

BERRYSIMONS
ENVIRONMENTAL LAW



GREEN LIGHT OR LIGHT GREEN – EDS CONFERENCE 2018 PRE-CONFERENCE WORKSHOP

SHORT TERM AMENDMENTS TO THE RESOURCE MANAGEMENT ACT 1991

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Short term RMA Amendments

- **Purpose and scope of presentation:**
 - **Context – background to EDS and Berry Simons combined work on potential short term amendments to the RMA**
 - **Why the need to do this now? Is this just “more tinkering”?**
 - **Summary of the four themes and key changes proposed for each theme**

Context – What’s the problem with the RLAA?

- **Driven by focus on housing – “Urban Contamination”**
- **Process issues -**
 - **“Shambolic” Select Committee process**
 - **RLAA passed by 1 vote after deal with the Maori Party**
- **Substantive issues - fall into four broad “themes”**
- **Cross-sector agreement that:**
 - **The RMA has become incoherent and increasingly unworkable**
 - **Some of the RLAA changes must be addressed now**
 - **Wider reform of the planning system is needed, but must proceed on a carefully considered and properly informed basis**

Context (cont)

- **Labour's commitment to reversing "objectionable" changes from the RLAA and improving the RMA's workability**
- **EDS and Berry Simons both critical of the RLAA**
 - **EDS 2016 Report and submission**
 - **Berry Simons RMJ articles**
- **EDS and Berry Simons identified 32 amendments to the RMA to be made in two tranches – provided to Minister and consulted on**



Why make short term amendments?

- **Criteria for our “Tranche 1” amendments:**
 - **This is a roll-back of an RLAA amendment and:**
 - **The amendment will likely create significant process / legal risk and delays, having a tangible negative impact on the resource management system, if not repealed promptly**
 - **There is broad-spectrum support for the amendment**
 - **The roll-back can be achieved without compromising the outcomes of the broader debate on RMA reform**
 - **Any costs associated with the amendment are justified**
 - **This is a new amendment which is straightforward, unlikely to be contentious and has significant process benefits**

The four themes and key proposed changes

- **4 key themes**
- **An example or two**
- **Link to EDS RM system project principles to underpin long term reform**



Facilitating public participation



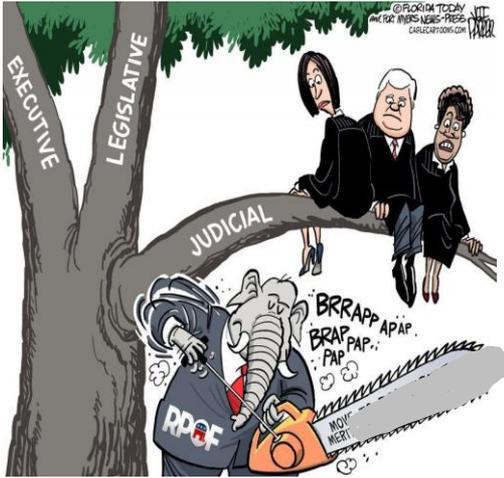
- **What's the issue?**
 - **Undermines core principle of the RMA**
 - **Maintain rule of law for environmental issues**
- **Example amendments:**
 - **Reinstate notification / appeal rights**
 - **Remove / amend the Streamlined Planning Process (Tranche 1 or 2)**
- **EDS Project: Participatory principle**

Protecting against Ministerial overreach

- **What's the issue?**
 - **Uncertain, undermines public confidence, undermines devolved decision-making**
 - **High risk of ad hoc political intervention: contrary rule of law / separation of powers**
- **Example amendments:**
 - **Amend regulations 360D and 360H**
- **EDS Project: Subsidiarity principle, environmental justice, participation**



Recognising role of the Environment Court



- **What's the issue?**
 - **Need for check and balance on first instance decision making**
 - **Loss of significant body of jurisprudence and experience**
- **Example amendments:**
 - **Curtail use of "ad-hoc" judicial bodies**
 - **Allow Court to consider challenges to notification decisions**
- **EDS Project: Principles of environmental justice, efficiency, participation**

Protecting “environmental bottom lines”

- **What’s the issue?**
 - **Compromises ensuring development occurs within the capacity of the environment to sustain itself**
 - **Undermines certainty and clarity**
- **Example amendments:**
 - **Remove “deemed permitted activities”**
- **EDS Project: Principles of sustainability, intergenerational equity, efficiency, conservation**



Short term RMA reform - where to from here?

- **Latest indications from the Minister**
- **Hoping to see progress later in 2018 – “watch this space”**
- **Progression of “Tranche 2” amendments**

