substituted) is amended by repealing subsection (8), and substituting the following subsection:

“(8) When considering an application for a resource consent, a consent authority must not have regard to trade competition.”

**20. Decisions on applications—**(1) Section 105 (1) (b) of the principal Act (as substituted by section 55 (1) of the Resource Management Amendment Act 1993) is amended by inserting, after the words “where the consent authority has restricted the exercise of its discretion,”, the words “consent may only be refused or”.

(2) Section 105 (2) (b) of the principal Act (as substituted by section 55 (2) of the Resource Management Amendment Act 1993) is repealed.

(3) Section 105 of the principal Act is amended by inserting, after subsection (2), the following subsection:

*Struck Out (Unanimous)*

“(2A) Notwithstanding any decision made under section 94 (2) (a), a consent authority shall only consider, under section 104, a resource consent application for a non-complying activity where it is satisfied that—

“(a) The adverse effects on the environment (other than any effect to which section 104 (6) applies) will be minor; or

“(b) The application is for an activity which will not be contrary to the objectives and policies of both—

“(i) Any relevant plan; and

*Struck Out (Unanimous)*

“(ii) Any relevant proposed plan.

“(2B) Where a consent authority is not satisfied that the requirements in subsection (2A) are met, the consent authority shall refuse the resource consent application.”

*New (Unanimous)*

“(2A) Notwithstanding any decision made under section 94 (2) (a), a consent authority must not grant a resource consent for a non-complying activity unless it is satisfied that—

“(a) The adverse effects on the environment (other than any effect to which section 104 (6) applies) will be minor; or

“(b) The application is for an activity which will not be contrary to the objectives and policies of,—

“(i) Where there is only a relevant plan, the relevant plan; or

“(ii) Where there is only a relevant proposed plan, the relevant proposed plan; or

“(iii) Where there is a relevant plan and a relevant proposed plan, either the relevant plan or the relevant proposed plan.”

(4) Section 105 of the principal Act is amended by inserting, after subsection (3), the following subsection:

“(3A) For the avoidance of doubt, when granting or refusing a resource consent or imposing conditions for a discretionary activity where the consent authority has restricted the exercise of its discretion, the matters in section 104 are relevant only in relation to those matters over which the consent authority has restricted the exercise of its discretion.”

*New (Unanimous)*

**20A. Restriction on grant of certain discharge permits**—(1) Section 107 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

*New (Unanimous)*

“(2) A consent authority may grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 that may allow any of the effects described in subsection (1) if it is satisfied—

5

“(a) That exceptional circumstances justify the granting of the permit; or

“(b) That the discharge is of a temporary nature; or

“(c) That the discharge is associated with necessary maintenance work—

10

and that it is consistent with the purpose of this Act to do so.”

(2) Section 57 (2) and (3) of the Resource Management Amendment Act 1993 are consequentially repealed.

**21. Conditions of resource consents**—(1) Section 108 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

15

“(1) Except as expressly provided in this section and subject to any regulations, a resource consent may be granted on any condition that the consent authority considers appropriate, including any condition of a kind referred to in **subsection (2)**.

20

“(2) A resource consent may include any one or more of the following conditions:

“(a) Subject to **subsection (10)**, a condition requiring that a financial contribution be made:

“(b) A condition requiring that a bond be given in respect of the performance of any one or more conditions of the consent, including any condition relating to the alteration or the removal of structures on the expiry of the consent:

25

*New (Unanimous)*

30

“(c) A condition requiring that services or works, including (but without limitation) the protection, planting, or replanting of any tree or other vegetation or the protection, restoration, or enhancement of any natural or physical resource, be provided:

35

“(c)(d) In respect of any resource consent (other than a subdivision consent), a condition requiring that a covenant be entered into, in favour of the consent

authority, in respect of the performance of any condition of the resource consent (being a condition which relates to the use of land to which the consent relates):

5 “~~(d)~~(e) Subject to subsection (8), in respect of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 (relating to the discharge of contaminants) or ~~15B~~, a condition requiring the holder to adopt the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of the discharge and other discharges (if any) made by the person from the same site or source:

10 “~~(e)~~(f) In respect of a subdivision consent, any condition described in section 220 (notwithstanding any limitation on the imposition of conditions provided for by section 105 (1) (a) or (b)):

15 “~~(f)~~(g) In respect of any resource consent for reclamation granted by ~~(a regional council)~~ the relevant consent authority, a condition requiring an esplanade reserve or esplanade strip of any specified width to be set aside or created under Part X:

*Struck Out (Unanimous)*

25 “(g) In respect of any coastal permit to occupy any part of the coastal marine area, a condition detailing the extent of the exclusion of other persons.”

*New (Unanimous)*

30 “(h) In respect of any coastal permit to occupy any part of the coastal marine area (relating to land of the Crown in the coastal marine area or land in the coastal marine area vested in the regional council), a condition—

“~~(i)~~ Detailing the extent of the exclusion of other persons:

35 “~~(ii)~~ Specifying any coastal-occupation charge.”

(1A) Section 108 (6) of the principal Act is amended by omitting the expression “(1) (b)”, and substituting the expression “~~(2) (b)~~”.

*New (Unanimous)*

(1B) Section 108 (7) of the principal Act is amended by omitting the expression “(1)(c)”, and substituting the expression “(2)(d)”.

(1C) Section 108 (8) of the principal Act is amended— 5

(a) By inserting, after the words “of contaminants”, the words “or 15B”;

(b) By omitting the expression “(1)(e)”, and substituting the expression “(2)(e)”.

(2) Section 108 of the principal Act is amended by repealing subsection (9), and substituting the following subsections: 10

“(9) In this section, ‘financial contribution’ means a contribution of—

“(a) Money; or

“(b) Land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent), but excluding Maori land within the meaning of the Maori Land Act 1993 unless that Act provides otherwise; or 15

“(c) A combination of money and land. 20

“(10) A consent authority must not include a condition in a resource consent requiring a financial contribution unless—

“(a) The condition is imposed in accordance with the purposes specified in the plan (including the purpose of ensuring positive effects on the environment to offset any adverse effect); and 25

“(b) The level of contribution is determined in the manner described in the plan.”

(3) The following enactments are consequentially repealed:

(a) Section 58 (1) to (5) and (7) of the Resource Management Amendment Act 1993: 30

(b) So much of the Fourth Schedule of the Building Act 1991 as relates to section 108 (1) (b) of the principal Act.

**22. Special provisions in respect of bonds or covenants**—Section 109 (1) of the principal Act is amended by— 35

(a) Omitting the expression “108 (1) (b)”, and substituting the expression “108 (2) (b)”; and

(b) Omitting the expression “108 (1) (c)”, and substituting the expression “108 (2) (c)(d)”. 40



5 **23. Refund of money and return of land where activity does not proceed**—Section 110(1) of the principal Act is amended by omitting the expression “108 (1)(a)” wherever it occurs, and substituting in each case the expression “108 (2)(a)”.

**24. Use of financial contributions**—Section 111 of the principal Act is amended by omitting the expression “108 (1)(a)”, and substituting the expression “108 (2)(a)”.

10 **25. Obligation to pay rent and royalties deemed condition of consent**—Section 112 (1) of the principal Act is amended by repealing paragraph (a).

15 **26. Change or cancellation of consent condition on application by consent holder**—Section 127 (3) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

*Struck Out (Unanimous)*

20 “(b) That written approval has been obtained from every person (whether they made a submission or not on the original application) who, in the opinion of the authority, may be adversely affected by the granting of the change or cancellation, unless in the authority’s opinion it is unreasonable in all the circumstances to obtain every such approval.”

*New (Unanimous)*

25 “(b) That written approval has been obtained from every person (including any person who made a submission on the original application who may be affected by the change or cancellation) who, in the opinion of the authority, may be adversely affected  
30 by the granting of the change or cancellation, unless in the authority’s opinion it is unreasonable in all the circumstances to obtain every such approval.”

*New (Unanimous)*

**26AA. Circumstances where consent conditions can be reviewed**—Section 128 (1) (a) of the principal Act is amended by inserting in subparagraph (ii), after the expression “15”, the expression “or 15B”.

5

**26AB. Matters to be considered in review**—Section 131 of the principal Act is amended by inserting in subsection (2), after the words “of contaminants”, the expression “or 15B”.

**26B. Consent authorities to grant certificates of compliance**—Section 139 (3) of the principal Act (as substituted by section 79 of the Resource Management Amendment Act 1993) is amended by omitting the word “No”, and substituting the words “Subject to subsection (5), no”.

10

## PART 6

## COASTAL TENDERING

15

*Struck Out (Unanimous)*

**27. Application of Order in Council**—Section 153 (e) (ii) of the principal Act is hereby amended by omitting the words “or section 426”.

*New (Unanimous)*

20

**27. Application of Order in Council**—(A1) Section 153 of the principal Act is amended by omitting from paragraph (c) the expression “and 15A” (as inserted by section 16 of the Resource Management Amendment Act 1994), and substituting the expression “15A, and 15B”.

25

(1) Section 153 of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Any application for a coastal permit to which section 124 applies and any coastal permit granted as a result of any such application:”.

30

*New (Unanimous)*

**27A. Rental payments to be reduced by amount of any coastal-occupation charges**—Section 158 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) Where any such tender is accepted under section 159, the amount of any rental payments payable pursuant to subsection (1) (d) (ii) must be reduced by the amount of any coastal-occupation charges payable under **section 64A** for the occupation of the area concerned.”

PART 7

DESIGNATIONS AND HERITAGE ORDERS

**28. Notice of requirement by territorial authority**—

(1) Section 168A (2) of the principal Act (as inserted by section 86 of the Resource Management Amendment Act 1993) is amended by inserting, after the word “Sections”, the expression “93,”.

(2) Section 168A (2) (b) of the principal Act (as so inserted) is amended by inserting, after the word “applicant”, the words “or a consent authority”.

(3) Section 168A (4) of the principal Act (as so inserted) is amended by omitting the expression “and 174”, and substituting the expression “, 174, and 175”.

**29. Recommendation by territorial authority**—

(1) Section 171 (1) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

“(d) All relevant provisions of any national policy statement, New Zealand coastal policy statement, regional policy statement, proposed regional policy statement, regional plan, proposed regional plan, district plan, or proposed district plan.”

*New (Unanimous)*

(1A) Section 171 (2) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

*New (Unanimous)*

“(a) Confirm the requirement, and any conditions as to duration, with or without modification and subject to such conditions as the territorial authority considers appropriate; or”.

5

(2) Section 87 (b) of the Resource Management Amendment Act 1993 is consequentially repealed.

*Struck Out (Unanimous)*

**30. Effect of designation**—(1) Section 176 (1) of the principal Act (as amended by section 90 (1) (b) of the Resource Management Amendment Act 1993) is hereby amended by inserting, after the words “the district plan”, the words “or any proposed district plan”.

10

*New (Unanimous)*

**30. Effect of designation**—(1) Section 176 (1) of the principal Act (as amended by section 90 (1) of the Resource Management Amendment Act 1993) is amended—

15

(a) By inserting, after the words “the district plan”, the words “or any proposed district plan”:

(b) By inserting, after the expression “15”, the expression “and 176A”.

20

(2) Section 176 (2) of the principal Act (as amended by section 90 (2) of the Resource Management Amendment Act 1993) is amended by inserting, after the words “district plan”, the words “or proposed district plan”.

25

**31. Outline plan**—The principal Act is amended by inserting, after section 176, the following section:

“176A.(1) Subject to **subsection (2)**, an outline plan of the public work, project, or work to be constructed on designated land must be submitted by the requiring authority to the territorial authority *(for its consideration)* to allow the territorial authority to request changes before construction is commenced.

30

“(2) An outline plan need not be submitted to the territorial authority if—

“(a) The proposed public work, project, or work has been otherwise approved under this Act; or

5 “(b) The details of the proposed public work, project, or work, as referred to in **subsection (3)**, are incorporated into the designation; or

“(c) The territorial authority waives the requirement for an outline plan.

“(3) An outline plan must show—

10 “(a) The height, shape, and bulk of the public work, project, or work;

“(b) The location on the site of the public work, project, or work;

“(c) The likely finished contour of the site;

15 “(d) The vehicular access, circulation, and the provision for parking;

“(e) The landscaping proposed; and

“(f) Any other matters to avoid, remedy, or mitigate any adverse effects on the environment.

20 “(4) Within 20 working days after receiving the outline plan, the territorial authority may request the requiring authority to make changes to the outline plan.

25 “(5) If the requiring authority decides not to make the changes requested under **subsection (4)**, the territorial authority may, within 15 working days after being notified of the requiring authority’s decision, appeal against the decision to the Environment (*Tribunal*) Court.

30 “(6) In determining any such appeal, the (*Tribunal*) Environment Court must consider whether the changes requested by the territorial authority will give effect to the purpose of this Act.

“(7) This section applies, with all necessary modifications, to public works, projects, or works to be constructed on designated land by a territorial authority.”

35

## PART 8

### SUBDIVISION AND RECLAMATIONS

**37. Meaning of “subdivision of land”**—Section 218 of the principal Act is amended by adding the following subsection:

40 “(4) For the purposes of subsection (2), the balance of any land from which any allotment is being or has been subdivided is deemed to be an allotment.”

*New (Unanimous)*

**37A. Completion certificates**—Section 222 (1) of the principal Act is amended—

- (a) By inserting, after the words “required by the territorial authority”, the words “or on the making of a financial contribution (as defined in section 108 (9))”: 5
- (b) By inserting, after the words “complete the work”, the words “or make the financial contribution (as the case may be)”.

**37B. Approval of survey plan by territorial authority**— 10  
Section 223 (3) of the principal Act is amended—

- (a) By omitting the words “it shall affix its common seal to”, and substituting the words “the principal administrative officer or other authorised officer of the territorial authority must sign a certificate to that effect on”: 15
- (b) By omitting the words “The seal of the authority”, and substituting the words “The signed certificate”.

**38. Restrictions upon deposit of survey plan**—  
(1) Section 224 (c) (iii) of the principal Act is amended by 20  
omitting the expression “108 (1) (b)”, and substituting the expression “108 (2) (b)”.

*New (Unanimous)*

(2) Section 224 (f) of the principal Act (as substituted by section 119 (3) of the Resource Management Amendment Act 1993) is amended by omitting the words “building or part of a building”, and substituting the words “existing building or part of an existing building (including any building or part thereof under construction).” 25

**39. Cancellation of prior approvals**—Section 227 (1) of the principal Act is amended by omitting the expression “240, 241,”. 30

**40. Creation of esplanade strips by agreement**—Section 235 (1) of the principal Act (as substituted by section 124 of the Resource Management Amendment Act 1993) is amended by 35

(inserting, after the expression "234", the words "(except section 230 (2))") omitting the words "to 234 and sections 236 to 237D", and substituting the words ", 232, 234, 237 (2), and 237C".

- 5     **41. Where land previously set aside or reserved—**  
 Section 236 of the principal Act (as substituted by section 124 of the Resource Management Amendment Act 1993) is amended by omitting the expression "220 (1)(ab)", and substituting the expression "220 (1)(aa)".

10   *New (Unanimous)*

- 41A. Covenant against transfer of allotments—**  
 (1) Section 240 (3) of the principal Act is hereby amended by omitting the words "have affixed to it the common seal", and substituting the words "be signed by the principal administrative officer or other authorised officer".

15     (2) Section 240 (5) of the principal Act (as added by section 127 of the Resource Management Amendment Act 1993) is amended by repealing paragraph (b), and substituting the following paragraph:

- 20     “(b) Where the survey plan has been approved by the Chief Surveyor or deposited, the territorial authority must forward to the District Land Registrar or Registrar of Deeds a certificate signed by the principal administrative officer or other authorised officer of the territorial authority to the effect that the covenant has been cancelled in whole or in part, and the District Land Registrar or the Registrar of Deeds must note the records accordingly.”

30     **41B. Amalgamation of allotments—**Section 241 (4) of the principal Act (as added by section 128 (2) of the Resource Management Amendment Act 1993) is amended by repealing paragraph (b), and substituting the following paragraph:

- 35     “(b) Where the survey plan has been approved by the Chief Surveyor or deposited, the territorial authority must forward to the District Land Registrar or Registrar of Deeds a certificate signed by the principal administrative officer or other authorised officer of the territorial authority to the effect that the condition has been cancelled in whole or in part,

*New (Unanimous)*

and the District Land Registrar or the Registrar of Deeds must note the records accordingly.”

**41c. Survey plan approved subject to grant or reservation of easements**—Section 243 (f) of the principal Act (as substituted by section 130 (3) of the Resource Management Amendment Act 1993) is amended by repealing subparagraph (ii), and substituting the following subparagraph: 5

“(ii) Where the survey plan has been approved by the Chief Surveyor or deposited, the territorial authority must forward to the District Land Registrar or Registrar of Deeds a certificate signed by the principal administrative officer or other authorised officer of the territorial authority to the effect that the condition has been cancelled in whole or in part, and the District Land Registrar or the Registrar of Deeds must note the records accordingly.” 10 15

**42. Consent authority approval of a plan of survey of a reclamation**—Section 245 of the principal Act is amended— 20

(a) By omitting the expression “108 (1) (b)” wherever it occurs, and substituting in each case the expression “108 (2) (b)”:

(b) By omitting the expression “108 (1) (c)” wherever it occurs, and substituting in each case the expression “108 (2) ((c))(d)”. 25

## PART 10

## DECLARATIONS, ENFORCEMENT, AND ANCILLARY POWERS

*New (Unanimous)*

30

**48A. Decision on application**—Section 313 of the principal Act is amended by inserting, after the words “notice of the application”, the words “, and any other person who has the right to be represented at proceedings under section 274.”



*Struck Out (Unanimous)*

**49. Form and content of abatement notice—**

5 (1) Section 324 (d) of the principal Act is hereby amended by omitting the words “, which cannot be less than 7 days after the date on which the notice is served”, and substituting the words “having regard to the circumstances giving rise to the abatement notice, being a reasonable period to take the action required or to cease the action”.

*New (Unanimous)*

**49. Form and content of abatement notice—**

10 (1) Section 324 of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

15 “(d) The period within which the action must be taken or cease, having regard to the circumstances giving rise to the abatement notice, being a reasonable period to take the action required or cease the action; but must not be less than 7 days after the date on which the notice is served if the abatement notice is within the scope of section 322 (1) (a) (ii) and the person against whom the notice is served is complying with this Act, any regulation, a rule in a plan, or a resource consent; and”.

20 (2) Section 324 (f) of the principal Act is amended by omitting the words “and the last day on which a notice of appeal can be lodged”.

**50. Appeals—**(1) Section 325 (2) (c) of the principal Act is amended by omitting the expression “7”, and substituting the expression “15 working”.

30 (2) Section 325 of the principal Act is amended by repealing subsection (3), and substituting the following subsections:

“(3) An appeal against an abatement notice does not operate as a stay of the notice unless—

*Struck Out (Unanimous)*

“(a) The abatement notice is within the scope of section 322 (a) (ii) and the person against whom the notice is served is complying with the relevant rules in a plan or a resource consent; or

5

*New (Unanimous)*

“(a) The abatement notice is within the scope of section 322 (1) (a) (ii) and the person against whom the notice is served is complying with this Act, any regulation, a rule in a plan, or a resource consent; or

10

“(b) A stay is granted by an Environment Judge under **subsection (3D)**.

“(3A) Any person who appeals under subsection (1) may also apply to an Environment Judge for a stay of the abatement notice pending the Environment *(Tribunal’s)* Court’s decision on the appeal.

15

“(3B) An application for a stay must be in the prescribed form and must—

“(a) State the reasons why the person considers it is unreasonable for the person to comply with the abatement notice; and

20

“(b) State the likely effect on the environment if the stay is granted; and

“(c) Be lodged with the Environment *(Tribunal)* Court and served immediately on the local authority or consent authority whose abatement notice is appealed against.

25

“(3C) Where a person applies for a stay under **subsection (3A)**, an Environment Judge must consider the application for a stay as soon as practicable after the application has been lodged.

30

“(3D) Before granting a stay, an Environment Judge must consider—

“(a) What the likely effect of granting a stay would be on the environment; and

“(b) Whether it is unreasonable for the person to comply with the abatement notice pending the decision on the appeal; and

35

*Struck Out (Unanimous)*

- 5 “(c) Whether the Judge should hear the applicant or the local authority or consent authority whose abatement notice is appealed against; and  
“(d) Such other matters as the Judge thinks fit.

*New (Unanimous)*

- 10 “(c) Whether to hear—  
    “(i) The applicant:  
    “(ii) The local authority or consent authority whose abatement notice is appealed against; and  
“(d) Such other matters as the Judge thinks fit.  
“~~(3E)~~ An Environment Judge may grant or refuse a stay and may impose any terms and conditions the Judge thinks fit.

- 15 “~~((3E))(3F)~~ Any person to whom a stay is granted under **subsection ~~(3D)~~ ~~(3E)~~** must serve a copy of it on the local authority or consent authority whose abatement notice is appealed against; and no such stay has effect until so served.

- 20 “~~((3F))(3G)~~ Any stay granted under **subsection ~~(3D)~~ ~~(3E)~~** remains in force until an order is made otherwise by the Environment (Tribunal) Court.

*New (Unanimous)*

“(3H) Notwithstanding section 309, any powers which may be exercised by an Environment Judge under this section may be exercised by an Environment Commissioner.”

- 25 **51. Restrictions on certain applications for enforcement orders and abatement notices**—Section 325B of the principal Act (as inserted by section 17 of the Resource Management Amendment Act 1994) is amended by repealing subsection (3), and substituting the following subsection:

- 30 “(3) No person may apply for an enforcement order of a kind specified in section 314 (1) (d) in respect of any actual or reasonable costs and expenses, where the costs and expenses which a person has incurred or is likely to incur constitute pollution damage (as defined in section 342 of the Maritime  
35 Transport Act 1994) in respect of which the owner of a CLC

ship (as so defined) is liable in damages under Part XXV of that Act; and no order relating to such damage may be made by the Environment (Tribunal) Court or any other Court in any proceedings (including prosecutions for offences) under this Act.”

5

*New (Unanimous)*

**51A. Meaning of “excessive noise”**—Section 326 (1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Train, other than when being tested (when stationary), maintained, loaded, or unloaded.”

10

*Struck Out (Unanimous)*

**52. Issue and effect of excessive noise direction**—Section 327 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

15

“(2A) Where a direction under subsection (1) is unable to be given because the occupier of the place refuses access or refuses to receive the direction, an enforcement officer (accompanied by a constable) or a constable may enter the place without notice to give the direction; and, in any such case, the provisions of subsections (6) and (7) of section 328 shall apply.”

20

**53. Compliance with excessive noise direction**—Section 328 of the principal Act is amended by repealing (*subsection (5)*) subsections (4) and (5) (as substituted by section 149 of the Resource Management Amendment Act 1993), and substituting the following subsections:

25

*New (Unanimous)*

“(4) Where a direction under section 327 is unable to be given because there is no person occupying the place from which the sound is being emitted or the occupier of the place cannot reasonably be identified, and there is no other person who appears to be responsible for causing the excessive noise, an enforcement officer (accompanied by a constable) or a constable may enter the place without notice and—

30

35

New (Unanimous)

5      “(a) Seize and remove from the place; or  
        “(b) Render inoperable by the removal of any part from; or  
        “(c) Lock or seal so as to make unusable—  
 any instrument, appliance, vehicle, aircraft, train, or machine  
 that is producing or contributing to the excessive noise.

       “(5) Where any enforcement officer or constable enters any  
 place under subsection (4), he or she must leave in that place, in  
 a prominent position,—

10      “(a) A copy of the relevant written excessive noise direction  
           issued under section 327; and

       “(b) A written notice stating—

          “(i) The date and time of the entry:

15           “(ii) The name of the person in charge of the  
           entry:

          “(iii) The actions taken to ensure compliance with  
           the excessive noise direction:

          “(iv) The address of the office at which inquiries  
           may be made in relation to the entry.”

20      **54. Penalties**—Section 339(1) of the principal Act is  
 amended by omitting the word “summary”.

**55. Liability of principal for acts of agents—**

25      (1) Section 340(1)(a) of the principal Act (as substituted by  
 section 22 of the Resource Management Act 1994) is amended  
 by inserting, after the word “agent”, the words “(including any  
 contractor {or sub-contractor})”.

       (2) Section 340(2)(b)(i) of the principal Act is amended by  
 omitting the word “involved”, and substituting the word  
 “concerned”.

30

PART 11

MISCELLANEOUS PROVISIONS

35      **57. New sections (relating to unlawful reclamations)  
 inserted**—The principal Act is amended by inserting, after  
 section 355, the following sections:

**“355A. Application for consent to unlawful  
 reclamation—**(1) Where land has at any time (whether before  
 or after the date of commencement of this Act) been reclaimed

from the coastal marine area unlawfully, any (*local authority or occupier of the reclaimed land*) person may apply under section 88 to the relevant consent authority for, and the consent authority may grant to (*the local authority or*) that person, a coastal permit consenting to that reclamation, as if the land were still situated within the coastal marine area. 5

“(2) The provisions of Part VI apply in respect of any application made under **subsection (1)**.

“**355B. Enforcement powers against unlawful reclamations**—(1) Where, since the date of commencement of this Act, any land has been unlawfully reclaimed from the coastal marine area, the powers of the Minister of Conservation and a regional council under Part XII apply to that reclaimed land as if the land were still situated within the coastal marine area. 10 15

“(2) Where any land has been unlawfully reclaimed from the coastal marine area before the commencement of this Act, the Minister of Conservation or a regional council may seek an enforcement order against the person who reclaimed the land, or the occupier of the reclaimed land, requiring that person to take such action as, in the opinion of the Environment (*Tribunal*) Court, is necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by the carrying out of the reclamation or by the reclaimed land; and in any such case Part XII applies with all necessary modifications. 20 25

“(3) Whether or not an enforcement order has been sought or granted under **subsection (2)**, the Minister of Conservation or a regional council, either jointly or severally, may take any necessary action to remove the unlawfully reclaimed land from the coastal marine area. 30

“(4) For the avoidance of doubt, any action taken under **subsection (3)** to remove any reclaimed land requires a resource consent unless expressly allowed by a rule in a regional coastal plan and any relevant proposed regional coastal plan.” 35

**58. Objections to certain decisions and requirements of consent authorities**—(1) Section 357 of the principal Act is amended by repealing subsection (4), and substituting the following subsections:

“(4) Any person who has been required— 40

“(a) By a local authority to pay an additional charge under section 36 (3); or

“(b) By a consent authority to pay a fee under section 40 (4)—  
has a right of objection to the local authority or consent authority in respect of that requirement.

5 “(4A) Any person who has been required by a consent authority to provide further information under subsection (1) or subsection (2) of section 92 has a right of objection to the appropriate (*local*) consent authority in respect of that requirement.”

10 (2) Section 357 (7) (b) of the principal Act is amended—

(a) By inserting, after the expression “section 36 (3)”, the words “or of a fee imposed under section 40 (4)”:

(b) To insert, after the words “the additional charge”, the words “or fee”.

15

*New (Unanimous)*

**58A. Regulations**—(1) Section 360 (1) of the principal Act is amended by repealing paragraph (hd) (as inserted by section 26 of the Resource Management Amendment Act 1994).

20 (2) Section 360 (1) of the principal Act is amended by inserting, after paragraph (he) (as so inserted), the following paragraphs:

“(hf) Prohibiting or permitting a discharge to which **section 15B** applies, or controlling a discharge to which that section applies, by prescribing conditions, limitations, or by other means, including describing the discharge by referring to the circumstances, quantities, components, or sources of the discharge:

“(hg) Prohibiting or permitting with or without conditions the making of a rule or the granting of a resource consent for a discharge to which **section 15B** applies, including describing the discharge by referring to the circumstances, quantities, components, or sources of the discharge:

“(hh) Prescribing any operations of a ship, aircraft, or offshore installation as a normal operation:”.

35 (3) Section 360 of the principal Act is amended by adding the following subsections:

“(2c) The Minister may, by notice in the *Gazette*, amend any schedule of any regulations made under section 360 (1) (hb) or (hc) by omitting or inserting the names or a description of waste or other matter or harmful substance to make that

*New (Unanimous)*

schedule comply with the provisions of an international convention relating to the pollution of the marine environment.

“(2D) Regulations made under **subsection (1) (hf) and (hg)** may apply—

“(a) Generally within New Zealand or to those areas of New Zealand specified in the regulations:

“(b) Generally to rules or resource consents, or to rules or resource consents made by the consent authorities specified in the regulations.”

## PART 12

## TRANSITIONAL PROVISIONS

**60. Provisions deemed to be regional rules**—Section 369 (4) of the principal Act (as substituted by section 166 of the Resource Management Amendment Act 1993) is amended by inserting, after the words “discharge permit”, the words “, or a coastal permit to do something that would otherwise contravene section 15,”.

**63. New sections inserted**—The principal Act is amended by inserting, after section 401, the following sections:

*Struck Out (Unanimous)*

“401A. (1) Where a person is occupying the coastal marine area, either as a holder of a resource consent or as a result of a permitted activity in a plan, there shall be implied a condition that that person shall, from the commencement of this section until the regional coastal plan is operative or the 30th day of June 1998 (whichever is earlier), pay to the relevant regional council any sum required to be paid by any regulations made under section 360 (1) (c).



*New (Unanimous)*

**“401A. Transitional coastal-occupation charges—**

(1) Where a person is occupying the coastal marine area, either as a holder of a resource consent or as a result of permitted activity in a plan, there is implied a condition that that person must, from the commencement of this section until a regional coastal plan or plan change is operative which contains either a charging regime or a statement to the effect that no regime shall be introduced or 30 June 1998 (whichever is earlier), pay to the relevant regional council, if requested by that regional council, any sum required to be paid for the occupation of the coastal marine area by any regulations made under section 360 (1) (c).

“(2) Any money received by the regional council under **subsection (1)** may only be used for the purpose of promoting the sustainable management of the coastal marine area.

“(3) Where a regional council prepares or changes a regional coastal plan or proposed regional coastal plan in the period from the commencement of this section until 1 July 1998, that plan is not required to comply with **section 64A**.

“(4) Where no provision for coastal-occupation charges has been made in a regional coastal plan or proposed regional coastal plan by 1 July 1998, the regional council must, in the first proposed regional coastal plan or change to a regional coastal plan (made) notified after 30 June 1998, include a statement or regime on coastal-occupation charges in accordance with **section 64A**.

*New (Unanimous)*

**“401B. Obligation to pay coastal-occupation charge deemed condition of consent—**In every coastal permit that—

“(a) Authorises the holder to occupy, within the meaning of section 12 (4), any land of the Crown in the coastal marine area; and

“(b) Was granted in the period commencing on 1 October 1991 and ending on the date a regional coastal plan containing provisions in accordance with **section 64A** is operative in relation to the part of the coastal marine area that the permit relates to—

*New (Unanimous)*

there is implied a condition that the holder must at all times throughout the period of the permit pay to the relevant regional council any sum of money required to be paid (if any) by that regional coastal plan.”

5

**64. Transitional provisions for esplanade reserves where land subdivided or road stopped**—Section 405A (1) of the principal Act (as enacted by section 191 of the Resource Management Amendment Act 1993) is amended by omitting the words “, a territorial authority may impose a condition in respect of any allotment of less than 4 hectares”, and substituting the words “in respect of any allotment of less than 4 hectares, a territorial authority may impose a condition”.

10

**65. Subdivision consent conditions**—Section 407 (1) of the principal Act is amended by omitting the expression “108 (1) (a)”, and substituting the expression “108 (2) (a)”.

15

**66. Financial contributions for development**—Section 409 (1) of the principal Act is amended by omitting the expression “108 (1) (a)”, and substituting the expression “108 (2) (a)”.

20

**67. Restriction on imposition of conditions as to financial contributions**—Section 411 (1) of the principal Act is amended by omitting the expression “108 (1) (a)”, and substituting the expression “108 (2) (a)”.

*New (Unanimous)*

25

**67A. Certain existing permitted uses may continue**—Section 418 of the principal Act is amended by repealing subsection (1B) (as substituted by section 23 (1) of the Resource Management Amendment Act 1996), and substituting the following subsection:

30

“(1B) For the purposes of this Act, section 15 (1) (d) does not apply in respect of any discharge of a contaminant from any industrial or trade premises which would not have required any licence or other authorisation to discharge contaminants onto or into land under any of the Acts, regulations, or bylaws, or

35

*New (Unanimous)*

parts thereof, amended, repealed, or revoked by this Act, unless a regional plan provides otherwise.”

5 (2) Notwithstanding the amendment of section 418 (6) (a) (ii) of the principal Act by section 23 (2) of the Resource Management Amendment Act 1996, section 418 (6) of the principal Act is to be treated as having continued to apply to leases and licences described in section 426 (1) of the principal Act as if that section 23 (2) had not been enacted.

10 (3) Section 23 (2) of the Resource Management Amendment Act 1996 is repealed.

**70. Repealing provision relating to outline plans—**

15 (1) Section 420 (3) of the principal Act is amended by inserting, after the words “section 184”, the words “and section 184A”.

(2) Section 420 (4) of the principal Act is repealed.

(3) Section 210 (2) of the Resource Management Amendment Act 1993 is consequentially repealed.

20 PART 13

OTHER PROVISIONS

*New (Unanimous)*

25 **72A. Consolidation of First Schedule Analysis—**The First Schedule of the principal Act is amended by repealing the Analysis, and substituting the following Analysis:

*Analysis*

PART I

PREPARATION AND CHANGE OF POLICY STATEMENTS AND PLANS BY LOCAL AUTHORITIES

1. Interpretation and time limits
2. Preparation of proposed policy statement or plan
3. Consultation
4. Requirements to be inserted prior to notification of proposed district plans
5. Public notice and provision of document to public bodies
6. Making submissions

*New (Unanimous)*

7. Public notification of submissions
8. Further submissions
- 8A. Service of further submissions
- 8B. Hearing by local authority
- 8C. Hearing not needed
- 8D. Withdrawal of proposed policy statements and plans
9. Recommendations and decisions on requirements
10. Decision of local authority
11. Notification of decision
12. *Repealed*
13. Decision of requiring authority or heritage protection authority
14. Reference of decision on submissions and requirements to the Environment Court
15. Hearing by the Environment Court
16. Amendment of proposed policy statement or plan
- 16A. Variation of proposed policy statement or plan
- 16B. Merger with proposed policy statement or plan
17. Final consideration of policy statements and plans other than regional coastal plans
18. Consideration of a regional coastal plan by regional council
19. Ministerial approval of regional coastal plan
20. Operative date

## PART II

REQUESTS FOR CHANGES TO POLICY STATEMENTS AND PLANS OF LOCAL  
AUTHORITIES AND REQUESTS TO PREPARE REGIONAL PLANS

21. Requests
22. Form of request
23. Further information may be required
24. Modification of request
25. Local authority to consider request
26. Notification timeframes
27. Appeals
28. Withdrawal of requests
29. Procedure under this Part

**73. Requirements to be inserted prior to notification of proposed plans**—Clause 4 (7) of the First Schedule of the principal Act (as substituted by section 210 of the Resource Management Amendment Act 1993) is amended by inserting, after the words “section 168 (3)”, the words “or section 189 (3)”.

*Struck Out (Unanimous)*

5       **76. Reference of decision on submissions and requirements to the Environment Tribunal**—Clause 14 (2) of the First Schedule to the principal Act (as amended by section 214 of the Resource Management Amendment Act 1993) is hereby amended by omitting the expression “clause 4”, and substituting the expression “clause 4 (5)”.

*New (Unanimous)*

10       **76. Reference of decision on submissions and requirements to the Environment Court**—Clause 14 (5) of the First Schedule of the principal Act is amended by repealing paragraph (b), and substituting the following paragraphs:

15       “(b) On the Minister of Conservation, where the reference is made in respect of a submission on a provision in a regional coastal plan, within 5 working days after making the reference; and

20       “(ba) Where the reference is made in respect of a submission on a provision, other than a requirement, within 10 working days after making the reference, on every person who made a submission on that provision; and”.

25       **77. Local authority to consider request**—Clause 25 of the First Schedule of the principal Act (as substituted by section 220 of the Resource Management Amendment Act 1993) is amended by repealing subclause (2), and substituting the following subclause:

“ (2) The local authority may either—

30       “(a) Adopt the request, or part of the request, as if it was a proposed policy statement or plan made by the local authority itself and, if it does so,—

      “(i) The request must be notified in accordance with clause 5 of this Schedule within 4 months of the local authority adopting the request; and

35       “(ii) The provisions of Part I of this Schedule must apply; and

“(iii) The request has effect once publicly notified;

or

“(b) Accept the request, in whole or in part, and proceed to notify the request, or part of the request, under clause 26.”

5

**78. Notification timeframes**—Clause 26 (b) (i) of the First Schedule of the principal Act (as substituted by section 220 of the Resource Management Amendment Act 1993) is amended by omitting the word “adopt”, and substituting the word “accept”.

10

**79. Matters related to regions**—Part I of the Second Schedule of the principal Act is amended by repealing clause 5, and substituting the following clause:

“5. The circumstances when a financial contribution of money or land may be imposed, the manner in which the (*amount*) level of the contribution that may be imposed will be determined, and the general purposes for which the contribution may be used.”

15

**80. Matters related to districts**—Part II of the Second Schedule of the principal Act is amended by repealing clause 3, and substituting the following clause:

20

“3. The circumstances when a financial contribution of money or land may be imposed, the manner in which the (*amount*) level of the contribution that may be imposed will be determined, and the general purposes for which the contribution may be used.”

25

**81. Part I of Eighth Schedule amended**—(1) Part I of the Eighth Schedule of the principal Act is amended by inserting in the second column, after the item relating to section 37P (4) of the Local Government Act 1974, the following item:

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“By inserting in subsection (5) of section 37P, after the words ‘reclaimed from the sea’, the words ‘(whether lawfully or unlawfully)’, and by omitting the words ‘under any authority conferred after 1 April 1978 by or pursuant to any Act’.”

(2) Part I of the Eighth Schedule of the principal Act is amended by omitting from the second column the item relating to section 24 (7) of the Reserves Act 1977, and substituting the following item:

“By inserting in section 24 (7), after the words ‘Local Government Amendment Act 1978’, the words ‘or as a condition of any resource consent under the Resource Management Act 1991’.”

5

*Struck Out (Unanimous)*

**83. Regulations revoked**—The following regulations are revoked:

- 10 (a) The Resource Management (Transitional Provisions) Regulations Extension Regulations 1992 (S.R. 1992/358);
- (b) The Marine Farming (Fees) Regulations 1994 (S.R. 1994/185);
- 15 (c) The Rock Oyster Farming Regulations 1964 (S.R. 1964/207);
- (d) The Rock Oyster Farming Regulations 1964, Amendment No. 1 (S.R. 1966/142);
- (e) The Rock Oyster Farming Regulations 1964, Amendment No. 2 (S.R. 1975/192).

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*New (Unanimous)*

**83. Regulations revoked**—The Resource Management (Transitional Provisions) Regulations Extension Regulations 1992 (S.R. 1992/358) are revoked.

25 **83A. Transitional provisions**—(1) Where, on the commencement of this section,—

- (a) An application in relation to a resource consent (including a change or a review of conditions of an existing consent); or
- 30 (b) A notice of requirement for a designation or heritage order; or

*New (Unanimous)*

(c) An application to become a requiring authority or heritage protection authority; or

(d) A proposed policy statement, plan, change, or variation; or

(e) An application for a water conservation order—

has reached the stage of a hearing having commenced or a decision having been made, the principal Act continues to apply to those matters as if this Act had not been passed.

(2) Where, before the commencement of this section, a hearing has been completed in relation to a matter specified in **paragraphs (a) to (e) of subsection (1)** of this section and where, whether before or after the commencement of this Act, a decision or recommendation is made in relation to that matter, nothing in this Act affects the rights of objection conferred by section 357 of the principal Act and the rights of appeal conferred by the principal Act in relation to that matter, and any such objection or appeal may be lodged, considered, and completed as if this Act had not been passed.

(3) Where the hearing of an appeal or objection has, before the commencement of this section, been commenced in relation to a matter specified in **paragraphs (a) to (e) of subsection (1)** of this section the proceedings in relation to that appeal or objection is continued as if this Act had not been passed.

(4) Where, before the commencement of this section, a decision or recommendation has been made in relation to any matter specified in **paragraphs (a) to (e) of subsection (1)** of this section and the time for lodging an appeal or making an objection in relation to that decision or recommendation has not expired on the commencement of this section, nothing in this Act affects the right of any person to lodge an appeal or make an objection within the time that would have been allowed under the principal Act if this Act had not been passed.

(5) Where an appeal has been lodged or an objection has been made before the commencement of this section, but the hearing of that appeal or consideration of that objection has not commenced, or where an appeal is lodged or an objection is made within the time referred to in **subsection (4)** of this section, the appeal or objection must be considered and completed under the principal Act as if this Act had not been passed.



*New (Unanimous)*

5 (6) Where, before the commencement of this section, an application for a subdivision consent has been made or a subdivision consent has been granted, all proceedings in relation to that subdivision, including the approval and deposit of any survey plan, must be considered and completed under the principal Act as if this Act had not been passed.

10 (7) Where, before the commencement of this section, any declaration or enforcement or abatement action under Part XII of the principal Act has commenced, every such action must be continued and completed (including any appeals) under the principal Act as if this Act had not been passed.

15 (8) Nothing in this section limits the ability of any person to withdraw that person's application, notice, or proposal under the principal Act as amended by this Act.

(9) Nothing in this section limits the ability of any person to withdraw any objection or appeal.

20 (10) For the purposes of this section, the term "appeal" includes any reference to, or inquiry undertaken by, the Environment Court.

25 **83B. Financial transitional provisions**—Nothing in sections 108 (9) or 108 (10) of the principal Act or in clause 5 of Part I of the Second Schedule of the principal Act or in clause 3 of Part II of the Second Schedule of the principal Act (as substituted by this Act) invalidates any provision included before the commencement of this Act in a plan or proposed plan which provided for the imposition of a financial contribution of works or services or both.