



New Zealand  
**Planning Institute**<sup>®</sup>  
Te Kokiringa Taumata



**NZPI Submission on the  
“Improving our Resource Management System  
discussion document”**

**2 April 2013**

## 1. Introduction

The New Zealand Planning Institute (NZPI) welcomes the opportunity to provide comment on the “Improving our Resource Management System discussion document”.

Established in 1949, NZPI is the professional organisation representing planners and planning practitioners throughout New Zealand. NZPI is the “home of the planning profession and achieves a better future for New Zealand by championing the profession, promoting excellence and supporting its members. It aspires to empower planners and promote excellence.” NZPI membership is broad, and individuals within our organisation have a varied range of opinions and experiences which underpin 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), Resource Management Act 1991 Principles Technical Advisory Group report (2012), and most recently the Resource Management Reform Bill.

This submission is the product of extensive consultation with all members. It is also informed by a number of regional workshops orchestrated by regional NZPI Branch leadership. This submission may not necessarily reflect the views of individual NZPI members, but rather, it reflects the views of a range of members, including minority views.

## 2. Overall comments

NZPI members agree that effective resource management is critically important to New Zealand’s future, and in principle support the objectives proposed in the discussion document, considered within the wider context of planning. NZPI members acknowledge that there is room for improvement and want to work closely with the Ministry to identify the shortfalls, and opportunities for positive change. While NZPI members support improvements that will lead to increased certainty and unnecessary duplication and cost in managing our natural and physical resources, NZPI members have concerns that the transitional period for many of these proposals will be substantial, leading to a long period of uncertainty for all, potentially increased costs, and uncertain outcomes. NZPI members note that the discussion document gives little emphasis to the implementation of many these proposals.

### *Timeframes - Short*

NZPI members agree with the discussion document that public participation, particularly in the early stages of planning, is an important element of good practice decision making. NZPI members are therefore concerned by the all too short timeframes for submitting on such an important suite of proposals, with some regions’ public meeting or hui held only a few days prior to the submission deadline.

### *Timeframes - Unaligned between central and local government*

Members have also voiced concerns relating to the timing of the discussion document’s release. Coinciding as it does with the release of the Auckland Unitary Plan, the Freshwater Reform 2013 and Beyond discussion document, and the Land Use Recovery Plan for greater Christchurch, few residents, planners and organisations will be able to give all four documents the attention that they deserve, equally, many will not have the time or opportunity to engage and provide comment.

### *Timeframes - Unaligned within central government*

Some NZPI members also expressed concern that this apparent lack of coordination and alignment has been further compounded by the submission deadline for the Freshwater reform proposals. Members noted that the public meetings and hui intended for the Improving our Resource Management System discussion document also included Freshwater reform, but were not notified prior to the meetings, giving attendees little opportunity to prepare or engage at the level necessary.

### **3. Chapter 1: Has this section correctly described the key issues and opportunities with New Zealand's Resource management system?**

NZPI members agree that a number of the key issues are accurately described, and recognise that improvements can be made to the RMA. Members have concerns, however, that the discussion document does not identify the positive aspects of the RMA as world leading enabling legislation with environmental bottom lines, and assert that the document is too focused on the premise that the RMA impedes development.

Some NZPI members posit that a number of the wider aspects of urban planning have not been reflected in the proposed reform, and that this discussion document does not fully recognise the complexities of the planning system. Furthermore, the discussion document is limited to the resource management system without considering 'long term planning' and 'planning' under the Local Government Act (LGA) comprehensively.

NZPI members note that the discussion document neither outlines the successes of the RMA, nor includes data to show how, or if, environmental bottom-lines have been achieved. They also express concern that the discussion document overstates the issues with the RMA by relying on anecdotal practice examples which may be the exception rather than the norm. Members have expressed disappointment that the discussion document does not showcase the good examples "best practice" or even acknowledge the evolution and progress from 1<sup>st</sup> generation plans to 2<sup>nd</sup> generation plans, e.g. the amount of collaboration taking place, and district plans giving effect to RPSs.

Members have also cited the prevalence of out of date data and case studies with inaccuracies in the discussion document, e.g. the Milford Case has yet to reach the Environment Court, as factors which undermine the credibility of the evidence and subsequent analysis.

Some NZPI members have also noted that the discussion document appears to have conflicting agendas, with a clear desire for more certainty on the one hand (stronger plans with stronger signals), which effectively leads to less flexibility on the other (plans that still allow consents to be applied for). Some members also found that the discussion document identifies issues that are 'large centre' focused (e.g. land supply), and that a legislative response with nationwide implications may not be appropriate for addressing some of the more local issues, and could potentially lead to increased costs on these communities.

#### **Recommendations:**

- a) NZPI members recommend that there be a greater recognition of the role of planning (e.g. sections 2.4-2.6).
- b) That greater recognition of the wider aspects of urban planning and long term planning be reflected in the proposals, and consideration be given to linkages to Long Term Plans and integrated spatial planning.

#### **4. Proposal 1: Greater national consistency and guidance**

NZPI members are generally in support of stronger national guidance and tools that promote greater consistency and enable nationally significant values to be better addressed in resource management planning and decision-making. A number of NZPI members recommend that the proposed changes need to seek a balance to ensure that the planning authority and responsibility remains with local communities. Some NZPI members are concerned that the changes have the potential to significantly weaken current national environmental legislation, leading to poor environmental outcomes owing to the trade-off between protecting the environment and enabling economic growth. They assert that increased focus on improving economic growth and efficiency should not be at the expense of the environment.

NZPI members would appreciate greater information on the detail of these proposals, and how they would be translated into legislation. Some members also find the proposals ambitious, and have expressed concern about central government's capacity to deliver on 3.1.2 - 3.1.4 in a timely fashion. It is noted that the mechanisms for national guidance already exist and the "issue" may be one of practice or implementation rather than legislative change.

#### **Recommendation:**

That more information be provided on the detail of the proposals, as well as details regarding how they would be translated into legislation.

#### **5. (3.1.1) Change the principles contained in sections 6 and 7 of the RMA**

NZPI members have a range of views regarding the proposal to combine sections 6 and 7 into a single section. While a number of members support the proposed changes in principle, a number of members question whether the changes are necessary considering this is already reflected in practice and case law. Some NZPI members are concerned that the changes may weaken the RMA, and that combining sections 6 and 7 would remove a hierarchy, which provides a clear directive of the more significant matters to be addressed when developing a plan or policy statement. They caution that removing the hierarchy could lead to more debate and court time taken up with how various matters are to be provided for or protected through plans, potentially adding to the complexity of implementing resource management.

A number of members are concerned that consideration has not been given to the feedback received on sections 6 and 7 from experts in the planning and resource management field. They note that there appears to be an overreliance on TAG material and expertise involved in the TAG report, when there was much discontent from equally qualified experts around the country. NZPI members also question the reasoning given for the deletion of some matters as being already covered in section 5, as this would apply for all principles. The inclusion of specific principles on quality would appear to be fundamental to achieve good environmental outcomes especially in urban planning.

#### **Recommendations regarding the proposed deletions and additions**

- NZPI members support retaining directional wording in relation to individual matters, i.e. the concepts of "protect" and "preserve".
- A number of NZPI members support the elevation of 'kaitiakitanga' to be recognised and provided for, particularly in light of the discussion document's comments regarding giving greater weight to "effective and meaningful Māori participation". Members support giving kaitiakitanga greater

importance. However, they do not support the proposal for kaitiakitanga to be combined with the existing clause as proposed, 6 (e) “the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, taonga species and other taonga **including kaitiakitanga**”, because it is a difference concept and should be kept distinct.

- NZPI members note that 6 (h) “the importance and value of historic heritage” is a shift from protecting historic heritage from inappropriate subdivision, use, and development. Some members support this as it will enable greater weighting to be given to the importance and value of the historic heritage in the development process.
- NZPI members do not support 6 section (k) and reference to “*the effective functioning of the built environment including the availability of land for urban expansion, use and development*”. The proposed principles do not reflect the range of matters that need to be considered in dealing with urban environments. This principle needs to be balanced with consolidation of existing urban areas. Furthermore, a reference to quality urban environments would ensure a broad judgment can be made. As not all growth is provided for by expansion of urban areas, “urban expansion” could be replaced by either “*providing for growth*” or “*consolidation*”, for example: **urban growth, including land being available for urban expansion, use, and development;**
- NZPI members generally agree with the inclusion of section 6 (l) **the risk and impacts of natural hazards, and recommended considering** climate change, including increased flood frequency and sea level rise, yet suggest that the reforms include stronger direction and support for tighter management or even exclusion of intensification of built environments in areas subject to flooding / inundation. A number of members have noted that it is the effects rather than impacts of climate change. Some NZPI members consider that this can be addressed by adding to section 6 (i) the ~~impacts~~ **effects** of climate change, **including flooding and coastal inundation;**
- Some NZPI members do not support the deletion of section 7(c) “the maintenance and enhancement of amenity values”, as this is a key factor in managing the built environment. It is not covered by the other principles, and is the basis for many planning assessments and affects the liveability of communities. Greater acknowledgement of, and provision relating to, urban environments in Part 2 of the Act is fully supported, as the current language of Part 2 is not an easy fit in managing the urban resource. These members do not agree with the argument that this matter is already addressed under section 5 as being a valid reason for its removal, particularly as the same could be argued for many, if not all, of the other matters proposed to be retained;
- NZPI members are concerned that the “overall broad judgement” approach often quoted relates primarily to decisions on resource consents rather than plan making, and so should not be used as a basis for removing priority consideration for certain matters. They do not support the proposal to add the phrase “In making the overall judgement to achieve the purpose of this Act”. However, they recognise that having a hierarchy is not inconsistent with the overall broad judgement approach. A number of members also do not agree with the deletion of the section 7 matters as suggested, and recommend that it remain with the term “effects” included. They believe that section 7 matters are important, and that the broad nature of section 5 could lead to these matters being easily overlooked or undervalued in the judgement process.

A number of NZPI members do not consider the suggested new section 7 to be necessary or useful, and do not support its inclusion. These members make the following points:

- The proposed subsections 1, 2, and 4 are effectively good practice guidance and they can be stated somewhere other than section 7. NZPI members see potential for inefficiency and costs in litigation over the interpretation of this section.
- Proposed subsection 3 requires decision makers to *have regard to* environmental compensation, which is in a form which does not qualify as mitigation. These members note that the Courts have already determined that they can and should have regard to such compensation - this matter would be better located in section 104 of the Act which sets out other matters which consent authorities should have regard to when making consent decisions. These members recommend that if this matter remains it should not be elevated to section 7.
- The proposed subsection 5 introduces the new phrase “achieve”. These members query the difference between *recognising and providing for* and *achieving*, and whether the latter is intended to have a greater status as could be argued.
- These members deem the explicit reference in subsection 5, to the balancing of public and private interests in the use of land, unnecessary and incomplete – private interests in public resource use also occurs. These members have concerns that this provision could give rise to unnecessary litigation. They recommend that if this matter remains, it would be better located within section 32 as a matter to be weighed when developing policy statement and plan provisions.
- These members query how useful and quantifiable “appropriate balance” is in subsection 5, as this proposal simply reflects a matter which is already inherent in section 5. Alternatively, this matter could be regarded as in effect changing the definition of sustainable management which we consider to be undesirable.

**6. (3.1.2) Improve the way central government responds to issues of national importance and promote greater national direction and consistency where needed**

NZPI members support the proposal for the development of guidelines that will clarify when and how each national tool or combination of tools would be used. NZPI members also agree with the proposal that criteria be developed and applied in choosing whether new NPSs are to be developed. Some members argue, however, that the process to develop these rules needs to be developed through a consultative process. They also seek clarity regarding where these ‘national tools’ will come from and how they will be developed, and regarding what each NPS seeks to achieve. They note that some NPSs have provided valuable policy direction for development of plans, e.g. Freshwater Management NPS, while others have proved more contentious largely due to the lack of direction regarding how they are “to be given effect to”.

NZPI members caution that a consistent approach across the country through the provision of NPSs will not be achieved as long as each plan and regional policy statement must put these into effect. They recommend that if a rule is required to implement an NPS, that the NPS specifies the wording and the directive to amend the regional/district plan without formality. This should be done only when a NES is not needed, such as when a very limited change is required.

**Recommendations:**

- a) That MfE consider s alternatives to the proposed additions, such as provided for in existing national instruments such as NPS, which are there to address matters of national significance.
- b) Clarify where the proposed ‘national tools’ will come from and how they will be developed.
- c) That if a rule is required to implement a NPS, the NPS should specify the wording and the directive to amend the regional/district plan without formality, except when a NES is required.
- d) That stronger national guidance be provided to address many of the RMA’s implementation issues.

### **7. (3.1.3) Clarifying and extending central government powers to direct plan changes**

NZPI members disagree with the assessment in the discussion document that planning is not “future-focused”, and note that plans, by their very nature, are both facilitative and about what can happen going forward, protecting scarce resources, etc. Members point out that those in growth areas are certainly future focused with future urban zones and other plans such as structure plans, which are critical for integrated management. Furthermore, this overlooks the important role that the LGA has in planning for the community.

NZPI members question the purpose of this particular proposal when central government already possesses other methods for implementing national projects and initiatives, for example, the use of the powers in section 25A of the Act (central government requiring a plan change) to achieve a specific outcome. While some members are of the view that the stepped process suggested has merit, and could create an opportunity for a collaborative approach to be adopted initially, to improve efficiency members support further progressing existing instruments over this proposed approach. Some NZPI members recommend that while the Minister should be able to amend an existing plan, it should be an independent process, rather than a political intervention and should be subject to the same rigour as any plan change (i.e. section 32, consultation and submissions). They suggest that if the government wants to implement a policy change, a NPS or NES process is a robust mechanism to ensure appropriate and proper public input.

Members also have concerns that the capacity for political intervention could be used to impose a specific project that could impact significantly on the community or the environment. Members are also of the view that the proposed power may only be appropriate for nationally significant projects such as major infrastructure, and seek clarity about what kind of matter would be addressed through this approach and how this would be resourced.

#### **Recommendation:**

That the Minister and central government examine the use of existing methods and tools to implement national projects or plan changes.

### **8. (3.1.4) Make NPSs and NESs more efficient and effective**

NZPI members note that although the three suggested amendments proposed to improve the flexibility of NPSs and NESs all have merit, they have the potential to create an even more complex policy and regulatory environment. Members also question the proposal for NPSs and NESs to be targeted to a specific region or locality, as this contradicts the purpose of nationally directive guidance. As an alternative model, the government could consider requiring compliance with the NPS (within a certain timeframe), or use direct insertion provisions already available for NPSs.

NZPI members have recommended a number of additional NPSs and NESs, but are cognisant that a number of existing NPSs and NESs and accompanying ‘user guides’ still require significant work. Some NZPI members recommend that NESs, in particular, be discussed more in the development stages with the planners that will be applying them, in an effort to identify difficulties before they come into force. Even with a small number of NESs there is some confusion and a lack of understanding how the different NESs work in practice as they all appear to adopt different approaches. NESs should deal with discrete topics and there should be limited, if any, ability for plans to have rules on the same matter.

#### **Recommendations:**

- a) That the proposal for any new NPSs and NESs be discussed with NZPI members.
- b) Members recommend the following potential additional NPSs and/or NESs:
  1. Natural hazards
  2. Outstanding natural features & landscapes

3. National guidelines on urban design
4. Assessing areas of ecological significance (so as to specify)
5. Assessing landscapes (so as to specify)
6. Contamination
7. Land supply
8. Housing
9. Measuring Noise (NES)
10. Measuring Light and Glare (NES)
11. Farm diary discharges (NES)- based on a range of climates and soil types
12. Erosion and Sediment Control (NES)
13. Biodiversity
14. Oil and gas exploration
15. Community health and prosperity
16. Sea- level rise

## **Proposal 2: Fewer resource management plans (3.2.1 - 3.2.4)**

### **9. (3.2.1) Require single resource management plans using a national template that would include standard terms and definitions**

NZPI members conditionally support the proposed approach, and recognise that there is a need to simplify approaches to planning and to come back to first principles. A number of NZPI members have concerns that while a standard form of plan could theoretically achieve efficiencies and time / cost savings, there would have to be a considerable amount of work undertaken to develop such an approach and to implement it throughout the country. This challenge would be made greater by the proposal to combine district and regional plans and regional policy statement into a single plan for each area. They argue that this process adds an additional work layer to the process, of taking separately prepared plan provisions into one plan. Some members assert the cost involved in developing this method would be more costly than the current approach and note that the problem lies not with the district plan provisions per se but with their implementation.

#### **Recommendations:**

- a) That the template addresses “technical matters” only and does not include subjective matters that are particular to each community. The discussion document refers to ‘zoning’ which implies that the template may be more than just technical. If this is the case then considerably more discussion with the sector is required on how this should be applied.
- b) That the development of the template builds on best practice examples from existing district plans and does not re-invent the wheel and will involve standard definitions as part of the ‘template’. Note that the material on the Quality Planning Website should be used as a basis for the template.
- c) That the template is developed collaboratively with the NZPI and councils being recognised as key stakeholders in this process.

### **10. (3.2.2) An obligation to plan positively for future needs including land supply**

NZPI members support a requirement for future planning within district plans but they do not support a specific reference to land supply. They point out that this is already provided for within the RMA to some extent, and that there may be therefore no real incentive to change this. NZPI members are concerned that the discussion document has taken a narrow focus on residential land, and that planning addresses growth and all land uses. Some NZPI members are also of the opinion that the matters relating to the cost of



development and housing affordability will not be assisted by the measures proposed and that the land supply and housing affordability issue is not able to be effectively addressed or achieved solely through the RMA. Rather this is a collective issue which spans a raft of legislation and a number of government departments NZPI members recognise, however, that there has been a preoccupation with the consideration of effects on the environment in plans developed under RMA and nervousness about actually “planning” for future growth as this necessarily involves “picking winners”.

NZPI members note that councils already have tools that can be used to provide future housing. This could include providing for growth options and in some cases actually purchasing land and undertaking the development themselves rather than relying on landowners undertaking development and providing the council with funding for infrastructure through development contributions. This approach is one of the few possible ways, along with subsidies, to create affordable housing. NZPI members believe the 10 year target for land supply may be too conservative. Members believe that this issue needs much more sophisticated policy that addresses different markets and products, and guides how this should be assessed, all of which could benefit from a NPS.

**Recommendations:**

- a) That future planning within district plans is required, but that a specific reference to land supply not be included.
- b) That councils, where practicable, play a greater role in planning for future housing needs.
- c) That the issue of land banking and housing affordability are both treated (separately) with much more sophisticated policy which is able to address different markets and products, and guide how this should be assessed and addressed through an NPS.

**11. (3.2.3) Enable preparation of single resource management plans via a joint process with narrowed appeals to the Environment Court**

Some NZPI members support this proposal in principle, and support limiting the scope of appeals to the Environment Court, although questions have been raised about how this would affect local democracy. Some members have noted that single resource management plans can already be carried out, although without the narrowed appeals. While members also support the use of independent commissioners, they recognise that this would place a greater reliance on commissioners having the right training and skills to make effective decisions.

Some NZPI members have concerns that the proposal to enable preparation of a single resource management plan is particularly ambitious, and may complicate the process, e.g. require significant resources. Some members applaud the intention of addressing all the difficult issues between regions and districts at a single stage, rather than in the staged and reactive (and sometimes adversarial) approach of successive development of regional policy statements, regional plan, and district plans. Members have suggested that additional assistance at the national level in the short term with guidance through NPSs/NESs and ‘templates’ would have significant benefits at the local level, and cumulatively across the country.

**Recommendations:**

- a) That independent commissioners need to have the appropriate training and skills to make effective decisions.
- b) That substantial assistance be provided at the national level in the short term, to produce guidance through NPSs/NESs and ‘templates’.

## **12. (3.2.4) Empower faster resolution of Environment Court proceedings**

NZPI members support the proposal in principle to empower faster resolution of court proceedings. However, members have found that parties have varying degrees of success in meeting Court set timeframes. Some members also note that while alternative dispute resolution in some cases can be successful, they do not support requiring it. They note that it is not always appropriate or efficient, and it can be simpler and more efficient for the issues to be presented to the Court.

## **Proposal 3: More efficient and effective consenting (3.3.1 - 3.3.11)**

### **13. (3.3.1) A new 10-working-day time limit for straight straight-forward, non-notified consents**

NZPI members support improvements in practice and generally support the proposal for shorter timeframes for simple consents. However, this requirement is unlikely to result in any significant efficiency. Some NZPI members have noted that most councils are already processing simple consents in 5-10 working days, and question what threshold test is being used to define a "straight forward" consent. Some members note that the details still require further thought particularly given the fact that previous amendments to the RMA have contributed to making the consenting process is difficult, cumbersome, and open to legal challenge. These members point out that existing district and regional plans have not been drafted in sufficiently simple terms to achieve compliance within such a timeframe. This is another example where the evidence to support this proposal is lacking.

Some NZPI members are also supportive of the three tiered activity types that could be considered for the 10-day process. With this in mind, members have suggested that there could be an option to fast track applications linked to the quality of the application and the applicant's agent, e.g. full NZPI member. This could ensure a higher standard of applications and advice from lay applications or applications submitted by non-planners, providing a path of accountability.

#### **Recommendations:**

- a) That this proposal be explored in greater detail in consultation with NZPI members.
- b) Clarify what threshold test is being used to define a "straight forward" consent.
- c) Explore further options for fast-tracking applications linked to the quality of an application and the applicant's agent.

### **14. (3.3.2) A new process to allow for an "approved exemption" for technical or minor rule breaches**

NZPI members do not wholly support this proposed change because it has the potential to undermine the role of rules as providing environmental bottom lines, and erode the integrity of plans and established rules developed through a public process. Members note that while this approach has some merit, it may be difficult to implement until there is a more codified approach to plan writing. They also query the definition of 'very minor', making it potentially difficult to decide whether a breach is technical or minor, and consequently a potentially costly and litigious process. Existing provisions for restricted or controlled activities can already allow for minor exemptions under defined circumstances.

NZPI members also have concerns about the potential legal implications for councils that fail to exercise that definition consistently. They suggest that the RMA will need to explicitly provide councils with a cost recovery mechanism for handling requests for such exemptions. It will also need to dictate the standard information necessary to seek an exemption, and the standard council form for responding to such a request. These members note that if these items are not specified, councils will have a propensity to apply a quasi-consent process that will negate the benefit sought by the exemption facility.

**Recommendations:**

- a) That details of a proposed new process to allow for an “approved exemption” for technical or minor rule breaches be explored with NZPI members.
- b) An alternative could be to codify the rules contained in some district plans, which would permit a breach to a plan rule if the written approval of the adjacent property owner is provided at the time the building consent is applied for.

**15. (3.3.3) Specifying that some applications should be processed on a non-notified basis**

NZPI members do not wholly support nationwide exceptions for notification, and are concerned that some of the examples used in the discussion document are not minor but are often significant in the residential context. They note that urban amenity is a major resource management issue that should inform notification decisions. They further assert that this approach could probably only work if plans were more codified, i.e. uniform in their description of activities, status, and conditions. Some members have noted that at present some plans specify where activities are not to be notified, so the proposed happens already.

Members recommend that thought be given to rewriting the notification provisions in the RMA as they still result in considerable delays while council planners work their way through the assessment, write a report and have it overseen by more senior staff. There is a particular issue with the provisions which make public notification the default if effects are more than minor, regardless of the type and scale of effects and whom they impact.

Some members assert applying a blanket non-notification approach to controlled and restricted discretionary activities would avoid the inconsistency that will result from the more activity based national approach proposed in section 3.3.3. These members further recommend that all controlled and restricted discretionary activity applications should be processed non-notified, and be designed to avoid adverse effects on other persons. The matters of control or discretion specified in the plan should be carefully constructed or amended to reflect the matters of most critical interest in terms of potential environmental effects or potential effects on other persons. Note that this proposal would incur both time and costs to make these changes to rule, so there would need to be a transitional timeframe associated with this.

**Recommendation:**

That greater thought is given to rewriting the notification provisions in the RMA.

**16. (3.3.4) Limiting the scope of conditions that can be put on consents**

NZPI members generally support limiting the scope of conditions that can be put on consents, but as noted in the discussion document, this commonly occurs in practice in most cases where the scope of consent conditions is already restricted by the Newbury Test and case law. Some members assert that the proposal is not necessary or justified when compared to the extent of the problem it is trying to address, and caution that there is a risk of unintended consequences. NZPI members recommend targeted training for planners in councils as a solution with respect to consent conditions, rather than an RMA amendment. Note that there is also a Guidance Note on the Quality Planning Website on this, which provides authoritative guidance.

**Recommendation:**

Rather than amend the RMA, provide or advocate for targeted training for planners in councils.

**17. (3.3.5) Limiting the scope of participation in consent submissions and in appeals**

While NZPI members support a focused approach to consent decision making, this must ensure that applications can be comprehensively assessed and that consideration can be appropriately given to mitigating

factors through submission processes. Members generally support the proposed changes to approvals and subsequent submissions. They assert that the conditions need to relate to mitigating specific effects/identified in the scope of plan rules.

A number of NZPI members have concerns with the proposal, however suggesting that it is not a 'best value' solution, i.e. minimum input, maximum outcome. Some members have also noted that changes to 'written approvals' may create a new category of 'notification', and that there is a need to identify why something is being notified. While these members agree that the limiting of current discretion has merit, they seek guidance from MfE on how to categorise applications based on effects that might be anticipated.

**Recommendations:**

- a) That further attention is given to this proposal in consultation with members.
- b) That MfE provides guidance on how best to categorise applications based on effects that might be anticipated.

**18. (3.3.6) Changing appeals from *de novo* to merit by way of rehearing**

NZPI members support the proposal to change appeals from *de novo* to merit by way of rehearing as a way of achieving greater time and cost efficiencies. Members recommend that the approach would be more effective if a time limit was placed on the Court to deliver its decisions.

**Recommendation:**

Change appeals from *de novo* to merit by way of rehearing.

**19. (3.3.7) Improving the transparency of consent processing fees**

NZPI members support improving the transparency of consent processing fees, as the costs of consent processing should be considered as part of councils' obligation to monitor the efficiency and effectiveness of Plans (section 35). NZPI members note that a key to reducing the cost of consent processing is eliminating or reducing the risk of legal challenge. A number of members have also recommended that the focus should be on achieving greater consistency of fees, as councils already demonstrate a level of transparency.

Some members recommend that councils be required to provide a preliminary (pre-application) assessment which indicates whether the council could support an application. This would help minimise risk by providing applicants with greater certainty about the potential outcome of their application.

**Recommendations:**

- a) That measures are taken and tools developed for councils to improve the transparency and consistency of consent processing fees.
- b) That those measures and tools replace the existing advice on the Quality Planning website.

**20. (3.3.8) Memorandum accounts for resource consent activities**

NZPI members query the intent of the proposal to introduce memorandum accounting for resource consent activities and note this is already done. Some members assert that the suggested change would lead to increased administration and compliance costs, and therefore seems at odds with councils current recovery of only reasonable administration/processing costs.

Some members also assert that memorandum accounts are unlikely add any benefit to the provision of efficient services, and could result in an increase of consenting overheads rather than a reduction in costs. Furthermore, consenting costs are significantly related to the complexity of the relevant regional or district

plan. Therefore, solutions to charging issues that may be reflected in the reporting will not be simple fixes in terms of funding policies.

**Recommendation:**

Provide further information regarding the necessity and purpose of introducing memorandum of accounting for resource consent activities.

**21. (3.3.9) Allowing a specified Crown-established body to process some types of consent**

NZPI members query the need for a new Crown-established body to process some types of consents, and also query how this differs from the current Environmental Protection Authority (EPA). Some members find the current direct referral process useful and support limiting the opportunity for councils to oppose an application for direct referral, provided the Court maintains the ability to reject such an application, i.e. if it was not sufficiently justified in terms of issues, scale and likely risk of challenge through a normal council process.

Members have concerns about the EPA or any Crown body adopting greater power at the expense of local decision making. Members in some regions who have experienced the erosion of local decision making through national processes recommend that it made be clear what is considered nationally important, whilst ensuring that the opportunity for local engagement and decision making is retained.

**Recommendations:**

- a) Reassess the need for a new Crown-body to process some types of consents, and clarify how the proposed approach differs from the current EPA.
- b) Clarify how such a new Crown body would address the need for balance between local and national decision making.

**22. (3.3.10) Providing consenting authorities tools to prevent land banking**

NZPI members do not support this proposal because they question whether the proposed tools have the ability to make a significant difference, particularly as the issue is with landowners who keep zoned land but do not lodge consents. Some members believe there is a role for government agencies to intervene directly in the market to help deliver affordable housing, but that these proposed tools are unlikely to have much impact.

A number of members agree that three years is an acceptable period to start and complete the physical works associated with a significant subdivision (between s223 and s224 approvals), particularly for larger developments. They recommend that s223 and s224 be approved at the same time, so construction of any subdivision needs to occur before survey plan approval. They believe that the five year lapsing period (up to s223) is the key problem, and this should be reduced, and advocate for a flexible approach of between one and three years, depending on the development.

**Recommendation:**

That central and local government focus on the development of more innovative interventions and tools to address affordable housing issues.

**23. (3.3.11) Reducing the costs of the EPA nationally significant proposals process**

NZPI members recognise the current expense and support the proposal to reduce the costs of the EPA nationally significant proposals process. Some members have advocated for the insertion of an alternative

dispute resolution prior to the appeal stage as a way of reducing court cases and costs, and early in the plan development and consent phases.

**Recommendation:**

That methods and options be sought for reducing the costs of the EPA nationally significant proposals process, and where possible alternative dispute resolution be considered.

**24. Proposal 4: Better natural hazard management: (3.4) Learning the lessons from Canterbury**

NZPI members support greater measures to better manage the effects of natural hazards, rather than the hazards themselves. NZPI members agree that more guidance is needed to encourage and ensure that assets are not placed in areas where natural processes will lead to or cause a hazard. With this in mind, some members support developing a NPS on natural hazards as a tool which could also include liquefaction, and other seismic and hazard elements such as seismic rating, ground and slope stability, and rockfall.

A number of NZPI members have concerns, however, that the effects of natural hazards are already taken into account in district plans. They advocate for better implementation of the existing regulatory framework for high risk areas, and have concerns that increased cost of compliance for average applicants in areas of low risk could be counterproductive. Some Canterbury based NZPI members note that there is a disconnect between district plans and the Building Act requirements for floor heights in flood risk area with the Building Act based on a 50 year return period event, whereas many plans set floor heights for 200-500 year events.

**Recommendations:**

- a) Develop guidance to better manage the effects of natural hazards through tools such as a NPS.
- b) Advocate for improved implementation of the existing regulatory framework for high risk areas.
- c) Clearly identify which areas pose high risks, in comparison with those areas of medium or low risk.

**25. Proposal 5: Effective and meaningful iwi/Māori participation (3.5.1)**

NZPI members support the intent in the discussion document for Māori to be able to engage more effectively in the resource management processes. NZPI members also support a clarified role of iwi in RMA plans and resource consents. Improving the awareness and accessibility of iwi management plans would make consultation easier, and be of great assistance both for the development of plans, and for development through the resource consent process to enable landowners to be aware of particular matters of importance to iwi. Some members have noted that there is no clarity about exactly how and at what stage any iwi advice or recommendations would be considered, and what level of statutory weight would be afforded to it.

NZPI members are concerned that this proposal does not acknowledge the capacity issues that some Māori communities may face in their effort to participate, nor the capacity or understanding of councils to appropriately consider iwi advice. It is therefore recommended that greater consideration regarding how the government can facilitate capacity building required for this proposal to be effective, including identifying the tools to assist participation of iwi in the RMA process.

**Recommendations:**

- a) Clarify the role of iwi in RMA plans and resource consents.
- b) Improve the awareness of accessibility of iwi management plans.
- c) Give greater consideration to how the government can facilitate capacity building.

- d) Identify the tools to assist participation of iwi in the RMA process.

## **26. Proposal 6: Working with councils to improve practice: (3.6.1) Improving accountability measures**

NZPI members welcome central government support, with the proviso that local communities maintain the mandate to plan for their futures. A number of members are concerned that some of the proposals go too far on this matter. Some NZPI members recommend creating greater transparency and placing greater emphasis on accountability as a means to improve the level of service received from councils. It is suggested that this will help create greater performance incentives for council employees to achieve more timely and reasonable consenting outcomes.

### **Recommendations:**

- a) That local communities will be supported by central government, yet retain the mandate to plan for their futures.
- b) That greater transparency and accountability from both local and central government will lead to improved levels of service.

## **27. (3.7) Addressing housing affordability**

NZPI members recognise that developing tools to address housing affordability is important. They welcome central government support to address the issue provided that local communities retain the mandate to plan for their futures. A number of members have expressed concern that some of the proposals in the discussion document need significant work and are unlikely to achieve the desired outcomes. Many of the development costs involved in producing housing lie in the costs of construction and in practices such as land banking. Members further recommend that housing intensification and housing needs are examined further in conjunction with housing affordability, while encouraging high quality design and desirable living environments.

### **Recommendations:**

- a) That the proposals in the discussion document regarding addressing the provision of affordable housing be given greater thought, including NZPI's recommendations in its submission on the Productivity Commission's Inquiry into Housing Affordability.
- b) That central government support councils working with local communities to plan for their futures.

## **28. (3.8) Implementing the proposed package of reforms**

NZPI members regard the proposals as a very ambitious package of reforms that will demand significant resources from MfE and local councils to implement. And this at a time when local councils are struggling to control costs. Members also support additional assistance at the national level in the short term to produce guidance such as NPS/NES and 'templates'. This would have significant benefits at the local level, and cumulatively across the country.

### **Recommendation:**

That additional assistance is provided to local government and MfE and other relevant Ministries to develop and implement those proposals agreed upon.

## 29. Conclusion

NZPI wishes to thank the Minister for the opportunity to provide feedback on the Improving our Resource Management System discussion document. We trust that these comments and recommendations provide useful feedback through the on-going RM review and reform process.

We would welcome the opportunity to meet with you and Ministry 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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