



New Zealand
Planning Institute[®]
Te Kokiringa Taumata



NZPI Submission on the Resource Management Reform Bill

28 February 2013

1. Introduction

The New Zealand Planning Institute (NZPI) welcomes the opportunity to provide comment on the Resource Management Reform Bill (the Bill).

Established in 1949, the NZPI is the professional organisation representing planners and planning practitioners throughout New Zealand. NZPI's purpose is to provide learning, support, knowledge, and advocacy for planning professionals. NZPI membership is broad, and individuals within our organisation have a varied range of opinions and experiences which helped to inform this submission.

NZPI members play a pivotal and unique role in the implementation of the Resource Management Act 1991 (the RMA). Our members lead the interpretation and application of the RMA throughout New Zealand and are therefore well placed to provide constructive, insightful and informed feedback on proposed legislative changes to the RMA. That unique expertise has led NZPI to provide the Ministry for the Environment (MfE) with feedback on its Building Competitive Cities Discussion Document (2010), and Resource Management Act 1991 Principles Technical Advisory Group report (2012).

This submission has tapped into that expertise, seeking feedback from all members and undergoing a rigorous peer review by both the NZPI Board and the Planning Advisory Committee. The submission has also been informed by a workshop, initiated and hosted by the Auckland Branch of NZPI.

2. Overview

NZPI is in general agreement with, and supportive of, the objectives of the Bill. NZPI members have raised concerns that the wider RM Reform process and the changes proposed in the Bill do not provide comprehensive urban and planning legislation, and therefore may fail to deliver the context in which those objectives can be met, namely to:

- further streamline the resource consent regime
- streamline the delivery of Auckland's first Combined Plan
- improve the quality of local decision-making
- improve the workability of the RMA through minor and technical amendments

Please note those recommendations in Part 1 of this submission address the general proposed changes to the RMA in the Bill, and recommendations in Part 2 of this submission address the proposed amendments affecting Auckland Council. Feedback on the process for development of the first Combined Plan for Auckland Council been provided primarily by the NZPI Auckland Branch. Comprising one third of the country's professional planners, NZPI Auckland Branch members have a clear understanding of the potential implications invoked by the Bill's proposals.

Part 1

The following comments address the general proposed changes in the Bill

3. Section 88: Making an application for resource consent

NZPI members have concerns that the proposed changes to section 88 (s88) may complicate what is currently a relatively straight forward part of the RMA. Furthermore, the proposed changes to s88 seem opposed to the governments overriding objective, which is understood to be the simplification and streamlining of the RMA. NZPI members believe that the proposed changes will also require increased resourcing resources at Council

level that may either not yet be budgeted for, or simply not affordable. The proposed changes, particularly to the calculation of working days, are very complex and difficult to understand, which is likely to add both time and cost to the consenting process.

NZPI members support the standardisation of planning requirements across New Zealand, such as information requirements for resource consents by applicants (AEEs). The changes proposed in the Bill are appropriate for some, but not all scales and types of development. The information required in AEEs should reflect the scale of the proposed activity and the effects of the proposal. A larger scale proposed activity, for example, would require a more robust AEE compared with a small scale proposed activity, such as an application for a front yard/road boundary setback. Rather than simplify and streamline, NZPI members believe that the proposed changes are likely to make the planning process more complicated and less accessible to the public.

NZPI members are also concerned with the impact that the proposed changes will have on applicants. It is unlikely, and should be unnecessary, for applicants to know and understand the full range of relevant objectives and policies in a District Plan for a proposal. This will have an economic impact on applicants who may now be required to locate and fund a specialist, thus adding additional costs and time for a resource consent application. The proposed changes to the RMA seem to encourage the use of external experts, rather than having an accessible planning framework for the public.

Recommendation 1: That s88 be retained and only changes be made to the headings of the subsections.

4. Section 95: Time limit for public notification or limited notification

A number of NZPI members have concerns regarding the proposed amendment to Section 95, which changes from 10 working days to 20 working days in respect of limited or public notification. It is reasonable to decide whether to give public or limited notification of the application within 10 working days. It is less feasible, however, for a council to actually undertake the notification within 10 working days.

Recommendation 2: That the existing Section 95 is amended to state:

~~A consent authority must, within 10 working days after the day an application for a resource consent is first lodged,—~~

- (a) within 10 working days after the day an application for a resource consent is first lodged, decide whether to give public or limited notification of the application; and
- (b) within 20 working days after the day an application for a resource consent is first lodged, notify the application if it decides to do so.

5. Clause 6, Section 32

NZPI members question whether the recasting of section 32 (s32) will achieve any real gains. Raising the quality of pre-notification plan analysis in a reasonable and cost-effective manner is important, but the resources and costs associated with this can be considerable.

This is further compounded by the transitional arrangement being proposed to apply to proposals that have not yet progressed beyond further submissions. These transitional provisions cast unnecessary uncertainty over proposals currently nearing a state of readiness for public notification. NZPI members believe that a transition time of three months from enactment is inadequate given the investment and commitment of those resources well-prior to the Bill's enactment.

NZPI members would like to see the Bill address situations where local authorities must amend their policy statements and plans to give effect to national planning instruments such as NPSs and NESs. Members believe that where councils already take actions in response to a NPS or NES, then s32 obligations for a detailed analysis of consents should be removed and much more straightforward.

With this in mind, NZPI members are concerned that the proposed amendments to s32 reporting are counter-productive to Cabinet's agenda to simplify and streamline. The most tangible and graphic illustration of the amendments is likely to be in the sheer size of s32 evaluation reports, notwithstanding the intent of s32(1)(c) suggesting a level of detail corresponding to complexity of issues. The NZPI members support the intent of transparent and collaborative process and for that reason support a robust s32 process.

Recommendation 3:

- a) Clarity is provided regarding which authority or agency will be required, and at which time(s), to undertake the assessment of options and evaluation of benefits and costs, plus the relevant reporting timeframes.
- b) Ensure local authorities are not required to undertake s32 evaluations when making changes to plans to respond to NPSs or NESs.
- c) Amend the transitional provisions so that any proposed plan or change already in its statutory phase is not required to be re-evaluated using the new s32 provisions.

6. Terminology

NZPI members have expressed concern regarding inconsistencies in the use of terms, and seek further clarification. Two examples are Clauses 69 and 81. Specifically, there is an inconsistency between the requirements in s32, s32A s32AA and consequent ambiguity in application. In particular there are three different definitions of 'proposal' as follows:

- s32 defines "proposal" as a proposed standard, statement, regulation or plan.
- s32A defines "proposal" as a proposed standard, statement, regulation, plan or change.
- s32AA defines "proposal" as a proposed statement, plan or change.

In Clause 5 to Schedule 1, the rewording is also unclear regarding which local authority planning documents it applies to. Clarity of these terms is critical, because as the obligation to undertake an evaluation is not included in the Reform Bill proposed s32, this clause becomes the main trigger for the obligation by the local authority to prepare an evaluation report prior to proceeding and to publicly notify.

Recommendation 4:

- a) That consistency of terminology be applied through the Bill.
- b) That the existing s32(1) be retained as it provides clarity regarding what planning documents a s32 evaluation has to be prepared for, and the responsibility for the preparation of the evaluation.
- c) That in Clause 69 clarity be provided regarding how to read the words "proposed standard, statement, regulation or plan".
- d) That in Clause 69 each document be referred to by its specific name or title, rather than the generic term "proposal".
- e) That the rewording of Clause 5 in Schedule 1 be reviewed.

7. Cost benefit analysis

While NPZI members recognise the merits in clarifying that assessment of benefits and costs is to include environmental, social, and cultural matters, the RMA's current meaning of 'environment' and 'effect' are

already sufficient to ensure a well-rounded consideration of all matters in plan-making. NZPI members believe that the proposed changes will move away from the current and arguably better process whereby planners report in full the analysis, reasoning, options, and implications of any given proposal, towards a lesser process of interrogation and assessment followed by reporting.

NZPI members support changes that would improve the quality of cost and benefit analysis of regulatory proposals throughout New Zealand. The Regulatory Impact Statement to the Bill notes that the main problem with s32 analysis is the capacity, capability, and resourcing with local authorities. It states that legislative changes are likely to have minimal benefit over the status quo unless practice-related options are also implemented.

NZPI members have expressed concern, however, regarding the level of detail contained in s32 (2) (i) and (ii), since they fail to correspond with the level of detail that is required to assess the impacts of a proposal. NZPI members note that s32 (2) appears to draw two specific matters out for special attention in the assessment of options. This could potentially weight the assessment against changes that have negative impacts against current sectors of the economy or sources of employment, without ensuring equal evaluation of the potential for new economic growth or employment opportunities that could be created in new sectors.

NZPI members advocate for a balance between the potential negative impacts on existing sectors of the economy with the opportunities for new, innovative approaches, and potential economic growth and employment opportunities that might be created. It is therefore suggested that the singling out of particular aspect of an economic evaluation could potentially be a blunt instrument to address an issue of practice.

Inclusion of greater detail poses a risk that greater weight may be given to economic versus over other effects to be considered. There is considerable case law regarding the balancing of environmental, economic, social, and cultural aspects of the RMA. Further to this, s32(2) changes could result in economic matters being considered twice (under both s5 and s32) unless the amended s32 is qualified to clarify that the amendments have been introduced to ensure that councils will give active consideration to economic wellbeing when preparing plans.

Recommendation 5:

Add the words ‘economic growth and employment’ in brackets as a sub-set of the word ‘economic’ as follows:

“(2) An assessment under subsection (1)(b)(ii) must—

(a) identify and assess the benefits and costs of the environmental, economic (including economic growth and employment effects), social, and cultural effects that are anticipated from the implementation of the provisions,~~including the opportunities for—~~

~~(i) economic growth that are anticipated to cease to be available; and~~

~~(ii) employment that are anticipated to be provided or reduced; and~~

Part 2

The comments in the following section address the proposed amendments affecting Auckland Council

8. Resourcing and capacity

NZPI members concur that under s122 MfE should meet the full audit costs. This is important to be seen as an independent review. NZPI is concerned that there may be inadequate resources and appropriately qualified staff to undertake the audit of the s32 report. This could mean that consultants or other Ministries may be engaged to undertake the work.

NZPI members have also expressed the need for the audit to be undertaken in an environment that diminishes the potential for political influence.

Recommendation 6:

- a) That MfE meet the full audit costs.
- b) That the audit be undertaken in a politically neutral environment.

9. Professional guidance and capability development

NZPI members have voiced concerns about the guidance that will be required to address the capability and resourcing for Council staff during the overall process.

Recommendation 7:

Provide and promote professional development through guidance and training as outlined in the regulatory impact analysis to the Bill's changes. Key features would include:

- a) A manual for practitioners.
- b) Templates and guidance on specific topics e.g. how to quantify costs and benefits.
- c) Training as continuing professional development for those who take a lead role in planning documents and/or practitioner accreditation process run by an external body.

10. Criteria

Some NZPI members have concerns regarding how MfE will audit s32 reports. While the audit criteria are required to be established in consultation with Auckland Council, it is members understanding that MfE determines the criteria.

The Bill under Section 122 (s122) should also include some general guidance on the scope as to what the audit should include. NZPI members seek that there will be a balance between the quantitative versus qualitative assessments. The emphasis on economic development and jobs created or lost should not be considered at the cost of social and environmental (both natural and physical) matters being discounted or ignored.

Recommendation 8:

- a) That MfE provides clear guidance, under s122, regarding the scope of the audit which should include provision of a statement of consultation undertaken.
- b) That MfE illustrates how the audit will achieve a balance between quantitative and qualitative assessments, as well as of environmental, social, cultural, and economic outcomes.

11. Timeframes and process

NZPI members recommend that a provision be included in the Bill for the preparation and public consultation on an initial draft s32 report prior to the formal notification of the Combined Plan and MfE audit report. This inclusion would enable the public to comment on and understand the context and rationale underlying the draft Combined Plan. The initial draft s32 should be released with the initial draft Combined Plan.

This principle does, however, raise a timing issue, because Auckland Council will release the initial draft Combined Plan for comment in March 2013. The period for comments then closes end of May 2013, before the initial draft s32 report's completion. It is therefore recommended that under s122 Auckland Council prepare an initial draft s32 and consult with the public for at least 4 weeks, with the feedback recognised and considered in the s32 report that goes to audit by MfE. Delaying the notification could lead to a better draft Combined Plan and s32 because of the enhanced public engagement and time for Auckland Council staff to consider the feedback.

NZPI also seeks clarification regarding whether the s32 and MfE audit would now be subject to appeal on points of law. Should Auckland Council, decide not to change the draft Combined Plan to reflect MfE's recommendations provided in the audit, would there be grounds for appeal?

Recommendation 9:

- a) Include a provision in the Bill for the preparation and public consultation on an initial draft s32 report before the formal notification of the Combined Plan and MfE audit report.
- b) Under new s122 Auckland Council prepares an initial draft s32.
- c) Auckland Council consults with the public for at least 4 weeks, with the feedback recognised and considered in the s32 report that goes to audit by MfE.

12. Pre-notification Consultation Process

NZPI supports this valuable process to input informally on the Auckland Unitary Plan, and believes that in principle it reflects good practice. The Bill must recognise that the first Auckland Combined Plan establishes Auckland's future direction. This requires development through a process that meets the principles of natural justice, as set out in section 14 of the Local Government Act 2002 (LGA 2002). Submitters have the right to be heard or the principles of the LGA 2002 related to a local authority, and for this to be conducted in an open, transparent, and democratically accountable manner that empowers Council to provide for the community's aspirations. NZPI has concerns about how and whether this will happen, given the short timeframes, lack of appeal rights, and level of detail to be reviewed by Auckland Council. In addition, the potential lack of public awareness coupled with the expertise required to develop submissions, poses a risk to the long term engagement required for the Plan's endorsement and support both by Council and the public.

Recommendation 10:

- a) A Statement of Consultation is included as a minimum.
- b) An (existing) s32 should accompany the discussion document, and be reflected in the proposed timeframes.
- c) Provide timeframes that allow for comprehensive engagement and review/consideration of the public comments.

13. Hearings Panel Formation (Sections 155-163)

NZPI members agree that Panel members should be appointed by Ministers. NZPI recommends, however, that Council, with input from the Māori Statutory Board, be engaged in the process and nominate panellists for

Ministers to select from. Appointing panel members from outside the Auckland region is acceptable, providing they have a particular skill set or knowledge of Auckland.

The proposed maximum of 7 panellists, in our members' opinions, is insufficient to service the volume of hearing(s) in the proposed timeframe. NZPI members recommend a greater number of persons to service these panels, and to allow multiple and overlapping panels to operate simultaneously. The number of panel members should be commensurate with the scale of the plan. Panel members should have a range of professional backgrounds to service the Hearings Panels.

Having a larger pool of panellists may also encourage the 'right' people as they may not need be full-time, which could prevent the potential risk of fatigue or burn-out.

Panel members' credibility will be critical, and a highly regarded Chair will be essential. An ideal panel will have a range of backgrounds including planning, legal, scientific, and Māori values. Panel members with a legal background, while beneficial, should not be compulsory. There are already planners who are independent Hearings Commissioners who would be excellent in the role. Additionally, remuneration may need to be reviewed should the Auckland Council recommend that the Minister apply the rate it currently pays independent Hearing Commissioners.

Recommendation 11:

- a) Provide a pool of persons, the ability to review the number s commensurate with the scale of the plan would be better, with a range of professional backgrounds to service the Hearings Panels.
- b) Allow for multiple and overlapping panels to operate simultaneously.
- c) Review the remuneration structure to pay Hearings Panel members the equivalent rate that MfE currently pays independent Hearings Commissioners.

14. Hearings Panel and Hearings Procedure (Sections 124-138)

NZPI members believe that the hearings process is very important, and have a number of concerns regarding the proposed changes to this aspect of the legislation. Given the tight timeframes, the ability to group like issues will be critical, as will the ability to make interim decisions.

Hearings Panel scope

NZPI members recognise the ability for the panel to add scope outside of submissions has possible benefits. NZPI members have concerns that the Bill does not currently define the extent of possible scope changes.

Recommendation 12:

- a) That MfE defines the extent of possible scope changes.
- b) That MfE inserts into the Bill a definition that allows for minor changes, yet excludes the ability to add substantive matters (e.g. a whole new greenfield area for development).
- c) That MfE provides a mechanism to address the restriction of variations during the process.

Cross-examination

NZPI members recognise that evidence testing through cross-examination is beneficial and important. It offers the following recommendations around this aspect of the Bill.

Recommendation 13:

- a) A fast track process to be provided as an option because of the importance of cross-examination, particularly for limited appeals.

- b) There is cross examination of laypersons / submitters, with the Chair directing questions back through the panel.
- c) Appeal rights should not be removed if the expert evidence provided cannot be tested.

15. Role of Council planners and others

NZPI members seek clarification in the Bill regarding what the speaking roles of Council planners and others are during the hearings process. NZPI members recommend that Council provides evidence to explain and support the Plan provisions, and be cross-examined to ensure a robust decision making process. Councillors should also explain their support of Plan provisions, as there is otherwise only s32 to rely on. These recommendations may have resourcing implications for Council, and must be considered as well.

Recommendation 14:

- a) That speaking rights and roles of Council planners and others be clarified in the Bill.
- b) That Council provides evidence to explain and support Plan provisions, and Councillors explain why those provisions are supported.

16. Submitters and community rights (Sections 127 -128)

The ability to disregard a submission if the submitter does not engage in the pre hearings process poses risks to genuine community consultation and long-term Plan buy-in, particularly in light of the Auckland Council's current co-governance structure. The consequences of not attending a pre-hearing session meeting may disadvantage sectors of community who do not provide a written submission. A number of factors for this may include intimidation by the process; attendance is not feasible due to work or other commitments, and barriers such as lack of transport, limited transport, or a physical disability.

Recommendation 15: Include a provision in the Bill that requires an inclusionary approach to engagement across the Auckland community that does not disadvantage those already disadvantaged.

17. Council Decisions on Recommendations (Sections 143-146)

NZPI supports the Bill's intention to deliver more efficient, better decision making. However, for the proposed Bill to be effective there needs to be alignment and connectivity between the Bill's content and the planning processes occurring on the ground in Auckland. It is NZPI's general view that the proposed solutions in the Bill do not necessarily reflect a deep understanding of the wider planning system.

NZPI members have raised concerns regarding Auckland Council's capacity to deliver within the Bill's proposed timeframe. This concern, coupled with the absence of Councillors from the Hearings Panel process poses a risk for the Plan's integrity due to forced or rushed decisions that lack evaluation and analysis.

NZPI members query whether the Bill's proposed process, whereby the Hearings Panel provides Council with recommendations to be decided upon within 20 working days, will achieve its intention. Aspects of the plan making process require robustness. This amount of time may be insufficient for Council to understand the complexities contained within the Panel's recommendations and therefore result in poor decision making.

The timeframes and absence of Councillors from the hearings process poses further risks. Councillors may require more time to make decisions, yet still require clarification regarding Panel recommendations. Councillors' absence could potentially disenfranchise them, as well as elected Local Board members, and Council staff from the Plan's elements requiring implementation, and related future decisions.

Recommendation 16:

- a) That the timeframes be reviewed to allow enough time for Councillors to make decisions based on strong evaluation and analysis.
- b) That Councillors be allowed to attend hearings to understand the context and rationale underpinning the panel's recommendations.

18. Appeal Rights (Sections 149-153)

NZPI believes that it is inappropriate to disregard a submission on the basis that the submitter has failed to attend a pre-hearing meeting, because this impedes the public's right to have their views both conveyed and considered, in accordance with the principles of section 14 of the LGA 2002. Overall, there is insufficient time to consult with the community, potentially negating the value of the draft submissions process.

Recommendation 17: That each submission be considered, including those received by submitters unable to attend a pre-hearing meeting.

19. Overall timeframes and alignment

NZPI agrees with the Bill's suggestion that there needs to be greater alignment between central government and local government in terms of understanding the impact of legislation on processes within Auckland. That understanding will necessitate greater communication between the two tiers of government, and provisions for unexpected problems such as unavoidable time delays.

To comply with the tight timeframes proposed in the Bill, Auckland Council may choose to adopt a tiered approach to develop the Combined Plan, e.g. by releasing different chapters or sections individually for consultation and notification. However, NZPI remains concerned that the timeframes imposed may have political ramifications in terms of sufficient buy-in from Councillors, Local Boards, and the public.

NZPI members recommend that in light of the very tight timeframes, sufficient checks and balances will be critical for providing a fair process. With this in mind, NZPI also seeks confirmation regarding what legal consequences there are, if any, should the Plan or process not comply with the 2017-18 end dates or other milestones process proposed in the Bill.

Recommendation 18:

- a) That the Bill includes a provision for a system checks and balances, to ensure that the process meets the principles of natural justice as set out in section 14 of the Local Government Act 2002 (LGA 2002)
- b) Clarify what legal consequences there would be should Auckland Council not meet the proposed milestones.

20. Conclusion

Thank you for the opportunity to provide feedback on the Bill. We trust that these comments and recommendations provide useful feedback through the on-going review and RM reform process.

NZPI wishes to be heard in relation to this submission, and welcomes the opportunity to meet with MfE officials to discuss our feedback more fully. Should you have any queries regarding the above submission content, please contact either of the following:

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Yours sincerely,



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