NEW ZEALAND BUSINESS ROUNDTABLE

SUBMISSION ON THE RESOURCE MANAGEMENT (ENERGY AND CLIMATE CHANGE) AMENDMENT BILL

SEPTEMBER 2003

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Executive Summary

- This submission on the Resource Management (Energy and Climate Change) Amendment Bill (the Bill) is made by the New Zealand Business Roundtable (NZBR), an organisation comprising primarily chief executives of major New Zealand business firms. The purpose of the NZBR is to contribute to the development of sound public policies that reflect overall New Zealand interests.

- *We recommend that the provisions in the Bill that relate to energy efficiency and renewable resources be deleted.* The rationale for them in the supporting Regulatory Impact Statement (RIS) is vacuous and they appear to have no sound policy basis.

- We also recommend the deletion of the provisions in the Bill that would insert into the Resource Management Act 1991 (the RMA) a requirement to have particular regard to the effects of climate change. The local effects of climate change are unknown for the foreseeable future.

- We concur with the goal of avoiding unnecessary duplication and costs at the local level of controls imposed on greenhouse gas emissions at the national level.

- Our greatest concern with the Bill arises from what we believe are its adverse implications for the government's prime goal of achieving and sustaining faster economic growth. While we are concerned about incentives to invest in electricity, and energy more generally, we think across-the-board amendments to make the RMA more pro-growth are needed.

- Much greater investment in energy is necessary if the cost and supply of energy are not to constrain economic growth. Much of the increased capacity must come from non-renewable forms of energy, notably coal. The ill-justified ratification of the Kyoto Protocol, the proposed bias in favour of non-

renewables, and the failure to address the impediments already imposed by the RMA are all negative signals for the business community in relation to this potential bottleneck.

- In our view, the measures in the Bill, in conjunction with the failure to review the RMA in a fundamental way, are seriously inconsistent with the government's stated goals for economic growth. This problem needs to be addressed.

1 Introduction

1.1 This submission on the Resource Management (Energy and Climate Change) Amendment Bill (the Bill) is made by the New Zealand Business Roundtable (NZBR), an organisation comprising primarily chief executives of major New Zealand business firms. The purpose of the NZBR is to contribute to the development of sound public policies that reflect overall New Zealand interests.

1.2 The Bill proposes to make explicit provisions in the Resource Management Act 1991 (RMA) for 'energy efficiency', renewable energy and climate change. It does not mention the government's prime economic objective – to achieve sustained economic growth of 4 percent per annum or more. The minister of energy did not relate the Bill's measures to this objective on its first reading. This omission is surprising given the government's acknowledgment on other occasions of the importance of investment in energy for economic growth.

1.3 This submission comments on the measures in the Bill in the context of the government's economic growth objective. Section 2 explains why investment in energy will be important for economic growth. It identifies what we believe to be the major barriers to that investment. Section 3 applies this analysis to the Bill's proposals for energy efficiency, climate change and renewable energy. Section 4 comments on the Bill's proposals relating to the RMA. Section 5 presents our conclusions.

2 The importance of investment in energy for economic growth

2.1 Inadequate investment in infrastructure hampers economic growth. In submissions to the 2001 post-winter review of the electricity system, we argued that the environment in which the industry was operating made future crises likely. This year's events bore out that assessment.

2.2 The government's target of achieving at least 4 percent per annum economic growth would increase economy-wide demand by 48 percent each decade, and double it every 18 years. In order to prevent infrastructure bottlenecks from stifling growth, major ongoing investments in infrastructure – transport, water, telecommunications, electricity, gas etc – would be necessary. For example, electricity generating capacity might need to increase by a third or more in the next decade.

2.3 In other contexts the government has readily acknowledged the importance of investment in energy. For example, in May 2003 the minister of energy observed that:

> Electricity is the essential fuel for a modern economy. We need it delivered in an efficient, fair, reliable and environmentally sustainable manner to all consumers. If our economy is to grow, business must have confidence that this will happen.[1]

2.4 There are a growing number of obstacles to infrastructure investment in New Zealand. For example:

- the RMA is a major impediment to development in terms of cost and uncertainty;
- much labour market, consumer, safety, environmental, competition and securities legislation undermines freedom of contract, private property rights and investment certainty;
- the ratification of the Kyoto Protocol is a deterrent to investing in energy in New Zealand;
- the trend to industry-specific regulation involving uncompensated takings, such as the forced separation of lines and energy businesses, increases uncertainty. It was a factor in Trans Alta's departure from New Zealand;
- increasing state ownership and control generates more risk and uncertainty for private investors. For example, the government's moves to expand

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[1] 'Stand-by generation is the way to safeguard our power supply', *National Business Review*, 14 May 2003.

electricity capacity in dry years potentially reduce the returns from investing in electricity capacity generally;[2] and

- the proposed removal of the right of appeal to the Privy Council elevates non-growth objectives ahead of commercial considerations.

2.5 Concerns about the cumulative adverse effects of this environment are widely held in the business community. They are also reflected in falls in the international rankings of New Zealand's attractiveness and competitiveness as a destination for investment.

3 Energy efficiency, renewable energy, and climate change

Energy Efficiency

3.1 The Bill inserts into the RMA a requirement to have "particular regard to the efficient use of energy from minerals and other sources of energy". However, it does not define the efficient use of energy. Nor is the definition in the Energy Efficiency and Conservation Act 2000 much help. That Act defines "energy efficiency" as "a change in energy use that results in an increase in net benefits per unit of energy".

3.2 The problem here is that those making decisions under the RMA will not have a satisfactory basis for assessing net benefits. Such assessments are subjective. For example, an expensively insulated building offers a trade-off between a high initial capital cost and low (fuel-related) heating costs (compared to a less insulated house). The better-insulated house takes less energy to maintain a given internal temperature, but buyers will differ as to whether it offers value for money. In general, poorer people may prefer the low capital cost/high running cost option, while higher income people may choose the opposite.

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[2] See the NZBR's submission to the Commerce Committee's Inquiry into the New Zealand Electricity Industry for more argument on this point.

3.3 When people differ about such matters, economists, central planners and politicians have no objective basis for saying which use is more efficient. Instead, at this level of generality, the welfare-maximising approach is to allow users to pursue their diverse preferences. The risk here is that energy efficiency policies will instead reduce welfare by adopting a 'one-size-fits-all' approach. For example, governments may set minimum standards that cater for the preferences of the relatively well-off but raise costs disproportionately for the poor.

3.4 In fact there is widespread confusion (worldwide) concerning what is an efficient use of energy.[3] As one example, the *National Energy Efficiency and Conservation Strategy* (the Strategy) set a "high-level target" of achieving at least a 20 percent "improvement" in economy-wide energy efficiency by 2012.[4] The arbitrary nature of this target is indicated by the Strategy's acknowledgment that the measure of energy efficiency to be used had not been determined. However, it seems reasonable to infer from its description of a planned "national efficiency energy index" that what it has in mind is a form of energy intensity index. In support of this interpretation, the Ministry of Economic Development's *New Zealand Energy Outlook to 2020*, February 2000, projects that New Zealand's energy intensity, as measured by PJ per dollar of GDP (1992 dollars), rose from 4.4 in 1970 to 5.5 in 1998. It projects that it will decline to 3.8 in 2020. These movements incorporate the effects of the past exploitation of Maui gas and the projected closure of gas-related petrochemical plants.

3.5 The problem here is that energy intensity is not a measure of the efficiency with which energy is being used. Nor is lower intensity an indicator of greater community welfare.[5] As the Maui gas example illustrates, if a country uses a large

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3 A speech on energy efficiency by Roger Kerr on 28 August 2000 focused on four particular sources of confusion. (Refer to http://www.nzbr.org.nz/documents/speeches/speeches-2000/energy_eff.doc.htm.)

4 This was prepared as a requirement of the Energy Efficiency and Conservation Act 2000 and was published in September 2001.

5 Dr Denis Dutton of the University of Canterbury recently illustrated the confusion between energy intensity and the community's overall welfare with the following anecdote:

source of energy locally, the measured "economy-wide energy intensity" is likely to rise. Whether that is in the national interest depends on whether it would be better to export the gas as LNG, or to leave it in the ground. This is an economic issue. Energy intensity is not a measure of economic value added.

3.6 People sometimes advocate lower energy intensity because they assume it will lead to less energy consumption. However, a new technology that reduces energy intensity may stimulate consumption by lowering the cost of energy per unit of output. To illustrate, people in well-insulated homes may choose to keep more rooms warmer in winter than those who live in draughtier homes.

3.7 In conclusion, the Bill is looking entirely in the wrong place for gains in energy efficiency. New Zealand has wasted energy in the past on a grand scale and is likely to do so in the future under current arrangements. Indeed, waste is arguably the most important feature of government energy investment, pricing and regulatory decisions in past decades. Waste can only be expected from widespread

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> In the 1970s during the oil crisis [Harvard psychologist] B F Skinner suggested a way that the United States' energy shortage could be alleviated. People should be rewarded, he argued, for coming together to eat in large communal dining halls, rather than cooking at home with their families. His reasoning was irresistible: large cooking pots have a lower ratio of surface area to volume. There would be therefore a considerable saving in energy in massive public kitchens, compared with numberless small individual pots cooking in private kitchen stoves across the nation.
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> Of course, Skinner must have known his idea would have to overcome objections based on ingrained middle-class prejudices. Some parents would feel aggrieved: placing children before big communal pots would rob mothers of the pleasure of preparing foods and feeding their own offspring. Others might object that the only food adequate to big, round energy-efficient vessels are stews or soups; they might complain about endless boiled fare. Families of one ethnic background or another might dislike the relatively uniform diet, despite the hearty, nutritious goodness of stew. I can imagine Skinner's frustration: Why are people so stubborn? Why can't they look beyond minor details and see the sheer reasonableness of the proposal?

Dutton comments that "B F Skinner was just another daft step on a long utopian road that stretches back through Marx, Rousseau, Hobbes, and St Thomas to Plato."

Denis Dutton, 'Darwin and Political Theory', *Philosophy and Literature* 27.1 (2003) p 241-254.

state ownership and control: the minister of energy recently alluded to New Zealand's track record as follows:

> In New Zealand, after decades of central government management … [c]entral planning was deemed inefficient and unreliable.
>
> Its failures, at different times, included over-capitalisation – the Clyde dam being a favourite example – under-investment leading to power shortages, as in the 1950s and 1973-74, and sudden price hikes such as the 60 percent rises in 1976 and 1979.[6]

3.8 If the government really wishes to promote the efficient use of energy it should seek to empower consumers by increasing their freedom to choose from competing suppliers who must look to customer patronage for their survival. It must also seek to ensure that regulations do not distort prices and that governments and regulators are constrained from predatory actions at the expense of those who invest irreversibly in infrastructure.

3.9 By expanding the range of considerations that politicians and bureaucrats can take into account in making decisions under the RMA, the Bill will further politicise the energy sector and complicate investment decisions. Given the incentives of politicians and bureaucrats, greater waste in the use of energy must be expected.

3.10 The Regulatory Impact Statement (RIS) in the Bill fails to consider waste in energy use as a result of excessive government ownership and control. To the contrary, it defines the problem to be the absence of a "stronger legal mandate" for exercising greater political control. The same RIS simply asserts that this stronger legal mandate will "potentially have long-term benefits for energy use". However, it does not identify their nature or define what it means by a benefit. Not does it consider possible adverse effects on the investment climate.

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6 Hon Pete Hodgson, *National Business Review*, *op cit*.

Renewable energy

3.11 Similar criticisms apply to the Bill's provisions requiring decision makers to have particular regard to the "benefits to be derived from the use and development of renewable energy". The provisions provide no guidance as to how decision makers can hope to assess such benefits, given their subjective nature.

3.12 The provisions to bias decision makers in favour of renewable forms of energy imply a bias against non-renewable forms. This is in addition to the bias against gas and coal implicit in the government's decision to ratify the Kyoto Protocol and in the Strategy's "high-level target" of achieving an increase in renewable supply of consumer energy by 2012 from a projected "business as usual" 10-20PJ to 25-55 PJ.

3.13 Such provisions seem likely to raise the costs and risks of investing in new generation from non-renewables such as distillate, coal, gas and geothermal. This is potentially serious because New Zealand must look to such sources, particularly to coal, for additional generating capacity as the Maui field runs down. For example, in the Ministry of Economic Development's base case for new generation requirements out to 2020, these sources account for over 60 percent of the 2,200 MW that is judged economic to develop. In contrast, wind energy is said to be economic for only 150 MW. This is consistent with US findings that renewable energy is not currently efficient: without policy privileges, "the renewable energy industry (at least the portion that generates electricity for the power grid) would cease to exist".[7]

3.14 The conflict between the objective of economic growth and other objectives is starkly illustrated with respect to coal. New Zealand has to develop alternatives to Maui gas. If new discoveries of gas can be exported as LNG for $7 a GJ, then, other things being equal, it would not be efficient to use it to generate electricity at a cost

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[7] Jerry Taylor and Peter VanDoren, 'Evaluating the Case for Renewable Energy: Is Government Support Warranted?', *Policy Analysis*, Cato Institute, 10 January 2002, p 4.

of 7.5-8 cents per kwh[8] when (imported) coal-fired electricity costs only 6.3 cents per kwh.[9] If New Zealand does not use coal to increase electricity generation capacity, where is the growth in capacity going to come from, and at what cost?

3.15 The RIS in the Bill states that the problem it is addressing in relation to renewable energy is that a number of councils and local government planners have repeatedly requested "a stronger legal mandate and legally relevant guidance to take climate change effects and the benefits of renewable energy into consideration". The RIS gives no consideration to the possibility that it might be unwise to accede to such requests. It makes no attempt to establish that a problem really exists or where the national interest might lie.

Climate Change

3.16 The Bill's provisions in respect of climate change have their good and bad points. The provision that requires decision makers to have particular regard to the effects of climate change provides no guidance as to how such effects should be assessed. The accompanying notes indicate that the intention is to allow regional councils to attribute to renewable energy the "benefits of lower greenhouse gas emissions".

3.17 This provision does not make sense. New Zealand emissions *in total* are too small to have any discernible effect on climate change. Any benefits from favouring renewable energy in this context could only relate to international relations. This is not a regional council competence.

3.18 In contrast, the Bill includes provisions that aim to avoid the costs and incoherence that would result from adding a regional layer to the national controls on greenhouse gas emissions. An even better approach would be for the government to require officials to provide it with more competent analysis of the greenhouse

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8 Presentation by Keith Turner, Meridian Energy, 27 August 2003.

9 The 6.3 cent figure is from p 24 of the Draft National Energy Efficiency and Conservation Strategy. It is sourced to the MED's outlook to 2012 document.

gas issue than that contained the National Interest Analysis of 13 February 2002. The lack of either official advice or competent public interest analysis of the case for ratification of the Kyoto Protocol is a serious problem for the government and the business community alike.

3.19 The RIS notes that, in future, applicants for resource consents will "be required to provide information on how their proposal takes into account the effects of climate change …" Given that no one knows the effects of climate change at the local level, applicants may take the path of least resistance and follow the lead of local politicians and bureaucrats. The blind will lead the blind. Nevertheless, the RIS assumes net benefits in asserting that: "Any costs arising from this requirement should be offset by a reduction in the cost of avoiding, mitigating, or remedying damage [from climate change]." This is empty rhetoric, unsupported by evidence.

4 The Resource Management Act

4.1 The RMA is already a serious impediment for major energy projects. Electricity projects have long lead times and long asset lives. Investors need a high degree of certainty about the planning environment, the rule of law, the stability of the regulatory environment and the behaviour of state electricity companies. Currently, New Zealand falls short in all respects and the RMA is a major part of the problem.

4.2 Nor does the proposed bias in favour of renewable forms of energy offer any serious prospect of relief. The RMA has a stronger bias against all development. Meridian's experience to date with Project Aqua illustrates the problem. The barriers are heightened by the credence given to non-scientific claims of harm and benefit based on spiritualism or animism.

4.3 There will be pressures on the government to adopt *ad hoc* responses designed to 'fast-track' (politically) important projects. Its recent decision on Project Aqua reflects these pressures. However, as the example of the National Development

Act 1979 illustrates, 'fast-track' legislation is likely to attract bitter opposition, make artificial and contentious distinctions between investment projects, and give priority to the wrong projects. It will also create investment uncertainties, delays and regulatory costs in disputed borderline cases.

4.4 What is required, above all, is a fundamental review of the RMA. All growth requires change, sustainable and unsustainable. Even the maintenance of current living standards requires ongoing change. The government's targets for economic growth require an acceleration in the rate of change in the economy. It has always been obvious that the RMA would be a major obstacle to change and therefore to economic growth. The NZBR's March 1990 submission on the Resource Management Bill reported that its members were unanimous that it would lead to a "retarded economy, poor environmental decisions and dwindling options for subsequent generations". It argued that framework of the legislation failed to distinguish adequately between desirable societal outcomes and the appropriate role of government in their achievement.

4.5 Failing a fundamental review, there is still much that could be done to alleviate the barrier the RMA represents to economic growth. The NZBR has made the following suggestions:[10]

(i) Increase the right to compensation. This would force greater balancing of costs and benefits, promote mutually acceptable agreements among parties, demonstrate greater respect for the victims of the legislation, and avoid turning assets into liabilities.

(ii) Seek to fund compensation wherever possible from those who claim a benefit from a restriction on development rights. Otherwise taxpayers and ratepayers will be at risk.

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[10] Speech by Roger Kerr, 'Resource Management Act: Fundamentally Sound or Fundamentally Flawed', 19 April 2002, at http://www.nzbr.org.nz/documents/speeches/speeches-2002/rma_act_fundamentally_flawed.doc.htm.

(iii) Limit objections. In particular, competitors and those who are making claims about harms that lack any scientific or objective basis should not be permitted to block the exercise of others' common law property rights. More generally, common law tests of who is an interested party should be applied.

(iv) Restore the rule that the costs of court action can be awarded against litigants.

(v) Impose a similar burden of proof on those objecting to a resource use to that which a court would apply to a common law application for an injunction – and seek similar disciplines on the scope of any injunction that is granted.

(vi) Clarify the law to establish that the only harms and benefits to be considered are those that relate to human welfare. References to intrinsic values would be dropped. So would the extremist notion that there are environmental 'bottom lines' not recognised as common law harms that must be achieved regardless of the cost to human welfare.

(vii) Eliminate fuzzy language more generally. This applies particularly to the references to Treaty principles and sustainable management.

(viii) Limit the application of the law to areas in which common law remedies would be likely to be ineffective.

4.6 The community needs to have in front of it a sound policy framework for identifying the actual problems that require government action and the most efficient means of addressing them. The antagonism and animosity that surrounds the RMA today reflects in part the fact that no such framework was established for principled discussion when the Act was being formulated.

4.7 In contrast, the proposed amendments to the RMA represent a further step in the wrong direction. They add the fuzzy concepts of energy efficiency, renewable energy and the effects of climate change to all the other fuzzy concepts in the existing statute. As such, they promise to increase the antagonism and animosity that is a hallmark of bad legislation.

5 Conclusions

5.1 With one exception, the measures in the Bill are inconsistent with the government's prime economic objective – securing faster economic growth. The provisions in relation to energy efficiency and renewable resources lack any discernible national interest basis.

5.2 The RIS embodied in the Bill is vacuous. It does not identify any problem that needs to be addressed.

5.3 *In our view these measures will raise the costs of investing in energy and reduce the (economic) efficiency of energy use. All proposals in relation to energy efficiency and renewable energy should be dropped from the Bill, and related legislation.*

5.4 The exception is the intention to avoid the unnecessary duplication at the regional level of costs imposed at the national level in respect of greenhouse gas emissions. However, we would expect the other measures on climate change in the Bill to be negative for investment and therefore economic growth. They presume knowledge about the local effects of climate change that does not exist. *In our view, the measures requiring decision makers to pay particular regard to the effects of climate change should be deleted from the Bill.*

5.5 The government may believe that it can add to the impediments to investment in the RMA and still achieve its targeted increase in economic growth. We do not share that view. What counts for local economic growth is the degree to which private investors invest locally, offshore, or not at all. The more investors see the government's growth aspirations as being inconsistent with its policy decisions, the less confidence they will have in investing in New Zealand. *In our view, the measures in the Bill, in conjunction with the failure to review of the RMA in a fundamental way, are seriously inconsistent with the government's stated goals for economic growth.*