New Zealand Planning Institute®
Te Kokiringa Taumata

Submission to Resource Legislation Amendment Bill 2015

Prepared by NZPI Senior Policy Adviser, 14th March 2016

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1.1 Introduction

In the preparation of this submission the New Zealand Planning Institute has consulted widely with its professional membership, taken legal advice on particular bill proposals, and considered material prepared by the Productivity Commission and Local Government New Zealand.

Contrary to popular myth, NZPI members are open to improvement and change in the existing system of planning in New Zealand. For many, however, it is their job to implement the planning system as it stands, and to make the best of it working for public and private sector organisations. Many have worked professionally within both Town and Country and RMA planning systems. Many have worked in other national jurisdictions. Because of their day-to-day experience of planning, and because they get on a daily basis the feedback and opinions of developers, communities and individuals, politicians, and those at either end of the conservation/preservation to development spectrum, they are uniquely placed to advocate how the system can be improved, and also to reflect deeply and to advise where major change is needed.

The starting point of this submission is NZPI's policy analysis of what the problems are with NZ's planning framework, and what needs to be done to fix them. This analysis, along with expert member commentary, and a legal opinion is then applied to the many proposals contained in the Resource Legislation Amendment Bill 2015.

1.2 Problems and Practical Directions

NZPI submits there are practical directions that could be built into the current planning framework to address failings that have been identified and which are generally agreed. NZPI's recommended practical directions for reform are summarised in the following submission points:

- The RMA framework could remain, to enable development to occur within agreed, regulated and monitored environmental bottom-lines, but it needs to include land use, infrastructure plans and outcomes, and be organised so that it has direction at a national level, and outcomes delivered at a local level.
- National direction policy statements that are geared toward urban development should be about strategic forward planning, rather than reactive issue planning. All s6 matters require national policy statements to provide national direction.
- Changes to the planning framework need to enable interagency cooperation inherent in a framework of multiple layers. This requires distinct national issues and plans, and local issues and plans. All existing plans would need to be reviewed.
- There is a need to standardise rules and systems for example with an appropriate national template system, allowing for local overlay provisions and variation, and to provide clear rights of involvement, participation and of appeal in plan making.
- Planning needs to be conceptualised as a public good where public and private property rights are protected, rather than simply as a user pays service for permission to develop.
- Economic and social externalities of development including losses and gains affecting public and private property need to be provided for in the present RMA framework by means of national policy statements and enhanced s.32 type processes.

Further detail is provided in Appendix 1

1.3 The Resource Legislation Amendment Bill 2015

The 40 or so proposals in the Bill include a number that NZPI supports without amendment; many that NZPI supports subject to important and specific amendment; and others that NZPI oppose either because the proposals are not consistent with the direction NZPI submits is what New Zealand needs or because legal advice commissioned by NZPI has exposed major flaws and unacceptable consequences.

NZPI submits that the problems that are exposed in the commissioned statutory interpretation and legal opinion of specific bill proposals (see Appendix 2 for the full opinion) raise significant questions about those specific proposals, and cast doubt on the drafting and likely effect of other proposals in the Bill (which NZPI has neither the resource nor the time to fully investigate). Extracts from the legal opinion follow:

> **Re New section 18A – Procedural Principles.** "We consider in their present form the procedural principles will inevitably lead to litigation and debate in the courts as to how the provisions are to be interpreted and applied in a variety of situations. This is likely to lead to increased transaction costs for local authorities, applicants and the community."
>
> **Re New section 30(1)(aa) relating to development capacity.** "The policy shift proposed has implications for local and regional authorities in terms of resourcing and the burden of additional costs in carrying out the assessments that would be required. The RIS suggests that the change will be supported by a phased programme of national direction and guidance, including that around assessing demand and development capacity and monitoring the take up of capacity. Until that guidance is available, the full implications of the amendment remain unclear…. If the intention is to target the reforms to those areas where councils are under pressure to provide development-ready land for housing and business in urban areas, then our view is that further changes will be needed to the Bill to avoid unintended consequences in regions and districts which are not experiencing the same types of growth pressures."
>
> **Re new section 104(1)(ab) consideration of environmental offsets.** "In terms of the assessment of offsets as part of a consent authority's overall broad assessment of an application under Part 2, we anticipate national guidance will be needed as consent authorities would need to gain a good understanding of the concept and good practice around various types of offsetting."
>
> **Re new regulation-making powers in sections 360D and 360E.** "…although most of the regulation-making powers only apply for a limited time, they provide the Minister with significant power to override local decision-making, a key tenet of the RMA. The proposed power also arguably blurs the distinction between the carefully distinct roles given to central and local government under the Act."

NZPI's overall submission is that while there is appetite for legislative change to New Zealand's planning framework, we submit that the Resource Legislation Amendment Bill – as drafted - is not

the appropriate mechanism for bringing about many of the major changes that it currently proposes. We submit that the Bill should be treated as an opportunity to fix immediate operational problems, rather than as the platform for more fundamental reforms.

Other policy initiatives are underway to review and reform New Zealand's planning system. For example: the Productivity Commission, under Government direction, is formally reviewing New Zealand's system of urban planning; Local Government NZ has recently released its "Blue Skies: Planning and Resource Management" thinkpiece which reviews the performance of the RMA and provides many ideas for the future; the National Council for Infrastructure Development has provided policy advice after an examination of urban and renewal planning in Australia and the UK. We are also aware of the "whole of government" Resource Management System Design package of work presently underway in the Ministry of Environment which is separate from the Resource Management Reform work stream.

Responding to these various initiatives the NZPI has embarked on a range of actions that tap into the enormous depth of knowledge held by our members, and is conducting enquiries into what is working well, what needs to be improved, and what needs to be added in New Zealand's planning system. The findings of NZPI's preliminary research which includes close examination of the policy initiatives referred to above, forms the basis of our approach to submissions to the Resource Legislation Amendment Bill (RLAB). The remaining sections of this document set out NZPI's submissions on the majority of the proposals contained in the RLAB.

There are three appendices. One provides an account of NZPI's suggestions for practical directions that could be built into the planning framework to address current failings. The second contains the legal opinion sought from Anne Buchanan and Stephen Quinn partners at DLA Piper New Zealand. The third contains specific and detailed feedback obtained from members who are expert in particular areas of RMA practice.

2.1 NZPI's Submissions to Resource Legislation Amendment Bill

The 40 or so proposals in the Bill include a number that NZPI supports without amendment; many that NZPI supports subject to important and specific amendment; and others that NZPI oppose because they are not consistent with the direction NZPI strongly advises is needed for New Zealand's future planning framework. Our submissions are structured accordingly:

- Proposals that NZPI support (some of which in our opinion require amendment);
- Proposals that would shift decision making from local/regional to central government, and which require checks and balances;
- Proposals that would cause major changes to address fundamental issues, and which we consider should be withdrawn from this Bill.

NZPI's main submissions are presented in the following sections.

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

In principle, the following proposals are supported by NZPI (These are numbered in accordance with MfE's Amendment Bill Regulatory Impact Statement. NB: Specific NZPI expert member commentary and workshop feedback is contained in appendix 3):

1.4 Improve the management of risks from natural hazards under the RMA
2.1 Changes to the plan making process to improve efficiency and provide clarity
2.4 Enhance Māori participation by requiring councils to invite iwi to engage in voluntary iwi participation arrangements and enhancing consultation requirements
3.1 Consent exemption for low impact activities and minor rule breaches
3.8 Improve management of risks from natural hazards in decision-making on subdivision applications
4.1 Enable objections to be heard by an independent commissioner
4.2 Improve Environment Court processes to support efficient and speedy resolution of appeals
4.3 Enable the Environment Court to allow councils to acquire land where planning provisions have rendered land incapable of reasonable use and placed an unfair and unreasonable burden on the landowner
6.2 Streamlined and electronic public notification requirements
7.1 Minor changes to the Public Works Act 1981 to ensure fairer and more efficient land acquisition processes
7.2 Provide for equal treatment of stock drinking water takes
7.3 Provide regional councils with discretion to remove abandoned coastal structures
7.4 Create a new regulation making power to require that stock are excluded from water bodies

Proposals falling into this category, but which members have significant concerns about are listed below (NB: Specific NZPI expert member commentary and workshop feedback about these proposals is contained in appendix 3):

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

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

The next set of proposals, in NZPI's view, create new decision-making powers at central government level which risk transferring control away from local government and potentially conflicting with the community enabling and self-determining purposes inherent in the RMA. NZPI submits generally that these powers should not be unfettered. We submit they need to be triggered by requests for support from territorial authorities, or be subject to checks and balances.

1.1 Changes in National Environment Standard provisions

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

1.1 Changes in National Policy Statement provisions

Bill Clauses 29-33. Amendments to NPS provisions. Expands the directive powers of a National Policy Statement (NPS), and allows an NPS to be targeted at a specific district, region within a TLA or RA or any specified area. The scope of the ability for Minister to direct and specify the functions of TLAs in respect to developing Plans is widened considerably. For example: *methods or requirements that local authorities must, in developing the content of policy statements or plans, apply in the manner*

specified in the national policy statement, including the use of models and formulas… In effect, provided an NPS states objectives and policies for matters of national significance that are relevant to achieving the purpose of the RMA, it can require any particular TLA to insert specific objectives and policies into its District Plan. This proposal also appears to enable unfettered ability for the Minister to directly manage the activities of any TLA/RA.

1.1 Changes in National Policy Statement & Environmental Standard provisions

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

1.1 Changes in National Policy Statement provisions

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

1.2 New regulation making powers to provide national direction through regulation

Clause 105. One of the founding principles of the RMA was to enable participatory planning. That is a planning regime that allowed and encouraged effective participation by local and regional communities in the planning and resource management system. To enable this there were wide opportunities for communities to take part in the planning system both in formulating planning instruments and participating in planning processes. Decision making was delegated to the level where effects of those decisions were most likely to be felt and planning documents, including district plans, were to closely reflect community aspirations. Over time principles underpinning participatory planning have been eroded. The proposal threatens to further undermine those principles. The new section 360D proposed for insertion into the principal Act threatens to undermine decision making at a local level, undermines the ability of local authorities to respond to community concerns and prevents councils from effectively representing the aspirations of their communities. There are other more appropriate mechanisms to address concerns of Central Government other than through a non-specific Ministerial regulation making power. These include specific amendments to the principal Act that signal particular and identified changes (thus allowing meaningful Parliamentary debate and select committee scrutiny), National Policy Statements and National Environment Standards. Informed by the legal opinion, NZPI submits that these regulatory powers, as drafted, risk undermining the purpose of the Act, and should not be enacted as drafted.

1.3 Changes in National Direction including National Planning Template

Clause 62(2). When considering applications under s.104 "…must have particular regard to the objectives and policies in the national planning template …". This proposal provides the Ministry and the Minister with a lever to directly influence the processing of local resource consent applications. (Detailed submissions are contained in expert comment provided in appendix 3.)

6.5 Changes in National Direction enabling EPA resource use

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

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

2.4 Category 3 Proposals better considered in a wider planning system review

NZPI is concerned by the number of major change proposals that have been incorporated into this Bill and which seek to correct or mitigate long term problems in the RMA without putting in place an implementation framework sufficiently broad to deliver the outcomes sought. For example, the legal opinion obtained by NZPI states that unless appropriate national guidance is in place, proposals relating to developable land and environmental offsets cannot be implemented at local level. NZPI strongly opposes the RLAB's bottom-up approach to reforming our country's planning systems. These proposals require national guidance and national resourcing to enable local implementation. NZPI strongly submits that these parts of the RMA Amendment Bill should not be progressed in their present form. In addition we are concerned that the costs of enacting and implementing major proposals will exceed their benefits. The administrative work required at national level will distract from the important task of long term planning reform of NZ's planning systems, and it will cause planners and policy makers at local level an immense amount of work to change internal systems in order to put into effect provisions with a short and problematic life. We note also that some of these proposals – eg the National Planning Template – are not required to be in effect until two years after enactment of Bill.

Proposals which NZPI strongly submits are not progressed in their present form include:

1.3 Mandatory National Planning Template

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

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

Clauses 11 & 12. Amendments to Sections 30 & 31. These are new provisions re objectives, policies, and methods and are intended to ensure that there is sufficient development capacity in relation to residential and business land to meet the expected long-term demands. Unclear what is "long term".

Or what approach might be taken to assess "expected". Factors to be taken into account include whether the land is serviced with infrastructure, which is generally provided in terms of the LGA. NZPI questions whether this might require all RA's/TLA's to prepare spatial plans (like Auckland). And just as importantly, how should the relationship between LGA and RMA duties be managed/prioritized, given that infrastructure needed to increase "development capacity" with serviced land needs to be funded by means governed through LGA decision processes? Legal advice raises important resourcing and implementation questions about this proposal.

2.3 Collaborative Planning Process option

Clause 52. Optional Collaborative Planning process for plan changes. While there are many methods that will lead to increases and improvements in community and stakeholder engagement with local planning decisions and systems, there are risks in adopting a simplistic approach to collaborative planning processes without at the same time also reviewing the objectives, purpose and scope of such planning processes. Moreover, there are many models of collaborative planning, some of which aim for consensus building, others at conflict resolution, and others include a fully costed assessment of all of the gains and losses that might be the outcomes associated with a change or proposal. There is no guidance within the Bill as to which model might be adopted. In the absence of a comprehensive review, the words 'collaborative planning' risk being meaningless at a community level. NZPI notes the conflict issues that are described in Productivity Commission and LGNZ research work, and which are a feature of applications where there is some discretion, and where there is a perception (real or imagined) that there are winners and losers. Unless mechanisms are put in place (eg an effective National Urban Development policy statement and an integrated s.32 type process), no amount of collaborative planning will have the guidance it needs to deliver an agreed or consensus outcome. NZPI opposes this option because it is incomplete and poorly though through in terms of implementation (See expert comment in Appendix 3).

6.1 New procedural requirements for decision-makers

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

6.6 Introducing Environmental Offset mechanism while removing financial contributions

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

submits, based on its legal advice, that unless this provision is supported by national guidance explaining how the provision might be implemented, it should not be enacted.

Ends

Appendix 1 – NZPI recommended approach to Planning System Reform

NZPI notes the appetite for reform evidenced by the Bill and the work of the Productivity Commission and provides this account of its preliminary investigation into the need for future planning framework reform. No single organization can legitimately claim the high ground when it comes an activity as multi-disciplinary as natural resource planning. We draw here from a range of sources including the views of NZPI members, who, as members of the profession, are open to improvement and change to New Zealand's system of planning. Nevertheless it is their job to implement today's system, and to make the best of the present framework as they work in the public and private sector. Many have worked professionally within both Town and Country and RMA planning systems, and many have worked in other national jurisdictions. Because of their day-to-day experience of planning, and because they get on a daily basis the feedback and opinions of developers, communities and individuals, politicians, and those at either end of the conservation/preservation through to the change/development spectrum, they are well placed to comment and to advocate how the system can be improved, and also to reflect and suggest where major change is needed

NZPI has drawn on that institutional knowledge and on Local Government New Zealand (LGNZ) and Productivity Commission work and analysis. Our findings are structured under these headings:

1. Outcomes leading to questions of current planning framework
2. Failings identified in current planning framework
3. Ways the current planning framework can be refocused
4. Practical planning institution and instrument reforms required

1. Outcomes leading to questions of current planning framework

Much has been written about resource and planning outcomes over the past 25 years during which time resource management planning has largely been conducted in terms of the Resource Management Act. Here is what LGNZ observes in its thinkpiece:

> ….the cost of a poorly designed and implemented resource management system can be extremely high. It may undermine quality of life, separate us further from nature, undermine our national brand and defer the ever-increasing cost of short-sighted decisions to future generations.
>
> Regardless of perception, the country faces significant challenges in the form of rising income inequality, declining water quality where land use is intensive, localised strong population growth, extreme rates of biodiversity loss and steadily rising carbon emissions. The critical question is whether yesterday's tools – despite their flexibility and the period of refinement they've been through – will be suitable to deal with tomorrow's issues or allow us to seize tomorrow's opportunities.[1]
>
> ….A resource management system that is able to effectively defuse conflict, encourage and support sustainable production, facilitate growth in economic performance and increase

[1] LGNZ *Blue Skies* Pg 7 and http://www.mfe.govt.nz/publications/environmental-reporting/environment-aotearoa-2015

social wellbeing would be an asset for New Zealand and would provide New Zealanders with a competitive advantage in an increasingly resource-constrained and resource-hungry world.

While there is room for debate and detail, NZPI adopts this summary as it captures the essence of the country's institutional planning predicament and challenge.

2. Failings identified in current planning framework

Much has already been written about the failings. NZPI suggests a useful descriptive starting point is also contained in the qualitative analysis presented in LGNZ's Blue Skies report. We quote below specific extracts which characterise several challenging planning system problems we are aware of:

> The design of the resource management system allows, and sometimes encourages, conflict between government agencies and different tiers of government (central, regional and local). This can create costly and divisive debate and generate adversarial relationships between parties that would ideally be working collaboratively to promote common outcomes and deliver benefit for the New Zealand community as a whole.
>
> Consenting processes under the RMA are overly complex and litigious, which encourages regulatory authorities to avoid risk and focus on procedural compliance rather than the quality of an outcome – this often prevents officers from using discretion, and burdens small projects with disproportionate information and procedural requirements.
>
> There is a strong and persistent view that the resource management system has, at its core, a focus on environmental protection. This complicates the process of balancing private and public interests and reconciling the relationship between private property rights and the public good. The relationship between (and different roles of) New Zealand's resource management and conservation systems is unclear and poorly understood.
>
> Plans and decision-making under the RMA, LTMA and LGA affect each other, all have different purposes, processes and criteria, and operate over different timeframes. This results in duplication and lack of clarity, demands considerable time and resourcing from all parties involved, and potentially frustrates efforts to promote innovative projects.
>
> There is geographic, temporal and financial misalignment between national, regional and local interests in relation to urban growth. Councils and government have struggled to agree where and when growth should occur in Auckland, for instance, and central government providers of physical and social infrastructure (including roads and schools) have struggled to align the timing of their investment and development plans with those of the council. In addition, too many of the costs of planning for, accommodating and delivering growth fall on local councils and communities, who can only recuperate these costs over the longer term through rates and service fees, which only exacerbates the difficulty of aligning the timing and location of investment.
>
> Central government has been slow to provide national policy direction and national environmental standards and, without this guidance, regional councils have had to develop

their own approaches to managing complex and common issues. This has led to inefficiency and increased cost for ratepayers, and in some instances councils have struggled to deliver robust management frameworks in a timely manner.

The Productivity Commission is also making a contribution to the debate, and while its contribution tends to concentrate on economic matters and the market at the expense of the environment and social matters, it does draw attention to property rights. This is a matter largely precluded from the RMA which was designed to leave such matters to the market. For example in its report *Using Land for Housing* the Productivity Commission recommends that Councils, through development levies, should ensure that development contributions fully recover the costs of trunk infrastructure needed to support growth. Further, the productivity commission argues that councils should be enabled to capture the uplift in property values resulting from infrastructure investments. NZPI supports the thrust of these recommendations, noting that the planning framework needs to move from a pure environmental effects based planning framework to one which more explicitly incorporates the economic and social externalities of development and which assesses losses and gains affecting public and private property in more comprehensive s.32 type processes.

These succinct accounts provide a useful overview of key challenges and gaps that NZPI considers need to be addressed at national, regional and local levels in future reforms of NZ's planning framework.

3. Ways the current planning framework needs to be refocused

In throwing its weight into the growing debate, NZPI has also engaged with its branch chairs, board members, and broader membership to research and describe the New Zealand planning system change requirement. These ideas are summarised in the following bullet points:

- The RMA framework could remain, to enable development to occur within agreed, regulated and monitored environmental bottom-lines, but it needs to be expanded to include land use, infrastructure plans and outcomes, and be organised so that it has policy direction at a national level, and strategic objectives at a regional level with local outcomes delivered at a local level.
- National direction policy statements that are geared toward urban development should be about strategic forward planning, rather than reactive issue planning. All s6 matters require national policy statements to provide national direction so as to assist in the development of regional and district plans.
- It was no surprise that RMA District Plans have adopted the Town and Country Planning Act approach – The permitted and conditional use types of zone controls are effects based planning. They deliver certainty, and can be implemented with much less legal and consultant cost than more subjective and less prescriptive approaches.
- Any new planning framework needs to enable interagency cooperation inherent in a framework of multiple layers. Distinct national policies and plans, supported by regional strategies and plans and local plans at all three levels must be reconciled and are essential in the event of a successful review of the RAM as outlined. All existing plans will need to be reviewed.

- There is a need to standardise rules and systems probably through the application of national templates, allowing for local overlay provisions and variation, and to provide clear rights of involvement, participation and of appeal by interested parties during plan making.
- Planning needs to be conceptualised as a public good where public and private property rights are protected, rather than simply as a user pays service for managing consents and approvals for permission to develop.
- Economic and social externalities of development including losses and gains affecting public and private property are effects that must be provided for both in the present RMA framework and in any future framework. This could be by means of national policy statements and enhanced s.32 type processes

4. Practical planning institution and instrument reforms required

Building on the practical commentary and directions described in the foregoing sections, NZPI considers that a set of integrated reforms are needed to NZ's planning framework. Changes are needed at national, regional and local level and incorporated to form what could be collectively named a National Development Plan, and which would incorporate an enhanced RMA and relevant provisions of the LGA, the LTMA, and the Maori Land Act.

It would have a National component including:

- A high level National Development Plan – NDP (government strategies including population distribution, anticipated national and regional economic outcomes)
- Promulgates National Policy Statements (policies to give effect to the NDP)
- Would provide information for all infrastructure of national importance (roads, communications networks, energy networks, ports, education, health)
- Sets national bottom lines and National Environmental Standards for natural resources
- Regulated by presentation and submission to Environment Court

Has a Regional EPA and resource allocation component

- Produces regional natural resource plan (allocations and consents for water, regional transport, regional spatial development, conservation and coastal area plans)
- Regulates and monitors regional bottom lines in respect of environment and key infrastructure outcomes
- Regulated by Environment Court within approved Regional Plans

Has a Local component for spatial, land use, conservation, heritage

- Produces and administers District Sustainable Development Plan (outcomes, spatial)
- District plan protects property rights, allocates property development rights, manages supply of local infrastructure consistent with national and regional plans and administers its financing and implementation of economic incentive instruments
- Regulates land development and use, and gives effect locally to the National Development Plan in accordance with national policy statements, but subject to bottom lines.

Variations in this are of course possible. For example public network infrastructures might be managed regionally, rather than locally. However there will be a need to ensure that conflict of

interest issues do not arise through locating service provision and the responsibility for services environmental regulation are clearly identified and reported independently.

The NZPI recognises that these fundamental changes are in recognition of a shift in New Zealand's development from a pattern in rural areas the receiving environment was largely undeveloped possessing reserve capacity to maintain environmental and conservation standards. In the urban areas of New Zealand up to 3 million population coped well with a distribution of population across a range of smaller cities, many ports and a pioneering rail system from north to south. We also had a lower density urban receiving environment. Now with our population moving inevitably to a few centres only, including the three largest cities, which comprise urban land that is already developed and is now the home, work and play environment for many more people together with the increasing congestion the difficulties of spatial, social and conservation planning are all increasing and the solutions have become more difficult.

Summary: The purpose of this appendix is to suggest a rationale and scope for a reformed NZ development planning framework, and to indicate a direction for the institutional reforms that would be needed. It sets the context for NZPI's submissions on the reforms proposed by Government in the Resource Legislation Amendment Bill. It also reinforces the view of NZPI that there is no quick fix. The issues are significant and require a collaborative review of the RMA and associated legislation, together with significant change and improvement in the performance of planning at all three levels of Government.

Appendix 2 – Aspects of RLAB proposals: NZPI legal opinion

NZPI has commissioned legal advice from senior partners at DLA Piper. This follows this cover page.

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29 February 2016

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Dear Susan

RESOURCE LEGISLATION AMENDMENT BILL 2015

1 You have asked for our advice in connection with the Resource Legislation Amendment Bill 2015 which is currently before the Local Government and Environment Select Committee. You have asked us to address a number of questions relating to the following clauses of the Bill:

1.1 Clause 8 - new section 18A Procedural Principles.

1.2 Clause 12 - new section 30(1)(aa) development capacity.

1.3 Clause 62 - new section 104(1)(ab) consideration of environmental offsets.

1.4 Clause 105 - new regulation-making powers in section 360D.

2 We address each of these issues below.

Principles of statutory interpretation

3 Section 5(1) of the Interpretation Act 1999 directs that the meaning of a statutory provision:

> … must be ascertained from its text and in the light of its purpose.

4 Even if the meaning of statutory text appears plain in isolation from its purpose, the meaning should always be cross-checked against purpose in order to observe the dual requirements of section 5(1).[1]

5 Contextual indications of meaning within a statute can also be taken into account.[2]

6 'Purpose' can be a similarly broad concern, encompassing express statements of statutory purpose along with the broader social, economic or other end that Parliament intended to achieve (often discernible from extrinsic material, such as Parliamentary debates or Select Committee commentary).

7 We have considered the application of these principles when expressing our opinion on the interpretation of the Bill's provisions in the discussion that follows.

Issue 1 - new section 18A Procedural Principles

8 Clause 8 of the Bill inserts a new section 18A - new procedural requirements for decision makers.

9 You note New Zealand Planning Institute (**NZPI**) is unclear about how decisions regarding 'proportionate' processes would be made or measured, and have queried whether a modified section 32 approach to the exercise of all powers and functions might be required as a result.

10 It is not clear whether there is intended to be any significance in the difference between the proposed opening wording *'every person exercising powers and performing functions under this Act'* with the similar wording used in sections 6, 7 and 8, namely *'in achieving the purpose of this Act, all persons exercising functions and powers under it…'*. However, the purpose of the clause seems to be to ensure that principles of good regulatory practice are met by decision-makers.

11 We agree it is unclear how decisions about what is a 'proportionate' process are intended to be made. A key issue is the uncertainty regarding whether the section is intended to introduce enforceable duties/obligations. The effect of any failure to comply with such obligations is also unclear, ie could a local authority's plan making process be overturned if it could be demonstrated the principles have not been followed?

12 If the intention is to introduce an enforceable duty, the onus would presumably be on consent authorities to demonstrate that the section has been complied with, through means of a section 32 analysis (where appropriate). However, it is also not clear how this section might apply to powers and functions which do not relate to policy statement or plan development, such as notification of resource consent applications, a consent authority's decisions on resource consent objections or the Environment Court's determination of

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[1] *Commerce Commission v Fonterra Co-operative Group Limited* [2007] NZSC 36; [2007] 3 NZLR 767 (SC), at para 22.

[2] Interpretation Act 1999, sections 5(2) and (3). Examples include: preambles, tables of contents, headings, examples and explanatory material, and the organisation and format of a statute.

appeals. In those circumstances section 32 may not apply and a decision-maker would have to find another way to demonstrate that the principles have been followed.

13 We consider in their present form the procedural principles will inevitably lead to litigation and debate in the courts as to how the provisions are to be interpreted and applied in a variety of situations. This is likely to lead to increased transaction costs for local authorities, applicants and the community.

14 One alternative is to clarify that the new principles introduce duties which are not intended to be enforceable against any person, and that there is no liability for any breach of the duty, as is done in section 17 of the Act. If the duty is intended to be enforceable, then further central government guidance about ways in which compliance with the principles may be demonstrated is likely to be needed.

Issue 2 - new section 30(1)(aa) relating to development capacity

15 Clauses 11 and 12 amend the functions of regional and territorial authorities by adding a new function requiring them to ensure there is sufficient development capacity in relation to residential and business land. We understand NZPI has received a number of queries from members about this provision, which appears to relate to areas of New Zealand that are experiencing high growth. You have asked two specific questions, namely:

15.1 What requirement does this provision impose on districts are not growing or that are shrinking?

15.2 How would the phrase 'expected long-term demands of the district' be assessed?

16 We agree the amendment does seem focused on areas facing issues such as housing shortages and affordability issues. The Regulatory Impact Statement (**RIS**) suggests the changes proposed are designed to contribute to improved housing affordability outcomes. However, there is the potential for wider application as the term 'residential and business land' is not defined. It is not clear in the Bill if the intention is to restrict the application of the term to 'urban' land and, in the absence of a definition, the meaning of the phrase is likely to be subject to debate in the courts ie does a demand for land for dairy farm conversions mean there is a demand for that type of 'business' land? If it does, a territorial authority would presumably need to demonstrate that this demand could be accommodated. So, while the urban populations in a district might not be growing, there may be other pressures which need to be addressed.

17 Having regard to the new proposed definition of 'development capacity' in section 30(5), we anticipate the 'expected long-term demands of the district' would be assessed based on a district's own local expectations and those of the relevant region and that central government growth and development policies would not be directly relevant.

18 The policy shift proposed has implications for local and regional authorities in terms of resourcing and the burden of additional costs in carrying out the assessments that would be required. The RIS suggests the change will be supported by a phased programme of national direction and guidance, including that around assessing demand and development capacity and monitoring the take up of capacity. Until that guidance is available, the full

implications of the proposed amendment remain unclear. It is also unclear how the new function might impact councils' other functions or duties under the Act, including the requirements of part 2. For example, should a territorial authority demonstrate it is meeting demand for development capacity even where this might conflict with a need to recognise and provide for matters of national importance?

19 If the intention is to target the reforms to those areas where councils are under pressure to provide development-ready land for housing and business in urban areas, then our view is that further changes will be needed to the Bill to avoid unintended consequences in regions and districts which are not experiencing the same types of pressures.

Issue 3 - new section 104(1)(ab) consideration of environmental offsets

20 The Bill provides that a consent authority must, when considering an application for resource consent, also have regard to:

> Any measure proposed by the applicant for the purpose of ensuring positive effects on the environment to offset any adverse effects on the environment that will or may result from allowing the activity.

21 You noted NZPI wishes to understand the effect and origins of the policy lying behind this clause and asked a number of questions about the proposed amendment:

21.1 What is the effect of the Bill in respect of environmental offset provisions?

21.2 What kinds of mechanisms might be required to assess environmental offset proposals?

21.3 What guidance might be required to assist assessment of applications?

22 Your understanding of the environmental offset provisions in the RMA is correct, in that they are only mentioned once in section 108(10) in connection with resource consent conditions and financial contributions. As it is now proposed to remove the ability for local authorities to charge financial contributions, environmental offsetting will only be possible on a voluntary basis.

23 As you are aware, the concept of offsets has developed through various applicants offering remedial or compensatory works to 'counterbalance' adverse effects and the issue has previously been considered in a number of Environment Court, High Court and Board of Inquiry cases. There has been significant debate about where the notion of 'offsetting' best sits in the RMA framework.

24 In relation to your query regarding the origins of the clause, we have been unable to locate much policy history. We understand the main motivation for the introduction is to clarify the context in which offsets should be considered, given the previous uncertainty regarding this issue. Express inclusion of the concept in section 104 fits with the way in which the courts have confirmed the issue should be approached ie the High Court's finding in *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District* Council [2013] NZRMA 293 that offsetting or positive effects do not constitute mitigation under the Act, so

could only be considered under section 104(a) or as an 'other matter' under section 104(c) if considered relevant by the consent authority.

25 As NZPI notes, this proposed clause does not expressly relate to conditions as it does at present, nor is the proposed offset dependent upon or related to any purposes specified in a relevant plan. The removal of financial contributions conditions would not prevent a condition being imposed requiring the implementation of an environmental offset volunteered by the applicant. However, we consider greater certainty would be provided in expressly linking proposed section 104(1)(ab) with amendments to section 108 and proposed section 108(AA) to clarify that conditions may be imposed to require the offsetting proposed by an applicant.

26 A further question which arises is whether offsetting should be relevant at the notification stage when determining the extent of effects? Given that the courts have confirmed an offset is not 'mitigation', it makes sense for offsets to be treated in the same way as positive effects ie only relevant in the substantive determination of an application, as is currently proposed.

27 In terms of the assessment of offsets as part of a consent authority's overall broad assessment of an application under Part 2, we anticipate national guidance will be needed as consent authorities would need to gain a good understanding of the concepts and good practice around various types of offsetting. The level of knowledge and ability to resource such assessments might vary considerably and detailed information to support technical assessments is likely to be required. This could be through non-statutory guidance documents similar to the government's existing 'Guidance on Good Practice Biodiversity Offsetting in New Zealand, August 2014'. Alternatively, the issues could be dealt with through a National Policy Statement or Statements. The assessments/mechanisms required would depend on the type of offsetting proposed and would need expert technical and stakeholder input.

Issue 4 - new regulation-making powers in sections 360D and 360E

28 New section 360D is inserted to provide regulation-making power to permit or prohibit certain activities including:

28.1 to permit a specified land use;

28.2 to prohibit a local authority from making specified rules or specified types of rules;

28.3 to specify rules or types of rules that are overridden by the regulations and must be withdrawn;

28.4 to prohibit or override specified rules or types of rules that restrict land use for residential development in a way that is not reasonably required to achieve the purpose of the RMA or are duplicative of other legislation.

29 You have queried the extent to which these provisions are in conflict with the purpose of the RMA, specifically the self-determining purpose 'that it enables people and communities to

provide for the social, economic, and cultural well-being'. You have also queried the extent to which the proposed new regulatory powers empowering the Minister to determine the content of district plans varies from the present powers to do that.

30 The list of regulation-making powers has been significantly extended in the Bill. These new powers are linked to the desire to provide stronger national direction. As you note, those powers in section 360D(1)(a)-(c) will only be available pending the development and notification of the National Planning Template (**NPT**) but that in section (1)(d) is not time limited. The purpose is said to be removing unreasonable restrictions or duplication of costs by removing unnecessary rules, and seeking consistency across planning documents.

31 The Minister does not currently have the power to intervene in plans in this way, although we note a similar regulation-making power has previously been introduced in the RMA in relation to aquaculture activities (refer sections 360A - C of the RMA). When the aquaculture regulation-making power was introduced in 2011, the government indicated the proposed reforms would enable it to play a more active leadership role in aquaculture planning at a national or regional level and that the intention was to use the regulation-making power in circumstances where other RMA process/tools were inadequate to achieve the government's objectives for aquaculture management. However, we are not aware of the power ever being used.

32 The Bill proposes substantial new powers for the Minister with limited involvement by others. While there are some process constraints, the decision to permit or prohibit certain activities ultimately lies with the Minister. Regulations made under section 360D would effectively override the power that local authorities have to establish, implement and review objectives, policies and methods to *'achieve integrated management of the effects of the use, development, or protection of the land and associated natural and physical resources of the district*' (section 31). Although central government has the role of providing national direction and guidance, once that is in place councils must work through their own processes at the local level. What is proposed is potentially in direct conflict with this as regulations made by the Minister would require the removal of provisions in RMA plans which conflict with the regulations. It is also unclear, for example, in proposed section 360D(1)(c) whether the regulation-making power is limited to rules proposed by local authorities after the section comes into force but before an NPT is in place, or whether it would also catch existing rules. This would conflict with section 7 of the Interpretation Act 1999 which provides that enactments do not have retrospective effect.

33 There is further uncertainty in proposed section 360D(4) which provides that regulations may require rules inconsistent with regulations to be withdrawn or amended 'to the extent necessary to remove the inconsistency'. However, what is 'necessary' will be a matter of interpretation and will vary depending upon the situation.

34 Local authorities might also have concerns that such a broad regulation-making power might have unintended consequences and leave unforeseen gaps in district plans if proposed regulations and changes are not carefully considered in a local context. The proposed consultation and submission process may address some of these concerns.

35 In conclusion, although most of the regulation-making powers only apply for a limited time, they provide the Minister with significant power to override local decision-making, a key tenet of the RMA. The proposed power also arguably blurs the distinction between the carefully distinct roles given to central and local government under the Act.

36 We trust this addresses the various questions you asked us to consider.

Yours sincerely

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Appendix 3: Expert member feedback and submissions

During consultation phases conducted by NZPI, feedback has been provided by members expert in the implementation of particular provisions of the RMA that are affected by RLAB proposals. Other responses have been recorded at a well attended workshop of members in Auckland and open text responses from surveys. It is considered by NZPI that the material selected and presented in this appendix needs to be carefully considered by MfE. (NZPI apologises for the varying numbering systems in these submission points. They are internally consistent for each RLAB proposal and submission.)

RLAB Proposal Number	Bill Proposal Title	Expert NZPI member submissions and workshop response
1.1	***Changes to National Policy Statements (NPSs) and National Environmental Standards (NESs)***	Workshop: 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.
1.2	***New regulation making powers to provide national direction through regulation***	**Expert Recommendation:** The removal of section 360D from section 105 of the Amendment Bill. **Reasons:** 1. The new section 360D proposed for insertion into the principal Act is unnecessary, creates uncertainty for local authorities, threatens to undermine decision making at a local level, undermines the ability of local authorities to respond to community concerns and prevents councils from effectively representing the aspirations of their communities. Instead it represents planning by decree by the Minister for the Environment. There are other more appropriate mechanisms to address concerns of Central Government other than through a non-specific Ministerial regulation making power. These include specific amendments to the principal Act that signal particular and identified changes (thus allowing meaningful Parliamentary debate and select committee scrutiny), National Policy Statements and National Environment Standards. 2. One of the founding principles of the RMA was to enable participatory planning. That is a planning regime that allowed, and indeed encouraged, to the greatest extent possible effective participation by local and regional communities in the land use planning and resource management system. To enable this there were wide opportunities for communities to take part in the planning system both in formulating planning instruments and participating in planning processes. Decision making was delegated to the level where effects of those decisions were most likely to be felt and planning documents, including district plans, were to closely reflect community aspirations. Over time, these laudable principles underpinning participatory planning have been increasingly eroded. The proposed amendments threaten to further undermine those principles. 3. Another founding principle of the RMA was to promote transparency and certainty in the planning and resource management system. This was to ensure openness in policy development and to provide clarity in regard to implementation; in other words to ensure all participants had full knowledge of how policy was developed and how policy was to be implemented and administered.

		4. Planning by Ministerial regulation in the manner proposed under section 360D is the antithesis of participatory planning. It is centralised planning by decree. It threatens to override community concerns, curtail community participation in planning processes, prevent local decision making in response to community concerns, and restrict community aspirations being reflected in planning documents, including district and regional plans. Local and regional preferences will be overridden by Ministerial preference set at the national level. Moreover, such national preferences will be inserted into the planning regime, not through open and transparent debate and input from all affected parties, but through Ministerial regulation under a cloak of uncertainty and indeed obscurity. 5. It is also unnecessary. There are other, better methods available to address these issues. The proposed Ministerial regulations under section 360D to prevent, restrict or prohibit a land use can only be issued when reasonably required to achieve the purpose of the RMA. Apart from what is meant by "reasonably", this is already the case when assessing land uses under the RMA. The difference imposed by the proposed amendment is that local authority assessment of achieving the purpose of the Act, augmented by Environment Court and higher court deliberations if necessary, is replaced by Ministerial assessment unchallengeable to the Environment Court. This is usurping the functions of local authorities and specialist courts for reasons not apparent nor explained in the Amendment Bill. 6. Subsections (1)(a), (b) and (c) appear to be a reaction to housing problems in Auckland, particularly (1)(b) and (c) which are specifically limited to addressing restrictions on land use for residential purposes. These may well be used to undermine urban boundaries that, in consultation with their communities, local authorities have chosen as a method to control urban sprawl, amongst other things. Moreover, these subsections will be repealed, and regulations made under them revoked, one year after the first proposed national planning template is notified. Such an ad hoc approach to land use planning and environmental regulation seems bereft of sound resource management principles and appears to indicate a short term and most likely unsuccessful attempt to address Auckland housing problems, with possible long term detrimental effects both in Auckland and the rest of New Zealand. 7. Subsections (1)(d) and (3)(b) on the other hand could have particular relevance to all local authorities throughout New Zealand. Section 360D, specifically subsections (1)(d) and (3)(b), gives the Minister for the Environment the power to make regulations to prohibit or override rules in planning documents that, in the Minister's opinion, duplicate, overlap with, or deal with the same subject matter as is included in other legislation when that duplication, overlap or repetition would be undesirable. Undesirable is not defined so could conceivably mean anything the Minister disagrees with. Such regulation can affect existing rules, can apply generally, to any district or region, or to any particular part of New Zealand. 8. The non-specific nature of such Ministerial regulatory powers provides no certainty to councils or their communities as to what could be encompassed under these provisions. It is open ended with the only qualification being that the subject activities be, in the Minister's opinion, undesirably duplicative, overlapping, or dealing with the same subject matter included in other legislation. This could encompass a wide range of activities that

		are subject to other legislation. This uncertainty over how the provisions will be used, what activities they will relate to, what other legislation will be encompassed, and for what reasons they will be used, puts local authorities in an untenable position. How are councils to pre-judge what the Minister may find undesirable before undertaking resource management functions under the RMA that may be subject to other legislation? 9. There are well established judicial procedures and abundant precedent for determining the role of different statutes in environmental planning and resource management. There appears to be no good reason to replace these with Ministerial regulatory powers, particularly when it is entirely unclear how they will be used and for what purpose. **Expert submission: Implications of Deleting s. 30(1)(c)(v)/31(1)(b)(ii) etc. of the RMA. Note new numbering scheme.** **1.** Clauses 11(2) and 12(2) of the Resource Legislation Amendment Bill propose to remove sections 30(1)(c)(v) and 31(1)(b)(ii) of the RMA. Clause 109 proposes to remove reference to hazardous substances (but not 'hazardous installations') from the 4th Schedule. The purpose stated in the MfE Regulatory Impact Statement is to remove generic duplication with the Hazardous Substances and New Organisms Act 1996 (**HSNO Act**). There is no evidence provided in the statement for the claim that land use management under the RMA generally is in conflict with, or repeats, requirements of the HSNO Act. **2.** This specific matter is also not addressed specifically in MfE's 'Departmental Disclosure Statement'. There is no background information provided to substantiate the assumption of duplication. **3.** It is submitted that the wording of both statutes does not represent duplication but complementary controls which are defined in both statutes. It is further submitted that maintaining clauses 11(2), 12(2) and 109 of the Bill as currently written will lead to confusion, undesirable variability in controls between local authorities, and ultimately increased risks to local communities and the environment from hazardous substance incidents and deterioration of the environment. **4.** The numbers of land use consents required under land use planning controls pursuant to RMA s. 31(1)(b)(ii) are generally low nationwide, and have been consistently low. Compliance costs are not high in comparison to the HSNO and workplace safety regulatory regimes, and benefits to local communities and natural environments are numerous. In addition economic benefits are likely to outweigh costs such as emergency response in cases of incidents, often adversely affecting neighbouring businesses as well (as an example consider the explosion at an oil recycling plant on 12 September 2015 in Wiri, South Auckland and its effects on the whole area). **Background (Changed numbering scheme)** **1.1** The HSNO Act and regulations (referred to from hereon as "**the HSNO legislation**"), introduced between 1996 and 2001 (with some later specific additional Regulations), consolidated and updated previous fragmented legislation such as the explosives, dangerous goods or toxic substances statutes. It was originally designed as Part XIII of the RMA ("Hazards Control Commission") but was consequently developed separately. The HSNO legislation is administered by the Environmental Protection Agency (**EPA**) and WorkSafe New Zealand. The HSNO legislation provides the basic substance-specific requirements for the management of hazardous substances which apply anywhere in New Zealand, specifically in places of work. The

		HSNO legislation does not control specific locational issues of activities which are appropriately addressed through land use planning and the RMA. **1.2** The HSNO Act confirms that district plans can contain requirements in relation to hazardous substances provided that a local authority considers them necessary to address RMA related environmental effects. Section 142 of the Hazardous Substances and New Organisms Act 1996 (HSNO) is the only section in either Act which specifically deals with the RMA-HSNO interaction. Subsection (2) and (3) state: **HSNO s. 142 Relationship to other Acts**... (2) Every person exercising a power or function under the Resource Management Act 1991 relating to the storage, use, disposal, or transportation of any hazardous substance shall comply with the provisions of this Act and with regulations and notices of transfer made under this Act. (3) Nothing in subsection (2) shall prevent any person lawfully imposing more stringent requirements on the storage, use, disposal, or transportation of any hazardous substance than may be required by or under this Act where such requirements are considered necessary by that person for the purposes of the Resource Management Act 1991... **1.3** Subsection (2) is self-explanatory. Subsection (3) should be clear but is often misinterpreted. It is important to highlight the words '**Nothing** shall prevent…' and '…where such requirements are **considered necessary**…'. There is no other qualifier specified for any person, including a local authority, to apply this power. It is not linked to any restriction, limit, test or qualification (apart from not being less stringent than HSNO). There is no reference to specific parts of the environment such as water bodies or eco-systems, no more or less sensitive land uses or any specific industries or others managing hazardous substances. It is important to note that the wording of s. 142 has not been changed in two decades. It is also essential to acknowledge that the wording of the law does not in any way envisage a time limit on the established RMA-HSNO relationship in this matter, nor does it envisage any other conditional change which would necessitate an amendment to sections 30/31 of the RMA on this matter. **1.4** The HSNO legislation controls on hazardous substances are largely designed to update, clarify and consolidate past requirements. The EPA User Guide to the HSNO Regulations[2] of February 2012 states: *"There are two aspects regarding the way in which the HSNO Act relates to other Acts. These stem from **the HSNO Act being explicitly designed to provide a basic set of controls** to manage the adverse effects of hazardous substances." (s.9, p. 24) (My emphasis).* *"The second aspect is that the HSNO Act requires that (new) Resource Management Act (RMA) consents comply with HSNO controls, but allow for more (stringent) specific "site" conditions to be imposed than under HSNO." (s.9, p. 24)* *"…the controls on hazardous substances act as part of a whole regulatory structure that includes other components from other legislation such as: • the Resource Management Act…" (s.9, p. 24).* **1.5** The HSNO legislation, despite its perceived complexity and mixture of performance based requirements and prescriptive controls, is not effectively more stringent or onerous compared to the old legislation it replaced (and which was used in conjunction with the former Town

[2] Environmental Protection Agency, User Guide to the HSNO Regulations (February 2012).

		& Country Planning legislation as well as the RMA). HSNO did not really 'raise the bar' but provides typically performance-based equivalents of the past prescriptive control regime, with some clearly necessary updates where past controls where completely inadequate. **1.6** Overall the following matters are resource management matters and not specifically addressed by the HSNO legislation: (a) The risk of hazardous facilities to people and property off-site, i.e. other land use activities, particularly where they may be sensitive to hazardous substance risks (such as residential activities, or activities attracting large numbers of people); (b) The risk of hazardous facilities to the natural environment and eco-systems, including vulnerable aquifers; (c) Cumulative risks of multiple hazardous facilities; (d) Risk increase due to a hazardous facility being subject to natural hazards occurring; (e) Reverse sensitivity issues, particularly land use changes over time establishing more sensitive land uses in the vicinity of (generally more major) hazardous facilities, and (f) Risks from hazardous substances outside the scope of the HSNO legislation (such as substances with high bio-chemical oxygen demand or with radioactive properties - see different definitions of the term in both statutes). Control of these matters is **NOT** provided for in the HSNO legislation, and guidance has been available in New Zealand for two decades that these matters are within the gambit of land use controls under the RMA. There has **NOT** been an amendment to the HSNO Act or any part of the HSNO legislation, in the 20 years since the HSNO Act has been in existence, to address these matters. To claim duplication on these matters is not supported by evidence. **Managing workplace safety of Major Hazards Facilities** **1.7** An indication of the HSNO legislation not representing the 'be-all-and-end-all' of hazardous substance management are the workplace safety 'Major Hazard Facilities (**MHF**) Regulations' promulgated by the Ministry of Business, Employment and Innovation (**MBIE**). MBIE released at the time as part of the review of workplace safety legislation a consultation document which includes a Chapter 6 on new regulations for major hazard facilities. Apart from the need for such facilities to be controlled beyond the minimum HSNO requirements, that chapter states in the Introduction that the RMA is the principal environmental management statute in NZ. It correctly states that almost certainly a resource consent would be required for a MHF which would include the necessary assessment of environmental effects, including the assessment of (offsite) risks. **1.8** Moving a number of HSNO components and functions from the EPA to WorkSafe NZ means that the workplace safety aspect of managing hazardous substances is meant to be strengthened. This means that the wider environmental aspects of hazardous substances management under the RMA may be becoming even more relevant in the future than they are now, rather than less. **1.9** The issue of cumulative risks of a number of hazardous facilities in one area is also a resource management matter. Requirements of the HSNO legislation are substance-specific and even location test certification – the equivalent of what local authorities used to do with Dangerous Goods licensing – is, where required, specific to one location within a hazardous facility. It does not include requirements

in relation to other hazardous facilities on other sites where interaction could occur in cases of accidents, regardless of whether those facilities should trigger location test certification themselves. The process also generally does not include any actual assessment of risk, either in isolation for one facility, or cumulatively. Again this demonstrates the location specific role of hazardous facility controls under the RMA.

1.10 The MBIE consultation document repeatedly emphasis the issue of co-operation between WorkSafe NZ and local government. Clearly moving a number of HSNO components and functions from the EPA to WorkSafe NZ means that the workplace safety aspect of managing hazardous substances is meant to be strengthened. This means that the wider environmental aspects of hazardous substances management under the RMA may be becoming even more relevant in the future than they are now, rather than less.

Examples of differing standards of HSNO and RMA requirements

1.11 As an **EXAMPLE** to demonstrate that the HSNO Regulations are designed to reflect a lower level of control than what is considered both internationally, and in NZ to date, good land use planning practice, some of the provisions of the Hazardous Substances (Emergency Management) Regulations 2001 are briefly explained. The Hazardous Substances (Emergency Management) Regulations 2001 specifying the circumstances and content of emergency response plans at Regulations 27 to 34. Those regulations only apply for reasonably likely emergencies (regulation 28), less likely events are not covered. This is particularly important where an adverse effect of an emergency in a particular location may fall within the definition of RMA s.3(f) as one of low probability which has a high potential impact. The ability to provide for such emergencies, in addition to the minimum HSNO requirements, is clearly a location specific matter which falls within the scope of the RMA.

1.12 In addition the HSNO (Emergency Management) Regulations do not provide for:

(a) Any participation of local authorities, local communities or even affected parties off-site to be involved in the development, testing/review or implementation of plans, be it in the form of consultation about off-site effects and the appropriate response to those, or even being informed about the existence or content of such plans;

(b) Any response in terms of buildings, structures or environmental features off-site potentially affected by an emergency (specific reference in Regulation 29 (iii) is limited to injury to persons);

(c) Any equipment, materials, systems or actions off-site necessary or useful to respond to an emergency, or even on-site if the emergency is not a fire or involves specified oxidisers/peroxides (Regulation 30);

(d) Any information to be provided to potentially affected off-site parties before an emergency, even just to inform about the type of emergency likely or possible.

1.13 Another **EXAMPLE** are separation distances for flammable substances. Quite a number of quantitative risk assessments (**QRA**) of individual fatality or injury risks of hazardous facilities using and storing flammable substances have been carried out in New Zealand for land use planning purposes. For more sensitive land use acceptance criteria (such as residential - not mandatory in NZ but widely adopted from Australia and other developed countries) the risk contours extend tens to hundreds of metres from the facility. In comparison the mandatory separation distances prescribed in Table 7 of Schedule 3 of the Hazardous

		Substances (Classes 1 to 5 Controls) Regulations 2001 range from 8 to 30 metres. They also apply only to hazard classes 3.2, 4.1.2 and 4.1.3 – other classes are not even covered. This includes the numerous flammable liquids of class 3.1, including petrol and numerous highly flammable solvents. It is obvious that the purpose of land use planning requirements under the RMA are targeted at a higher level of safety than the minimum controls under the HSNO Regulations. There are numerous other matters where the scope of the HSNO legislation does not extend to the level widely considered appropriate and necessary for land use planning purposes. **1.14** It is considered that these matter are important enough to warrant an ability to add to the minimum HSNO controls, in accordance with HSNO Act s. 142(3). In fact, it would be an important omission if local authorities could not retain that ability. In that regard it would be useful if not essential to retain the specified function of local authorities in the RMA. **The 4th Schedule of the RMA** **1.15** Schedule 4 of the RMA requires that assessments of effects on the environmental prepared in support of a resource consent application provide specific reference to the management of risk – and the assessment thereof – originating from the use of hazardous substances (clauses 6(1)(c), 7(1)(f)). This has only been amended recently through the Resource Management Amendment Act 2013 which strengthens the wording in relation the hazardous substance risks from 'should consider' to 'must address'. These meaningful provisions are now also proposed to be deleted without substitute by clause 109 of the Bill. Reference to assessing 'hazardous installations' is to remain – despite no provisions in the RMA to control 'hazardous installations'. **1.16** It is noted that the definition of 'hazardous substance' in the RMA is not to be repealed (although the term is proposed not to be used anywhere in the Act), whereas the term 'hazardous installation' – not used otherwise in the Act – is not even defined. This is confusing and reflects a lack of thought on this matter. Clause 109 does not appear to make sense and should be removed from the Bill. **Conclusion** **1.17** It is acknowledged that the wording of sections 30(1)(c)(v) and 31(1)(b)(ii) with regard to the respective functions of regional councils and territorial authorities is very similar which can give the impression of duplication. However, in practice every regional council specifies in their RPS which local authorities has the specified function within the region in accordance with s. 62, and virtually anywhere it is the territorial authorities. If this 'duplication' (in theory if not practice) is considered unnecessary by the Committee, repealing only s. 30(1)(c)(v) and the relevant parts of s. 62 would be sufficient. Repealing both sections 30(1)(c)(v) and 31(1)(b)(ii) is ill-considered and will lead to land use planning practices for hazardous facilities which would fail to meet those of other developed countries. **1.18** In summary the alleged duplication of land use planning requirements for hazardous facilities with HSNO controls of hazardous substances is more perceived than real. Removing the ability of local authorities to manage the effects of hazardous facilities from a location-specific perspective is counterproductive and will result in adverse effects on the environment, including local communities, over time. It is submitted that clauses 11(2), 12(2) and 109 should be deleted from the Bill.

1.3	***Mandatory National Planning Template to reduce plan complexity and provide a home for national direction***	Expert advice: If template plans are to achieve anything it should be to standardise basic issues such as definitions, the names of zones and overlays and address rules which are more or less the same throughout the country. If the template plan is a means of achieving a level of consistency on these matters then NZPI should back it to that extent. There's nothing more frustrating that having each local authority with their own definition of "site" or "building" or trying to wade through a plan which has a structure and terminology which is hard to follow and difficult to read. Simplifying some of these basic matters will reduce both the cost in preparing plans and in administering them. Workshop: 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. Some 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). Some participants were concerned about the level of resources that may be necessary to prepare and implement the NPT.
1.4	***Improve the management of risks from natural hazards under the RMA***	Workshop: 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. 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. 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.
1.5	***Strengthen the requirements on councils to improve housing and provide for development capacity***	Workshop: 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. 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. 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. 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.
1.6	Dropped from Bill	
2.1	***Changes to the plan making process to improve efficiency and provide clarity***	Workshop: 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.
2.2	***Provide councils with an option to request a Streamlined Planning Process for developing or amending a particular plan***	Workshop: 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
2.3	***Provide councils with an option to use a Collaborative Planning Process for preparing or changing a policy statement or plan***	Workshop: 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
2.4	***Enhance Māori participation by requiring councils to invite iwi to engage in voluntary iwi participation arrangements and enhancing consultation requirements***	Workshop: 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.
3.1	***Consent exemption for low impact activities and minor rule breaches***	Workshop: 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. Activities being treated as permitted 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.
3.2	***10-day fast track process for simple applications***	Workshop: 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.
3.3	***Streamline the notification and hearing process***	Workshop: 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/ is it broken? 29. The second group agreed with the first group and thought there were lots of flaws. Individual experts: The draft submission includes reference to section 3.3 - "streamlining notification" and that this is appropriately opposed by the NZPI. There is currently no commentary fleshing out this opposition. A large proportion of the membership deals with the resource consent process and it is incredibly important that the submission comes out strongly against the cumbersome and incredibly complicated changes being proposed to notification and limited notification provisions. Far too much time is already spent arguing about notification with applicants, so much so that this aspect, which really should be little more than an administrative task, consumes the whole process. The tests of "minor" or "more than minor" are opaque tests at best and open to significant/ inappropriate influence by applicants in my experience to the detriment of neighbours and the general public. If the Government really wants to "streamline" notification it should simply change the legislation to state that each Plan must list the

		notification path for certain rule breaches. In practice these are well known and this approach would mean a consistent approach for all applicants/ stakeholders and allow planners to focus on what actually matters - being the merits of a proposal.
3.4	***Improve processes for specific types of housing related consents***	Individual expert: I support this in principle but am concerned that applicants could end up with a City Council consent for subdivision but not be able to use it because of regional consent requirements - many subdivisions in the Wellington Region require earthworks and piping of streams with a range of environmental effects that need to be addressed, and iwi consultation. This approach would require District and Regional Plans to both agree that it is okay to use certain areas of land so the process would be streamlined - and potentially lock off other areas - or at least put in some guidance so developers have certainty. There is no point have a consent that can't be exercised because other key consents cannot be obtained.
3.5	***Require fixed remuneration for hearing panels and consent decisions issued with a fixed fee***	Individual expert: I have a really issue with this one and believe NZPI should take a strong stance against this as it goes to the integrity of the decision making. As an example of the issue the recent advertisement in Planning Focus for Commissioners in Rotorua District contains a fixed fee of $150 an hour for a Panel member and $170 an hour for a Chair (including all disbursements) which needs to be committed to for 3 years. A quick look at their own fees schedule indicates that a Council reporting officers hourly charge out rate will actually be more than the Panel Member involved in making the decision. Not only is this somewhat of an insult it undermines in my view the decision making process and the significant responsibility that is being placed on those decision makers. I'm aware that similar situation have occurred in Hamilton and Auckland. What will end up is a dilution of decision makers where those very experience Commissioners will not become involved or that Council's will have to "top up" the rate to obtain those commissioners. I'm aware that Commissioners have already pulled out or not tendered for these fixed fee situations. Perhaps the irony of this amendment is that there is no proposal to fix the rates of Council reporting officers. This is perhaps where there is an significant issue as in my experience they are ranging from $75 -$200 per hour for the same service. In a situation where this is not supposedly a profit making service this substantial difference is hard to understand. I'm aware that some NZPI members in local authorities are somewhat embarrassed by this situation. Practitioner comments: Hearing panels need to have flexibility and expertise. Currently, many Councils pay too little for commissioners. However, fixed fees for the applicant are a good idea in terms of consent fees, but leave some discretion to get the right expertise on a decision making panel for more complex cases. No. Poor quality decisions on important projects in the public interest will almost certainly result. Technical specialists are needed for some applications. The market dictates their fee that must be paid. Compromises in the selection of members due to remuneration could result in poor decision making. Fixed fees are great for the people who have to pay for them because they can budget for them. They are hard to estimate for some hearings and there is a risk that commissioners could be underpaid as a result - unless the Consent Authority paid the difference between the fixed fee and the actual costs. This needs to be considered carefully and allow for cost overruns where they are reasonable. One size does not fit all. The other risk is that fees will be set really high to cover the risks and that is not fair on applicants. This will just pass the cost onto ratepayers, so no I do not support this. Developers should pay if they are reaping the commercial benefit.

3.6	***Clarify the scope of consent conditions***	Various expert practitioner views: Doesn't appear to change anything substantially for Auckland Council experience I do not support this proposal - especially when the explanation states that MfE has no record of there being a problem. it would be good to have standardised conditions for certain things, but other non-standard conditions are often quite relevant to a proposal and still fit the measurable, enforceable for a specific environmental effect framework. Surely educating people would be a better approach than making new laws. Should not limit advice notes beeing added to consents These should be left open and the conditions should reflect the application on a case by case basis. Not all two consents are the same and some will require more creative conditions than others Appears to undermine offsetting or compensation works, as these no not normally relate to the adverse effects but are designed to 'offset' these effects. I would say the scope of most conditions already relate to the criteria listed
3.7	Dropped from Bill	
3.8	***Improve management of risks from natural hazards in decision-making on subdivision applications***	
4.1	***Enable objections to be heard by an independent commissioner***	
4.2	***Improve Environment Court processes to support efficient and speedy resolution of appeals***	
4.3	***Enable the Environment Court to allow councils to acquire land where planning provisions have rendered land incapable of reasonable use and placed an unfair and unreasonable burden on the landowner***	
5.1	***Provide for joint resource consent and recreation reserve exchange processes under the RMA and the Reserves Act 1977***	Expert practitioner advice: This amendment should be supported. I am working on a major project. The problem faced at the moment is a chicken and egg situation where no one seems to know which process should go first and then there are allegations that the one that goes first will actually determine the outcome of the second. While this should not be true and each process should be seen as independent there remains, even amongst Council staff, that perception.
5.2	***Align the notified concessions process***	

	under the Conservation Act 1987 with notified resource consents under the RMA	
6.1	***New procedural requirements for decision-makers***	
6.2	***Streamlined and electronic public notification requirements***	
6.3	***Enhanced council monitoring requirements***	
6.4	***Reduce BOI cost and complexity***	
6.5	***Enable the EPA to support RMA decision-making processes***	
6.6	***Simplify charging regimes for new developments by removing financial contributions***	Expert practitioner: I am concerned about the outright removal of financial contributions. They may be generally correct that Dev Levies are the appropriate tool to service the costs of growth. However it does not pick up instances where a local development should contribute more to infrastructure that directly services them. It is also a concern that the ability to require developers to vest land may be removed. This particularly applies to roading. The removal of fc's is just going to make life more difficult(although Auckland council has largely removed FC from PAUP mainly because they don't understand development) for council. The current draft Bill that is that development contributions rather than financial contributions should be the mechanism under which developers contribute towards wider network improvements. This notwithstanding government stated intention to cap the level of development contributions that can be charged. Under the RMA financial contributions require district plan rules and policies before they can be levied. There will still be instances whereby it is appropriate that Council seek to receive or levy funds for local roading works which are not captured or provided for under a coarse development contribution regime and where doing so effectively means individual developers are inappropriately subsidised by the wider development community. These include where: i) Contributions were legitimately levied pursuant to the legacy plans. ii) To address specific effects or to service the land subject to development or subdivision including the component upgrading of road frontages to a road standard that would otherwise fall upon a developer to provide. In such instances any local 'betterment' component should not be shared amongst the wider development community. This reflects the concept that some of the cost of infrastructure should be borne by the adjoining land owner. Without this ability this could lead to some developers holding off on developing land alongside transport links that are required because if a Council does the work then they will only have to pay an average contribution rather than the true costs of what would otherwise be required to service their property. iii) Situations where it is not practical for applicants to undertake work themselves to service their subdivision or development or to address adverse effects. This includes where work is on land not currently under the control of Council or to address the

		effects of an activity on existing infrastructure that may not be captured under developer contributions such as need to upgrade roads to accommodate additional heavy traffic from quarries or similar activities. iv) For activities such as quarries or landfills which affect the life of pavements and roads but are not technically developments. v) A cost of capital where the timing of development requires work to be brought forward from when over wise provided for. vi) All land required to accommodate infrastructure to the extent required to serve a site or address adverse effects. This is a major concern in terms of the ability to require applicants vest roads and intersections to the required standard. Infrastructure work under taken or funded by Council that is necessitated by or serves a limited catchment and which would, in the course of time, be the responsibility of the adjoining or nearby development to provide at their cost as part of their development. . For example where council has built a road across undeveloped land but not charged any betterment it is appropriate that the land owner contribute to the cost of this frontage work rather than have it shared amongst a larger community of developers. This also applies to new roundabouts and signals which may only front 2-3 developers. Should the first party have to meet the lion share and other party only pay a general contribution spread across all developers… or none at all. vii) Work undertaken or funded by Council that serves, is necessitated by or addresses the effects of a land use activity, development or subdivision including works and land that would otherwise be provided by a developer. viii) Cash in lieu of parking/cycle/passenger transport facilities where it is optimal to provide the above off site – and where part of the cost should be borne by those creating an attributable demand. ix) Recovering the cost of such other work and land that is necessitated by or required to service an activity, development or subdivision. x) Recovering reasonable additional whole of life costs associated with infrastructure proposed by developers (e.g. power associated with otherwise unrequired new pump). It recommended that the ability to charge some form of financial contributions to deal with local circumstances and impacts be retained. This is on the basis that these cannot always be adequately or appropriately covered by current coarse development contributions regimes. It is possible that sections of the act which already preclude 'double' dipping could be redrafted to limit the circumstances to where ether is a clear and 'local' rational nexus between a development and the land or works to be funded. As a minimum it is important councils have the ability to require developers to vest land to the extent required to serve their development (e.g. to local collector or business road standard rather than arterial). Alternatively · a national policy statement around road widths/land , and the extent and situations where other contributions can be applied may be a mechanism. · if one regime is preferred there is a need to review the development contribution to permit a more fine grained assessment and additional development specific requirements to be added There is also a need for a review of infrastructure funding associated with development. Certain utilities already have the ability to charge connection fees or conditions requiring land to be vested(power gas, telecommunications , even water waste water) whereas roading in particular does not have an equivalent mechanisms. The removal of

		financial contributions as a funding and land vesting tool to address local impacts will make it difficult for road controlling authorities and councils to ensure appropriate infrastructure is provided at the appropriate time and to recover the costs of this from adjoining development. It will also increase the likelihood of substandard infrastructure and corridors being vested with Council having in the future to address such comings or accept lower levels of service.
6.7	***Remove the ability for Heritage Protection Authorities that are bodies corporate to give notice of a heritage protection order (HPO) over private land and allow for Ministerial transfer of HPOS***	
7.1	***Minor changes to the Public Works Act 1981 to ensure fairer and more efficient land acquisition processes***	
7.2	***Provide for equal treatment of stock drinking water takes***	
7.3	***Provide regional councils with discretion to remove abandoned coastal structures***	
7.4	***Create a new regulation making power to require that stock are excluded from water bodies***	
7.5	***Amendment of section 69 and Schedule 3 – Water Quality Classes***	

Ends