Auckland Branch NZPI Workshop 26 January 2016 – RMA amendments 2015

Notes for the workshop sessions from the 65 members that attended.

Topic 1 - Part II (s6) and Council functions (s30 & s31)

Part II

1. General agreement the changes (or lack of changes) to Part II were generally expected. Not including the rebalancing of 'economic' and environmental issues was signaled beforehand. The changes to section 6 and inclusion of natural hazards was also expected and generally supported as a required change [group comment]
2. General agreement the outcomes of the Productivity Commission process and recommendations regarding 'Better Urban planning' is likely to replace the previously considered changes to Part II relating to the rebalancing of 'economic' and environmental issues. This may have significant impact on how planning is undertaken in New Zealand. General concern about the breadth and scope of potential changes. [group comment]
3. Some concern regarding 'natural hazards' not being defined as part of the changes. Potentially require national direction to clarify those 'significant natural hazard risks' which will require consideration. For example, the different return periods of different natural hazards and the potential consequences will range significantly. Questions about whether low-frequency but high potential consequence events should be managed differently to high frequency, but low consequence events. [group comment]
4. Smaller councils may not have the skills or resources to appropriately investigate and identify natural hazardous affecting individual regions. Cost of research and expert reporting may be an issue for smaller councils. [group comment]
5. Participants generally agreed it will be challenging for councils to progress policy changes regarding restrictive land use provisions where existing or future property rights are impacted. Likely to be general public opposition or individual legal challenges. National guidance on types of natural hazards and levels of protection would help councils deal with individual site specific situations and may reduce potential challenge. [group comment]

Council functions (s30 & s31) - sufficient residential and business development land capacity to meet long term demand.

6. Identification of a potential disconnect between current regional council functions regarding environmental safeguards versus new requirements to ensure sufficient land supply to meet long term demand. Some concern councils may have difficulty dealing with conflicting roles. Concern about the potential risks for councils if natural hazard protection measures render development land being incapable of reasonable use. [group comment]
7. Some concern about the assumption housing affordability is solely driven by land supply and capacity. General agreement the focus on 'development capacity' is potentially flawed if 'efficiency' isn't considered at the same time. Suggest the changes to s30 & 31 should include consideration of development efficiency. [group comment]
8. Focusing on land supply is not the answer to improving housing affordability. Different approaches are required for growth centres compared to locations with low growth or declining populations. A single approach for the whole country is unlikely to succeed. [single point of view]

9. General agreement councils have the skills and abilities to undertake land supply assessments. However there will be little point in completing this exercise in towns or cities where there are no growth challenges. [group comment]
10. Some support for more national direction regarding stimulus for regional centres rather than ensuring the provision for greater growth in centres where growth isn't efficient. [group comment]

Topic 2 – National Direction – Workshop participant feedback

1. An overall concern was the amount of central government discretion over future planning decisions. There was concern about local democracy being taken away. Some participants noted the political motivations of the Minister compared to the statutory obligations of local authorities when preparing planning documentation could sway planning decisions inappropriately.
2. The main discussion was on the national planning template. There was some concern about the broad range of powers available under the national planning template, but no clear direction about how the Minister would use it. This issue makes commenting on the provisions difficult.
3. Some people expressed a concern that there was a lack of evidence for needing a national planning template. They noted that the RMA has been in force for many years and councils are used to producing plans in a particular format. Adding another layer of planning could lead to increased complexity and bureaucracy. This issue was reasonably balanced, as other participants noted that the NPT could be useful for smaller local authorities who are under resourced to help produce quick and efficient plans. Others noted that standardisation of things like definitions and potentially zones could be helpful. Definitions in particular could help standardise commonly used terminology throughout the country. One person noted for instance, that the definition of "site" varies significantly across the country. Minimum standards could be useful. Planning consistency for national agencies would be useful (eg infrastructure providers and stakeholders with interests across the country).
4. Some participants were concerned about the level of resources that may be necessary to prepare and implement the NPT.
5. There was some discussion about the proposals to introduce regulatory making powers to remove rules and plans which duplicate other regimes. Most noted this seems sensible, but care would need to be taken not to leave gaps in the management of RMA issues. The proposals to remove hazard substances management from local authority functions was noted as one potential concern given that the HSNO regime does not address land use issues.
6. Many participants queried whether there were already sufficient powers within the RMA for the government to give appropriate direction, including through the use of NPSs, NESs and MFE guidance. Some thought that it may be useful to have a model NPT, but were concerned about the mandatory nature of it.
7. There were some specific comments on the proposals for new regulation making powers to set fees for Council hearings. Several people noted the complexity in setting fees given the uncertainty of how a hearing may proceed (e.g. number of days, submitters and witnesses).
8. Slightly unrelated to the proposal itself, some people noted the problems with properly interpreting section 32 in terms of what is required when making plans. Further guidance on this could be helpful.

TOPIC 3 PLAN DEVELOPMENT

Schedule 1

1. Participants saw opportunities for limited notification of small discrete Plan Changes (PC) with limited effects/issues or site specific.
2. Not seen as appropriate for strategic or comprehensive PC
3. Concerns were raised at the lack of criteria for determining notification.
4. One participant questioned whether these should be consultation prior to limited notification
5. Several participants raised concerns that this proposal could herald in changes based on the SHA notification provisions. Two participants from Council's Housing Project Office advised limited notification was working well from their perspective. Others were concerned that limited notification could cut out special interest groups such as RF&B, Fish and Game etc.
6. Some participants raised concerns about the rights of the community and the erosion of the participation ethos of the RMA.
7. One planner preferred limited appeal rights but wider participation at the beginning of a process
8. In terms of matters not covered by the Bill, Megan noted Council finds there is no or limited value in the further submission process.
9. Other participants unsure as how to determine who is affected party.
10. Removal of further submissions may have an unintended consequence in submitters providing much detail in their primary submission, particularly in terms of supporting the PC.
11. Some thought submitters should give reasons why making further submissions.
12. One member suggested submission forms should be simplified and streamlined – most members of the public struggle to fill them in.
13. No particular consensus on additional matters to be promoted for inclusion in the Bill.

Collaborative planning processes

1. Collaborative planning considered by some to be more suitable for strategic issues such as water quality/natural resources.
2. General agreement that the composition of a collaborative group is very important.
3. General consensus supported involving communities but different solutions on how to achieve this including
    a) Maybe have parameters as to when to use this tool.
    b) Should there be a right to challenge parties selected by Council to participate/ability to register interest in being involved
    c) If no ability to appeal decision, community should have opportunity to comment
4. Many considered this tool is already being used - do we need to legislate best practice? Evolving case law on future collaborative planning provisions in RMA may slow improvements to best practice
5. General agreement on identified weaknesses of collaborative planning including:
    a) Ability of strong members to influence others
    b) Members fall away because of considerable time and cost of involvement
    c) May not deliver a consensus

Streamlined planning processes

1. Streamlined planning process considered useful for administrative type of PC.

2. One participant considered this process would be useful where Plan was lagging behind its own consenting regime i.e resource consents being routinely granted for some issues such as over-height buildings
3. Issue raised on legal effect of the PC. If addressing an urgent matter or unintended consequences should legal effect be introduced with notification?
4. General agreement that other options already exist under the RMA such as a declaration from Env. Court
5. Again concerns by some participants that this provision is taking community participation out of planning. Desire to establish minimum safeguards of participation.
6. Discussion evolved as to whether Auckland (and potentially Christchurch) should be looked at for its own special legislation/RMA provisions

Iwi participation

1. Agreement that this already been undertaken by some councils as best practice.
2. Funding and resourcing of Iwi to take advantage of this provision seen as the key issue.

Topic 4 Resource Consents

Boundary Activity

1. In principle- good concept?
2. Will create new amendments?
3. Overall the first group thought it was a good idea if there was more details and these were gotten right.
4. Need to write into district plans what boundary rules ARE- discretion at this Council level.
5. No specification of scale (but could be specified with a rule, e.g. HRB)
6. Who is responsible for determining compliance?
7. Transparent process which is good.
8. What is a boundary? Who is affected?
9. Height? Clarification as to how this relates to boundary. Is the height rules, height in relation to boundary, or just a set height standard?
10. The second group agreed that it was a good idea/ concept.

<u>Activities being treated as permitted</u>

1. In relation to the rule enabling marginal non-compliance being treated as a permitted activity it was viewed that the rule was quite subjective and was subject to council's discretion.
2. Do you have to pay any fees if the activity comes under a marginal non-compliance? (as you have to pay for a resource consent application).
3. Would be beneficial for smaller triggers for a resource consent, ones that seem silly as there are no affected parties or adverse effects. Would be a good idea for this reason.
4. What about large scale developments? Rules? A big developer could buy up properties and become a permitted activity through the neighbours giving written consent RMA amendment. This could change the intended character of an area.
5. Would is work like a pre application meeting?
6. Lots of risk for both a consultancy and council as different people will have different views on what a "marginal non-compliance" is. How would council determine what activities become permitted?
7. Need the right person to be able to sign off on these.
8. New reporting process? (e.g. PIM process for building consents).

9. Definition of an adjacent property- doesn't account for different housing type's e.g. apartment blocks.
10. Value if Regional Council lodged?
11. Risk- without an assessment of effects on the environment how can an activity be viewed as a marginal non-compliance.
12. Overall the first group thought it was a good idea/ concept.
13. Need a check process- Would you need to get the owner or occupier's written consent?
14. Need a standardised form you should full out which would explain who you need to get consent from.
15. Is this a 'quasi' resource consent?
16. Establishing what is already practiced.
17. Good idea- the neighbour has a say, reduce the cost of applying for a resource consent if you can get written approval.
18. Council can use its discretion before or after the application is lodged.
19. What's the point in a residential area? As the new reforms define a residential area.
20. Good- classification, language needs to be changed.
21. Underlying assumption: risk adverse approach.
22. Means people won't have to get affected party consent if an activity is a marginal non-compliance, but the neighbours might not agree.
23. What types of infringements are catered to?
24. Does it undermine plans by creating a grey area of a marginal non-compliance?
25. Language of "effects are no different"- What does this mean? Is this necessary if activity meets the first test?
26. Defaulting to discretionary shouldn't be mandatory to non-notify.
27. Overall the second group agreed with the first but thought it needed some clarification.

Notification

1. Fundamentally both groups shared the view that there is nothing wrong with the current s95 and it doesn't need fixing. Both groups felt that what is proposed is overly complicated and basically flawed.
2. Table of who should be notified under certain circumstances sounds good, but should it be in the Act?
3. Group one didn't have a problem with the current s95 and didn't think it needed to be changed.
4. These changes could be the result of other sections in the Act being changed (Is this the right approach?)
5. Sub division will only be publically notified if it is a non-complying activity this must be reflected in a district plan, this is very problematic, earthworks aspect.
6. Under these new rules a subdivision activity will only be publically notified if it is a non-complying activity. This will cause a need for making subdivisions more non-compliant in District Plans. Council could manipulate this to their advantage.
7. Designations- only a requiring authority can be limited notified but doesn't cover things like designations for an airport, this is flawed, too loose as it's written now.
8. Risky defining adjacent- restricts it even though effects might go beyond this definition of adjacent. This definition does not always follow through in real life. Is a messy definition and may exclude those who are adjacent to the effects produced. Adjacent has already been defined through case law, this reform is unnecessary and is actually a bad definition.
9. Could limit definition of adjacent to know what does/ does not apply- specificity, it doesn't say anything about scale, as some effects are bigger than others and will go over this

definition of adjacent but under this rule those people won't be considered affected. Could enable more consents to be publically notified.

10. No explanation on why these changes to s 95 are being made.
11. Changes hoping to put through could be counterproductive.
12. Overall the first group thought there were lots of flaws with the proposed s 95 changes.
13. Pointless- Is this change just made to make a point? Effects being no different.
14. Public Notification: How often are they notified? You can already resolve that now with specification in district plan. Drafting is terrible.
15. Regional consenting- it won't work.
16. Don't actually need it, the old RMA was fine
17. Limited Notification: Default is everyone's eligible then they go through the exceptions. Council is not listed so regional council can't submit on district council- will this happen? Have to go through both stages.
18. Not very straight forward- planners can't get their heads round it. Don't like it. Should be able to comment on something not considered.
19. Why language of notification- who determines the adverse effect and what are the risks? (No appeal process)
20. Special circumstances- already accounted for.
21. Is it reflective of what's actually happening in practice?
22. Outcome based- moving beyond the permitted baseline (e.g. regional consenting)
23. Will have an immediate effect of subdivision- will have to rethink how we provide for it.
24. It shouldn't be mandatory to non-notify, it should be at discretion.
25. N-D non-notification what id Regional Council needed and they require notification?
26. Two stage process to determine…
27. Process not straightforward.
28. Not a fan/ broken?
29. The second group agreed with the first group and thought there were lots of flaws.

Fast-track: decision on notification needs to happen in 10 days instead of 20

1. Nobody applies the time constraints anyway so why bother trying to limit it to 10 days? It's silly.
2. Fundamental issue- Minister has authority/ power.
3. The fast tracking will make it harder for council to make a decision which could result in incomplete decisions. As council will have less time to make a decision on notification a full analyse might not be made. It could just result in council making excuses to buy more time, like asking for more information which would delay the process.
4. If the RMA reforms for s95 also go through then it will take ages for the consenting authority to get used to this making it harder for them to make a decision on notification in a shorter timeframe. This could lead to mistakes.
5. Is 10 days really going to make that much of a difference in the scheme of things?
6. An application is fast tracked if it is for a controlled activity or particular activities or classes of activities are specified in the district plan as fast tract activities.
7. Will it just result in Council notifying more applications as they don't have enough time to full process them so they want to cover their own asses.
8. It could be a good idea for small easy consents that are obviously not needing to be notified which could quicken the consenting process.