NATIONAL OFFICE
P O Box 12 013
Thorndon
Wellington 6144
Ph: 0800 692 376
Cell: 021 576 109
alan@civilcontractors.co.nz
www.civilcontractors.co.nz

Civil Contractors New Zealand submission to the Environment Committee on the Resource Management (Consenting and Other System Changes) Amendment Bill

Contact: **Alan Pollard**
Chief Executive
Civil Contractors New Zealand
PO Box 12013
Wellington

Mobile: 021 576 109
Email: alan@civilcontractors.co.nz

Introduction

Thank you for the opportunity to submit on the Resource Management (Consenting and Other System Changes) Amendment Bill. CCNZ wishes to appear before the Environment Select Committee to be heard on this submission in further detail.

Civil Contractors New Zealand (CCNZ) the industry association for horizontal construction in New Zealand. We represent more than 800 member businesses and organisations involved in horizontal infrastructure construction, including more than 550 large, medium-sized, and small businesses in civil engineering, construction, and general contracting. Our 300 associate members provide valuable products, support, and services to contractor members. We live and work in all communities across New Zealand.

Our members play a vital role in the development of our country, our economy, and our way of life. They are responsible for the physical construction and maintenance of NZ's transport networks, water networks that bring fresh water to houses and wastewater to treatment plants, cables that bring the internet to homes and businesses, ports, airports and private developments.

These are the services a modern and developed economy must have to compete efficiently in world markets and to deliver high living standards and wellbeing for all New Zealanders. Because of the breadth of work environments, civil contractors have an extensive understanding of how the environment is protected in practical terms. They work to construct wetlands as part of projects, as well as maintaining riverbanks, parks and great walks.

In short, resource management is relevant to civil contractors because the construction and maintenance of infrastructure is a use of land and the environment.

CCNZ acknowledges the widely held view that the Resource Management Act 1991 (RMA) system as it stands is broken. It is litigious, expensive, and time consuming, for both resource consenting and planning.

It has created significant cost, both for those seeking consent for development and those seeking environmental protection, because it lacks effective mechanisms for conflict resolution, often leading to a costly stalemate where development is sought.

The Resource Management (Consenting and Other System Changes) Amendment Bill (the Bill) is the second bill in the Government's RMA reform programme.

CCNZ submits on this Bill in keeping with our overall approach to RMA reform. Our guiding principles are (as stated in a previous CCNZ submission on RMA reform):

- Consenting pathways that enable the construction, operation and maintenance of infrastructure and the built environment, for both large and small projects
- Efficient and effective and affordable consenting, planning and other regulatory processes, also to avoid unnecessary delays in regulatory processes
- The above to apply to civil construction at all scales, from small earthworks to multi-firm construction alliances for nationally significant projects
- Ability to manage trade-offs or conflicts between RM reform objectives, eg between protection of, and the use and development of the natural and built environment
- Effective mechanisms to balance the environmental cost of development against the benefits infrastructure delivers for our society
- Access to raw materials that support the infrastructure supply chain and enable infrastructure construction, such as aggregate, steel and concrete, and efficient repurposing of construction and demolition waste, whether through recycling or through identified sites for 'enabling infrastructure' - eg quarries, 'circular economy' materials recovery sites, or cleanfills
- Upholding of property rights, including for existing infrastructure and buildings

The Explanatory Note to the Bill says it progresses the following Government priorities:

- making it easier to consent new infrastructure, including for renewable energy, building houses, and enhancing the primary sector:
- cutting red tape to unleash the investment in renewable energy for New Zealand to meet its emissions reduction targets:
- making the medium density residential standards (the **MDRS**) optional for councils, with the need for councils to ratify any use of the MDRS, including in existing zones:
- implementing the Going for Housing Growth policy to unlock land for housing, build infrastructure, and allow communities to share the benefits of growth:
- facilitating the development and efficiency of ports, and strengthening international supply networks:

- simplifying the planning system.

There are five themes for RMA amendments, listed below, with those within scope for this submission are highlighted in **bold**:

- **infrastructure and energy**
- housing growth
- farming and the primary sector
- **natural hazards and emergencies**
- system improvements

This submission is structured as follows:

- Introduction
- Executive summary
- Detailed submissions

EXECUTIVE SUMMARY

This Bill addresses the coalition Government's electoral commitments, and subsequent statements of policy direction. They are non-controversial and are aimed at "quick wins" in improving the working of the Resource Management 1991 (RMA) system with an eye to promoting economic growth, including for infrastructure provision.

For this reason, CCNZ supports the Bill.

Within that, we propose amendments to several clauses of the Bill, for clarity and to improve workability of an amended RMA. They are to:

a) Add to cl 37 (new s106A, RMA) wording to specify risk from natural hazards, to whom and what, i.e. the consent authority, the environment, and third parties

b) Add to cl 64 (new s331AA (6), RMA) a new limb (g), to state: "recognise the pivotal role of civil contractors in emergency response, and absolve them from any risk of prosecution in relation to carrying out works in response to any sudden event causing or likely to cause loss of life, injury, or serious damage to property." Add the same wording into a new s330 (1AA), RMA, to cover all situations demanding an urgent emergency response, beyond those for which regulations are made

c) While supporting cl 42 (new s123B, RMA) as it stands, consider the alternative of extending the maximum duration of resource consents beyond 35 years for "long-lived infrastructure", to improve certainty for project proponents and asset owners for certain assets

d) The Explanatory Note states, "Plan changes that introduce new natural hazards rules will now have immediate legal effect", which we support; and is referenced in cl 25 of the Amendment Bill.

e) Add to the definition of "long-lived infrastructure", that which provides for water supply, wastewater and stormwater; and clarify the definition of "specified energy activity" (cl 4).

In relation to Recommendation (b), we make the following observations.

Contractors often act as first responders in cases of national or regional emergency. They have the equipment and knowledge to manage earthmoving and water courses.

However, it is important that civil contractors do not face prosecution for trivial and irrelevant matters at a time when civil contractors are putting in their time, energy, expertise, experience and effort into emergency response activities, often at their own personal cost.

In such cases, the work is needed immediately, however, may not meet all resource consent conditions that might be applied by decisionmakers.

During Cyclone Gabrielle in 2023 CCNZ heard many instances where contractors were threatened with prosecution for taking necessary action, as we noted in our response to the Emergency Management Bill, which was proposed at the time.

Examples include:

- A landslide has blocked a road, and earth must be moved to the roadside to enable access for emergency vehicles, or to save properties or lives. Here, it may not be possible to move soil to a consented site.

- Places where stopbanks need urgent repair, or where water courses require urgent diversion to save properties from damage or destruction.

Other clauses are actively supported below because they are important to the effective and efficient working of civil contractors.

DETAILED SUBMISSIONS

The following submissions are made in order of their appearance in the Bill, for ease of reference, and not necessarily in their order of importance to civil contractors.

Clause	Issue	CCNZ recommendations
4 Section 2 amended (Interpretation) In section 2(1), insert in their appropriate alphabetical order: **long-lived infrastructure** means— (a) pipelines that distribute or transmit natural or manufactured gas: (b) a network for the purpose of telecommunication as defined in section 5 of the Telecommunications Act 2001: (c) facilities for the generation of electricity, lines used or intended to be used to convey electricity, and support structures for lines used or intended to be used to convey electricity, excluding facilities, lines, and support structures that a person— (i) uses in connection with the generation of electricity for the person's use; and (ii) does not use to generate any electricity for supply to any other person: (d) structures for transport on land by cycleways, rail, roads, walkways, or any other means: (e) facilities for the loading or unloading of cargo or passengers transported on land by any means: (f) any activity or thing that regulations made under section 360 prescribe as long-lived infrastructure	This is a good definition of "long-lived infrastructure", with room for improvement. Water assets should be added to the definition to avoid a piecemeal approach The types of infrastructure listed have a service life of 50-100 years or more, which points to what "long lived" means. This poses an issue for maximum resource consent durations of 35 years, eg in terms of investment certainty (refer to comment under cl 42).	Add to the definition of "long-lived infrastructure", 'infrastructure for water supply, stormwater and wastewater distribution'. See proposal under cl 42. Amend (b) to say:

specified energy activity means— (a) the establishment, operation, or maintenance of an activity that produces energy from solar, wind, geothermal, hydro, or biomass sources: (b) the establishment, operation, or maintenance of the transmission and distribution of electricity through the electricity network	There appears to be a word missing in (b)	*"the establishment, operation, or maintenance of the transmission and distribution of **this** electricity through the electricity network"*
28 Section 88 amended (Making an application) After section 88(2), insert: (2AA) An applicant must ensure that information required by subsection (2)(b) is provided at a level of detail that is proportionate to the nature and significance of the activity. (2AB) A consent authority may accept an application that does not fully comply with subsection (2)(b) if the authority is satisfied that the information provided by the applicant is proportionate to the nature and significance of the activity.	Cl 28 will help promote consenting of standard activities, as occurs frequently when building roads and other transport networks.	Supported.
37 New section 106A inserted (Consent authority may refuse land use consent in certain circumstances) After section 106, insert: **106A Consent authority may refuse land use consent in certain circumstances**	Cl 37 strengthens the ability to prevent construction in areas where there is significant risk presented by natural hazards.	This is a logical addition to the RMA, in the wake of Cyclone Gabrielle, and is supported. CCNZ proposes the following

(1) A consent authority may refuse to grant a land use consent, or may grant the consent subject to conditions, if it considers that the activity for which consent is sought will— (a) create a significant risk from natural hazards if there is no existing risk from natural hazards; or (b) increase an existing risk from natural hazards to a significant risk; or (c) increase an existing significant risk from natural hazards. (2) For the purposes of **subsection (1)**, an assessment of the risk from natural hazards requires a combined assessment of— (a) the likelihood of natural hazards occurring (whether individually or in combination); and (b) the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and (c) whether the proposed use of the land would accelerate, worsen, or result in material damage of the kind referred to in **paragraph (b)**; and (d) whether the proposed use of the land would result in adverse effects on the safety or health of people. (3) Conditions imposed under **subsection (1)** must be— (a) for the purposes of avoiding or mitigating the effects of any significant risk from natural hazards; and (b) of a type that could be imposed under section 108.	Missing from proposed new s106A is wording on risk, or significant risk to whom or what. It is worth noting that if an impact on others is not created, this should not be an impediment to granting consent, where risks such as flooding can be actively and appropriately managed.	amendments to s106A (emphasis added): (a) create a significant risk **to consent authorities, the environment, and/or third parties** from natural hazards if there is no existing risk from natural hazards; or (b) increase an existing risk **to resource consent applicants, consent authorities, the environment, and/or third parties** from natural hazards to a significant risk; or (c) increase an existing significant risk **to resource consent applicants, consent authorities, the environment, and/or third parties** from natural hazards.

38 New section 107G inserted (Review of draft conditions of consent) After section 107F, insert: 107G Review of draft conditions of consent (1) An applicant for a resource consent— (a) may request the consent authority to provide them with any draft conditions of the resource consent; and (b) must make the request before whichever of the following the consent authority does first: (i) the authority issues its decision on the application; or (ii) the authority provides a report under section 42A in accordance with section 42A(3); but (c) may make the request only once. (2) If a request is made, a consent authority—	Applicants may seek to review draft consent conditions of consent before finalisation, which makes sense.	Supported.

(a) may suspend the processing of the application but no more than once; and (b) must provide the draft conditions to the applicant and, if the application was notified, to submitters; and (c) may provide the draft conditions to submitters who received a copy of a report provided under section 42A. (3) An applicant and any submitters must provide their comments on the draft conditions to the consent authority within a reasonable time specified by the consent authority. (4) A consent authority may take those comments into account only to the extent they cover technical or minor matters. (5) A consent authority may provide draft conditions to the persons specified in subsection (2)(b) or (c) more than once.		
42 New section 123B inserted (Duration of consent for renewable energy and long-lived infrastructure) After section 123A, insert: **123B Duration of consent for renewable energy and long-lived infrastructure** (1) A resource consent authorising a renewable energy or long-lived infrastructure activity must specify the period for which it is granted. (2) The period specified under **subsection (1)** is 35 years from the date of commencement of the consent under section 116A unless—	Some infrastructure, eg the Huntly Power Station and hydroelectric schemes, would benefit from longer resource consent durations than 35 years. This is because they are significant and long-lived assets. There is a typo in the drafting under (b), in that it refers to section 116A (aquaculture) but should just refer to s116.	Add to s123B, RMA the following subsection: *(2) (d) the applicant is the proponent of a regionally or nationally significant, long-lived infrastructure project, in which case a longer consent duration can be applied for.* Amend reference to 116A to just refer to 116.

(a) the applicant requests a shorter period; or (b) a national environmental standard, a national policy statement, or a national planning standard expressly allows a shorter period; or (c) the consent authority decides to specify a shorter period after considering a request from a relevant group for a shorter period for the purpose of managing any adverse effects on the environment. (3) In making a decision under **subsection (2)(c)**, a consent authority must consider— (a) the need to provide for adequate management of any adverse effects on the environment; and (b) the benefits of providing certainty of long-term consent duration. (4) This section applies subject to section 125. (5) In this section, **relevant group** means a group who may be or is required to be involved in processes under this Act that relate to planning documents or resource consents by virtue of any Treaty settlement, the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, or the Marine and Coastal Area (Takutai Moana) Act 2011.		
48 Section 166 amended (Definitions) In section 166, definition of network utility operator, after paragraph (ha), insert: (hb) operates an inland port (not contiguous with the coastal marine area) or the landward operations of a seaward port operated under the Port Companies Act 1988; or	Necessary for completeness.	Supported.

49 Section 168 amended (Notice of requirement to territorial authority) After section 168(3), insert: (3A) A notice given under subsections (1) to (3) must include an assessment of any effects that the project or work will have on the environment. (3B) The assessment of the effects of the project or work on the environment must— (a) have particular regard to any relevant provisions of— (i) a national policy statement: (ii)a New Zealand coastal policy statement: (iii) a regional policy statement or proposed regional policy statement: (iv) a plan or proposed plan: (b) if the requiring authority does not have an interest in the land sufficient for undertaking the work,— (i) give adequate consideration to any alternative sites, routes, or methods of undertaking the work; and (ii) explain how the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought: (c) if the requiring authority has an interest in the land sufficient for undertaking the work, and the work is likely to result in any significant adverse effect on the environment, describe possible alternative locations or methods for undertaking the activity.	Cl 49 simplifies the requirements and costs for designating authorities.	Supported.

(3C) The information required to be provided in the assessment need only be at a level of detail that is proportionate to the nature and significance of any effects of the project or work.		
52 Section 184 amended (Lapsing of designations which have not been given effect to) In section 184(1), replace "5 years" with "10 years".	The problem of a short lapsing period for designations was identified during the development of the since repealed Natural and Built Environments Act	10 years is sufficient. Supported.
53Section 184A amended (Lapsing of designations of territorial authority in its own district) In section 184A(2), replace "5 years" with "10 years".	As above.	As above.
62 Section 330 amended (Emergency works and power to take preventive or remedial action) After section 330 (3), insert: (3A) However, if the occupier cannot be found in the place, subsection (3) is satisfied, and the local authority or consent authority is not required to take further action to contact the occupier, if— (a) there is displayed in a prominent place on the land a notice that gives the date of entry, the reasons for entry, and the contact details of a person who can provide further information; and (b) as soon as practicable after entering the land, the local authority or consent authority serves written notice (containing the same information as in **paragraph (a)**) on the person who is the ratepayer for the land for the purposes of the Local Government (Rating) Act 2002.	S330 provides for immediate response actions to emergencies and natural hazard events, which is appropriate and essential. Missing is a provision to remove any threat of prosecution of civil contractors, which occurred in the wake of Cyclone Gabrielle (see Executive Summary, above). New s330 (3) This provides for entry onto land for	Add a new s331AA: "In relation to subsection (1), recognise the pivotal role of civil contractors in emergency response, and absolve them from any risk of prosecution in relation to carrying out works in response to any sudden event causing or likely to cause loss of life, injury, or serious damage to property." Supported.

	emergency response activities, in the event the occupier of the land cannot be readily located or contacted.	
64 New section 331AA inserted (Emergency response regulations) After section 331, insert: **331AA Emergency response regulations** (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations (**emergency response regulations**) for the purpose of— (a) responding to a natural hazard event or other emergency in an area; and (b) enabling recovery efforts in the affected area (including any work required to improve the resilience or standard of assets). (2) Before recommending emergency response regulations, the Minister must— (a) be satisfied that the proposed regulations are necessary or desirable for the purpose of this Act: (b) be satisfied that the proposed regulations are not broader than is reasonably necessary: (c) consider the effects on the environment that could occur as a result of the proposed regulations and whether any adverse effects can be avoided, remedied, or mitigated:	An Order in Council process is appropriate for secondary legislation, however, can take months to complete, a long time given the purpose of enabling emergency response. The need for immediate powers of response is already provided for under s330, and is not undermined by new s331AA, RMA.	Supported. Add to new s331AA (6): "(g) recognise the pivotal role of civil contractors in emergency response, and absolve them from any risk of prosecution in relation to carrying out works in response to any sudden event causing or likely to cause loss of life, injury, or serious damage to property."

(d) consult the Minister for Emergency Management and Recovery: (e) consult the Minister of Conservation if the regulations affect the coastal marine area: (f) consult any affected councils and relevant Māori entities, and invite them to provide written comments about the proposed regulations: (g) provide a draft of the proposed regulations to the committee of the House of Representatives that is responsible for the review of secondary legislation: (h) have regard to comments, if any, from the committee of the House of Representatives that is responsible for the review of secondary legislation. (3) Before recommending emergency response regulations, the Minister may invite any other persons or representatives of persons that the Minister considers appropriate (including local community groups), or the public generally, to provide written comments about the proposed regulations. (4) Comments referred to in **subsection (2)(h)** or written comments provided in response to an invitation from the Minister under **subsection (2)(f) or (3)** must be provided within 5 working days of the draft being provided to the committee or to the invitation being received, respectively, unless the Minister extends that period. (5) Emergency response regulations— (a) may apply only to an area where, under the Civil Defence Emergency Management Act 2002, a state of national or local emergency has been declared or notice given of a local or national transition period; and		

(b) may be made, or continue to apply to that area, after the declaration ceases to have effect or the transition period ends; and (c) expire on the date that is 3 years after the first declaration is made or notice is given, or any earlier date specified in the regulations. (6) Emergency response regulations may— (a) permit, authorise, or prohibit specific activities, while noting that this will not give long-term existing use rights to those activities: (b) modify or alter the unitary, regional, and district plan development processes: (c) apply a temporary stay to types or categories of consent applications (processing and granting of consents): (d) limit or exclude rights of appeal (other than judicial review) in relation to decisions on resource consents, plan changes, or variations: (e) extend the time frames for lodging retrospective resource consents for emergency works under section 330: (f) extend or shorten consent processing time frames. (7) Emergency response regulations may incorporate material by reference. Schedule 1AA applies as if references in that schedule to a national environmental standard, national policy statement, or New Zealand coastal policy statement were references to regulations under this section. (8) Emergency response regulations are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).		

CONCLUSION

Thank you for your time in reading this submission.

As indicated in the introductory paragraphs, CCNZ is happy to appear before Select Committee to further discuss the needs of the country's civil construction industry in relation to this legislation. CCNZ also supports the submission made by Infrastructure New Zealand.

Several of our members have advised us of the issues their businesses have faced due to the existing legislation, and what they think would be required to overcome these issues. We can arrange for them to present also, if you would like to hear their concerns directly.

Yours sincerely,

Alan Pollard
Chief Executive
Civil Contractors NZ