



## Verbal submission on the COVID-19 Recovery (Fast-track Consenting) Bill

This is a very complex Bill. Its complexity stems from the fact that it is trying to intervene to speed up the processes of a very complex statute. I do not pretend to have had the time to tease apart every clause with reference to the principle Act, much of which has to do with process. My concern is with the environment and whether the framing of this Bill weakens the aim of environmental protection.

On this point I take heart from the fact that the Minister has made it clear that while he is wanting to expedite a variety of employment-rich initiatives that will support recovery from the economic damage caused by the current pandemic, he still wishes to uphold the environmental ambitions of the Resource Management Act 1991 (RMA). This is admirable.

The Bill seeks to do that at the highest level by specifically referring in its purpose clause (clause 4) to “continuing to promote the sustainable management of natural and physical resources” and providing that sustainable management has the meaning given to it in section 5(2) of the RMA.

The problem with that formulation is that section 5(2) contains a much more expansive definition of the motivation for the legislation than that which is governing this Bill.

The first part of section 5(2) embraces a very wide, long-term socio-economic rationale for management:

“managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety”.

Whereas this Bill is focused on immediate short-term action to:

“urgently promote employment growth to support New Zealand’s recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand ...”.

That rationale is much more precise and focused than the wide formula in section 5(2). The best way to ensure that focus while meeting the Minister’s wish not to weaken environmental protections would be to repeat sub-clauses (a), (b) and (c) of section 5(2). Instead, the Bill tries to use short-hand – “while continuing to promote the sustainable management of natural and physical resources” which ends up dragging in the whole clause including that much broader purpose.



The case law establishes that two 'sets' of matters divided by the word 'while' must both be achieved at 'the same time'. This means that the new set of matters mentioned in the Bill must be achieved at the same time as s 5, taken as a whole. This creates room for argument about whether the matters in 5(2)(a), (b) and (c) are 'diluted'.

The safest, simplest way to solve this is the drafting I have proposed. The Bill principally achieves its purpose of *urgently* promoting recovery and *supporting* ongoing investment by limiting the consultation processes and timelines associated with consent processing under the RMA. The Government has deemed that to be necessary if it is to respond to the current crisis and I don't detect any widespread disagreement with that view.

If the Government wants to do that but leave the integrity of environmental protection intact, it should use the precise words used in the subclauses to section 5(2) which will eliminate any doubts and remove the need for adjudication about which purpose clause takes precedence.

Simple consequential amendments should then follow as I have outlined in paragraph 16 of my submission.

Having watched all sorts of attempts to mess around with the RMA over more than two decades, this is not the time to create a new round of uncertainty. The Government has been carefully reviewing the fundamental tenets of the Act and is, I understand, shortly to publish a major review. We are all looking forward to that and it is in that context that any material changes to Part II of the Act should be considered. This is a Bill with a sunset clause. It should not raise any questions about the environmental framing of resource management legislation.

The changes I propose would make that crystal clear and also confirm the thrust of the *King Salmon* case.