



Preliminary Analysis and Submission Approach to Resource Management Amendment Bill 2015

Prepared by NZPI Senior Policy Adviser, 21st January 2016

1. Introduction

As Simpson Grierson has observed, “while the Government has abandoned controversial changes to Part 2 of the RMA, the proposals in the Bill are still significant and wide ranging.... the select committee process will be crucial in identifying any unintended consequences and improving the workability of the reforms.”

The timetable for preparation of appropriately consulted NZPI submissions to the Resource Management Amendment Bill Select Committee is short and sharp because submissions must be received by 14th March (NZPI Board signoff is 26th February). This has necessitated quick work during the Christmas and summer holiday period. There have also been requests from members for copies of NZPI’s analytical work to assist their preparation of institutional submissions to the Bill.

The purpose of this briefing is to:

- a) share with NZPI members preliminary research findings and associated recommendations for discussion,
- b) share our thinking with partner organisations including Local Govt NZ, NZ Council for Infrastructure Development, RM Law Association, Environmental Defence Society
- c) seek feedback on process, research and priorities over the coming 6 weeks.

2. Preliminary Comments vis a vis the Bill

The MfE introduction to its Regulatory Impact Assessment (RIS) explains: “...There has not been any wider public consultation on new and amended proposals contained in this paper since 2013; however there will be further opportunity for public views to be heard on these proposals through the Select Committee process....”. The RIA Team in Treasury have reviewed MfE’s RIS and while being generally supportive, state: “...there has been no consultation on several actions, including some that are identified as being among the most significant... it is unclear how far the reform package is likely to deliver its objective of robust and durable resource management decisions...”.

In effect, the devil is in the detail.

3. Appetite for Change

Members will be aware of a number of other policy initiatives that are underway to review and reform New Zealand’s planning system. For example: the Productivity Commission, under Government direction, is formally reviewing New Zealand’s system of urban planning; Local Government NZ has recently released its “Blue Skies: Planning and Resource Management” thinkpiece which reviews the performance of the RMA and provides many ideas for the future; and

the National Council for Infrastructure Development has provided policy advice after a close examination of urban and renewal planning in Australia and the UK.

In recent years various NZ Government technical working groups have examined aspects of NZ's planning system and provided recommendations for change – few of which have been acted upon.

We believe there is appetite for significant legislative change, and we further believe the current RMA Amendment Bill is not the time or place for major change. We believe the Bill should be treated as a holding operation and an opportunity to fix immediate operational problems.

4. Proposed Approach and Basis for NZPI's Response

The 40 or so proposals in the Bill include a number that NZPI is likely to support without amendment; many that NZPI will probably support subject to important and specific amendment; and others that NZPI will likely oppose because of significant concerns. That recognition has led us to suggest the following structure for the submission to the Select Committee:

- Proposals that NZPI support (some of which in our opinion require amendment);
- Proposals that would shift decision making from local/regional to central government;
- Proposals that would cause major changes to address fundamental issues.

5. Research and Consultation undertaken by NZPI to date

NZPI moved swiftly prior to the Christmas break to construct and distribute a survey aimed at capturing members initial thoughts on the individual proposals within the Bill. To date some 80 + responses have been received, with more expected.

Those responses received have served to reinforce an initial clause by clause analysis of the Bill that has been completed and will serve as an engagement tool in the coming weeks. An engagement process and communications strategy have also been designed to ensure a robust submission.

The next sections of this report set out NZPI's preliminary assessment of the Bill proposals organised into the three categories described above. This assessment has been reviewed by NZPI's RMA Working Party members led by Board Member Karyn Sinclair.

6. Category 1 - Bill Proposals that meet a clear and present need

In principle, subject to amendment and detailed suggestions drawn from member experience, the following proposals be supported by NZPI (These are numbered in accordance with MfE's Amendment Bill Regulatory Impact Statement):

- 1.4 Improve the management of risks from natural hazards under the RMA***
- 2.1 Changes to the plan making process to improve efficiency and provide clarity***
- 2.4 Enhance Māori participation by requiring councils to invite iwi to engage in voluntary iwi participation arrangements and enhancing consultation requirements***
- 3.1 Consent exemption for low impact activities and minor rule breaches***
- 3.2 10-day fast track process for simple applications***
- 3.8 Improve management of risks from natural hazards in decision-making on subdivision applications***
- 4.1 Enable objections to be heard by an independent commissioner***

- 4.2 Improve Environment Court processes to support efficient and speedy resolution of appeals***
- 4.3 Enable the Environment Court to allow councils to acquire land where planning provisions have rendered land incapable of reasonable use and placed an unfair and unreasonable burden on the landowner***
- 6.2 Streamlined and electronic public notification requirements***
- 7.1 Minor changes to the Public Works Act 1981 to ensure fairer and more efficient land acquisition processes***
- 7.2 Provide for equal treatment of stock drinking water takes***
- 7.3 Provide regional councils with discretion to remove abandoned coastal structures***
- 7.4 Create a new regulation making power to require that stock are excluded from water bodies***

Proposals falling into this category, but which members have significant concerns about are:

- 2.2 Provide councils with an option to request a Streamlined Planning Process for developing or amending a particular plan***
- 2.3 Provide councils with an option to use a Collaborative Planning Process for preparing or changing a policy statement or plan***
- 3.3 Streamline the notification and hearing process***
- 3.4 Improve processes for specific types of housing related consents***
- 3.5 Require fixed remuneration for hearing panels and consent decisions issued with a fixed fee***
- 3.6 Clarify the scope of consent conditions***
- 6.6 Simplify charging regimes for new developments by removing financial contributions***
- 6.7 Remove the ability for Heritage Protection Authorities that are bodies corporate to give notice of a heritage protection order (HPO) over private land and allow for Ministerial transfer of HPOS***

Proposals falling into this category, but which members and our internal analysis require further detail and information about prior to coming to an informed view, are:

- 5.1 Provide for joint resource consent and recreation reserve exchange processes under the RMA and the Reserves Act 1977***
- 5.2 Align the notified concessions process under the Conservation Act 1987 with notified resource consents under the RMA***
- 6.3 Enhanced council monitoring requirements***
- 6.4 Reduce BOI cost and complexity***
- 6.5 Enable the EPA to support RMA decision-making processes***
- 7.5 Amendment of section 69 and Schedule 3 – Water Quality Classes***

NZPI is interested in specific comment from members about any of the above proposals.

7. Category 2 - Proposals shifting decisions from local/regional to central government

The next set of proposals, in NZPI's view, create new decision-making powers at central government level which run the risk of transferring control away from local government and potentially conflicting with the community enabling and self-determining purposes inherent in the RMA. NZPI is interested to hear more from members on whether the following proposals strike an appropriate balance between supporting or weakening decision making at local level.

1.1 Changes in National Environment Standard provisions

Bill Clauses 25 & 26. Amendments to Section 43. Regulations relating to “National Environmental Standards” (NES) may be prepared *for any specific area of New Zealand, and may specify how affected consent authorities perform their functions to achieve the standard*. This is one of a set of measures which, when combined, give the Minister almost unrestricted abilities to direct the activities of individual TLAs or RAs in regard to what must be in Plans, how those Plans are given effect to, how they are monitored, and what their effects are. There appears to be no ability for a TLA to oppose or to challenge the imposition by the minister of an NES specification as to what it must do to perform its function to achieve any NES. For example an NES may specify activities that do not require consent and/or are precluded from public notification – which might conflict with the District Plan. This appears to be an unfettered ability for the Minister to directly manage the activities of any TLA/RA in relation to the achievement of one or more NES.

1.1 Changes in National Policy Statement provisions

Bill Clauses 29-33. Amendments to NPS provisions. Expands the directive powers of a National Policy Statement (NPS), and allows an NPS to be targeted at a specific district, region within a TLA or RA or any specified area. The scope of the ability for Minister to direct and specify the functions of TLAs in respect to developing Plans is widened considerably. For example: *methods or requirements that local authorities must, in developing the content of policy statements or plans, apply in the manner specified in the national policy statement, including the use of models and formulas...* In effect, provided an NPS states objectives and policies for matters of national significance that are relevant to achieving the purpose of the RMA, it can require any particular TLA to insert specific objectives and policies into its District Plan. This proposal also appears to enable unfettered ability for the Minister to directly manage the activities of any TLA/RA.

1.1 Changes in National Policy Statement & Environmental Standard provisions

Bill Clause 34. New Combined NES and NPS provision. This proposal gives the Minister considerable freedom to intervene locally. The combination of the stream-lined process provision in 46a(1)(b), with the ability to target a specific TLA, and the ability to require the achievement of a specific NES and to impose the ways and means of dealing with it in an NPS, would appear to enable unfettered central control.

1.1 Changes in National Policy Statement provisions

Clauses 39, 42 and 46. Changes require TLAs and RAs to comply with any direction built into NPS, NZCPS, NPT, and accordingly change district/regional plans. These provisions require an understanding of the context and criteria for which the Minister might exercise this right, along the lines of Board of Enquiry call-in powers. NB: an NPS and NZCPS can - if the proposed reforms prevail – relate to specified land/coastal areas.

1.3 Changes in National Direction including National Planning Template

Clause 62(2). When considering applications under s.104 “...must have particular regard to the objectives and policies in the national planning template ...”. This proposal provides the Ministry and the Minister with a lever to directly influence the processing of local resource consent applications.

6.5 Changes in National Direction enabling EPA resource use

Clause 66. Preliminary statutory interpretation is that Minister must have regard to views of applicants and TLA, TLA’s capacity to handle matter, and recommendations of EPA (but is not bound by these), when deciding to call in any matter. This proposal is associated with other changes enabling EPA planning resources to be allocated to BOI investigations, and for related costs to be charged as appropriate.

This category of proposals could be enacted in the form of provisions that can be sought following an appropriate formal request by a local authority, rather than centrally imposed. However in their present form, these proposals would deliver a form of central control, rather than national guidance and direction.

There are more proposals in this category which are yet to be fully analysed.

8. Category 3 Proposals more appropriately considered in a wider planning system review

NZPI is concerned by the number of major change proposals that have been incorporated into this Bill and which seek to correct or mitigate long term problems in the RMA. However, because other initiatives are now underway to change NZ's system of planning (in particular the *Better Urban Planning* inquiry being conducted for Central Government by the Productivity Commission), NZPI considers that the RMA Amendment Bill should not be progressed in its present form. We are concerned that the costs of enacting and implementing major proposals will exceed their benefits. The Administrative work involved will distract from the more important task of planning reform, and it will cause planners and policy makers an immense amount of work to change internal systems in order to put into effect provisions with a short and problematic life. We note also that some of these proposals – eg the National Planning Template – are not required to be in effect until two years after enactment of Bill.

Proposals include:

1.3 Mandatory National Planning Template

Clause 34. New National Planning Template (NPT) provisions. The main stated objective of these provisions is to minimize duplication. It will also harmonise and standardise plans. The first of these NPTs must be promulgated within 2 years of enactment. Some members in response to the first survey suggest that these should have been around 20 years ago (or near when RMA was first enacted), and question whether there is any point to these provisions now, given the present appetite to more thoroughly review aspects of NZ's planning system.

1.5 Requirements on councils to improve housing/provide for development capacity

Clauses 11 & 12. Amendments to Sections 30 & 31. These are new provisions re objectives, policies, and methods and are intended to ensure that there is sufficient development capacity in relation to residential and business land to meet the expected long-term demands. Unclear what is "long term". Or what approach might be taken to assess "expected". Factors to be taken into account include whether the land is serviced with infrastructure, which is generally provided in terms of the LGA. NZPI questions whether this might require all RA's/TLA's to prepare spatial plans (like Auckland). And just as importantly, how should the relationship between LGA and RMA duties be managed/prioritized, given that infrastructure needed to increase "development capacity" with serviced land needs to be funded by means governed through LGA decision processes?

2.3 Collaborative Planning Process option

Clause 52. Optional Collaborative Planning process for plan changes. While there are many methods that will lead to increases and improvements in community and stakeholder engagement with local planning decisions and systems, there are risks in adopting a cut and paste approach to collaborative planning processes by themselves without at the same time also reviewing the objectives, purpose and scope of such planning processes. Moreover, there are many models of collaborative planning, some of which aim for consensus building, others at conflict resolution, and others include a fully costed assessment of all of the gains and losses that might be the outcomes associated with a change or proposal. There is no guidance within the Bill as to which model might be adopted. In the

absence of a comprehensive review, the words ‘collaborative planning’ risk being meaningless at a community level.

6.1 New procedural requirements for decision-makers

Bill Clause 8. New Section 18A. A new procedural/process principle to apply to all persons exercising powers and performing functions. *(1) must use timely, efficient, consistent, and cost-effective processes that are proportionate...* It is unclear how decisions about what is a proportionate process would be made or measured. This principle is a provision requiring substantial new case law for interpretation. It lacks detailed mechanisms for implementation. NZPI questions whether this is the right time in the RMA’s history to implement provisions whose purpose is unclear and which might conflict with the current purpose of the Act?

6.6 Introducing Environmental Offset mechanism while removing financial contributions

Clause 62(1). When considering applications under s.104 “...measures proposed by the applicant for the purpose of ensuring positive effects on the environment to offset any adverse effects...”. This policy idea arises from the proposal to drop financial contributions, and appears to incorporate the ‘unders and overs’ approach that has been suggested – and which is close to rejection - for the management of water quality. This is a controversial proposal. Under it offsets can be offered by individual applicants. Care is required before legislating the expectation of “offset” especially as the BOI and Environment Court have judged that the RMA is not zero effect based legislation.

9. Your Feedback and Contributions

While this preliminary report identifies Bill proposals that are generally supported (based on feedback from the first survey) and addresses most of the potentially contentious aspects of the Bill, more analytical work is being carried out on sections that have yet to be fully explored. (These include, for example: proposals affecting farms and water; ministerial powers relating to aquaculture; loosening of subdivision decision-making provisions; submission strike-out provisions; detailed notification and fast track provision changes; EEZ changes enabling exploration).

NZPI is intent on providing thought leadership over the proposals contained in what is a very complex Bill, and in reflecting the views of our membership. With that in mind we will be sharing our thinking with our broader membership and with partner organisations including: Local Government New Zealand; New Zealand Council for Infrastructure Development; Resource Management Act Law Association; Environmental Defence Society. The latter engagement would be based on the hope that there may be the opportunity for mutual support of various aspects of our respective submissions.

Your Feedback:

NZPI would appreciate feedback, by 10th February, on the following matters:

- 1) Do you generally support the submission approach suggested in this report?
- 2) Do you have strong views that support/conflict with anything in this report?
- 3) If you have prepared specific submission material or other commentary that you would like to share with NZPI for our consideration, we would request that you please send it to NZPI’s senior policy adviser: joel.cayford@planning.org.nz

We plan to incorporate your feedback and consolidate the policy basis of our submission work. Next stages include drafting submission text and identifying specific submission points which we will seek qualitative membership feedback on, before proceeding with our second full membership

quantitative survey. Information collected from members, will shape and inform NZPI's final submissions which will be provided to the Board for sign-off on the 26th February 2016.

Ends