New Zealand Institute of Architects Incorporated

NZIA Submission on Improving our resource management system Discussion document

2 April 2013

Introduction

The New Zealand Institute of Architects (NZIA) represents more than 90 percent of all registered architects in New Zealand and a majority of recent graduates making their way into the profession. We have a total membership of around 2,700. The NZIA is active not only in promoting the services of our members but also in promoting practices and education that will help ensure improvement and on-going sustainability of the built environment. In 2009 we summarised our views and aspirations for the built environment in a document titled *Shaping our Places: A Manifesto for New Zealand's Built Environment*. Our submission on the discussion document that follows adopts views that are consistent with the vision articulated in *Shaping our Places* and that included in previous resource management act reform submissions and in our response to the *Building Competitive Cities* discussion document.

General comments

Our views on the discussion document are generally mixed. Whilst there are some sound proposals for change in other cases we find there is insufficient evidence to support all the changes that have been suggested. Like any change to legislation, the detail will be important and we would encourage the Government and officials to make use of our first-hand experience in developing and testing the proposed changes.

The Institute and its members are keen to work with Government and officials on ensuring that the reforms respond positively and pragmatically to the current issues and challenges. We offer experience in the key issues, knowledge for a national template and a national continuing professional development programme. Our eight branches across the country offer a diverse working knowledge of the issues and a basis to test proposals. We see many opportunities for the Institute to collaborate with others (e.g. Ministry, Local Government, other professional Institutes, etc.) on the professional development of those parties involved in the resource management system. We would welcome further discussions with the Minister and officials on this.

Throughout the document the terms **effective** and **efficient** are used extensively. We have concerns that these words may be interpreted in this document and any legislation that follows from it to have purely financial meanings. Management of resources including development of the built environment cannot solely be driven by financial concerns and it is important that the meanings under the legislation of *effective* and *efficient* are taken to incorporate non-financial matters as well. Only in this way will the built environment and management of resources be able to incorporate broad qualitative criteria.

Chapter 1

Has this chapter correctly described the key issues and opportunities with New Zealand's resource management system?

There is a significant opportunity for the resource management system to recognise the function of urban cities and centres, rather than individual developments. The Institute in its submission on the Government's "Building Competitive Cities" document (2010) identified the need to explicitly recognise the urban environment.

We understand that this and other recent initiatives to enhance the RMA have sought to do so. We think more could be done through the proposed changes of the Section 6 and 7 principles and most effectively through preparation of National Policy Statements. Much good work has been previously undertaken on the Urban Design National Policy Statement. This work could now be finalised in conjunction with the proposed changes to legislation.

The New Zealand planning system would benefit from recognising explicitly the key elements of legislation, strategy, plans and policies. Much good work has been undertaken by Government and it would be prudent to reference this in the Act. Recognising this work also supports the Governments proposals, such as, streamlining the Environment Court process, call-in powers for the Minister and National Policy Statements.

A simple hierarchy could be:

- Legislation – Resource Management Act and regulation
- National Strategies (e.g. NZ Infrastructure Plan, Roads of National Significance Programme) Housing Plan for New Zealand (see reasoning for this below)
- National Policy Statements (NPS) and National Environmental Polices (NES)
- Building rules and requirements
- Monitoring and performance (see explanation below)

Given the emphasis on housing supply and affordability, the Institute considers a New Zealand Housing Plan essential. This would provide a consistent structure, evidential base of the issues key outcomes and targets and a scope of powers to respond. It would also enable responses to be tailored to regional and/or local circumstances.

A greater focus on monitoring and performance is needed. Evidence is essential if timely and positive changes are to be made. We would encourage the Government to look at the level of evidence required for plan changes, Environment Court action and direct intervention by the Minister on housing affordability issues. Section 3.2.2 of our submissions outlines how a possible housing and land supply monitor could function.

The document acknowledges opportunities under the current legislation for government to provide more clear direction by way of National Policy Statements and National Environmental Polices. Such instruments can help the RMA system to reflect contemporary social, cultural, economic and environmental values. We do not understand why these instruments are not currently being used and don't agree that putting national guidance into practice should involve lengthy, complex or costly processes (p21). Surely the processes of changing legislation are at least as challenging.

We consider that legislation in general and the RMA in particular should be written in a manner that makes it a more enduring framework to guide processes of change. Sitting under the legislation, tools such as NPS's and EPS's can then be used to reflect contemporary values, address particular challenges or issues and respond to changes in values when they are identified. We

believe that a number of the matters raised in the discussion document could be addressed through National Policy Statements which could make the current and future change processes run more efficiently and timely.

The role of technology needs to be considered when thinking about making efficiencies and improvements to the resource management system. A 7,000 page unitary plan for Auckland does not create an easy-to-use environment for professionals or the wider public. With significant government and private services being delivered on-line, the resource management system should also be developed in this direction. With work currently underway on a national on-line consenting system, it seems prudent to ensure the wider resource management system is technologically savvy.

The Institute would encourage the Minister to consider universal public access to plans and data a priority. This could be achieved through a Government portal – similar to the igovt portal already operating – that could provide access to all plan proposals and plans so that anyone can investigate which plans govern a specific property or district.

A problem that is not clearly defined is the role and function of specialist expertise in decision-making processes – be it the Environment Court, Hearings Panel composition, role of elected members in technical decisions, advice from urban design panels and the like. Accordingly, we believe there is a need to clearly define these roles and the parts they play in RMA processes. The proposed changes to the membership of Hearings Panels addresses the competing roles elected Councillors play in terms of governance, policy making and application decisions. Further definition would remove the variation currently experienced across the country.

Often there is a lack of knowledge or awareness during the plan making stage of the costs and the feasibility of implementing plan requirements. Whilst section 32 of the RMA requires an evaluation of the appropriateness, effectiveness and efficiency of rules, policies and methods, there is no standard or benchmark on the evidence requirements to support this analysis. This could be addressed through the provisions of the Regulation. Sometimes the best policy intent cannot be built and/or is just not financially viable. By having a clear test in the plan preparation process, such issues could be avoided.

The Schedule 1 requirements on "identifying those likely to be directly affected" can often be difficult and open to frivolous legal challenge. It would be of benefit to all parties, if the public notice requirements were further described in the regulation such that where a method and assessment is documented – the outcome is robust for decision-making purposes and not open to legal challenge unless on grounds of procedure only.

It would be fair to say that many of the current problems with the Act are being experienced because:

- It is an excessively complex framework – the complexity of the legislation increases the risk of errors of interpretation and process, which generates a fear of potential litigation and risk adverse decision-making. This in turn leads to delays and added costs which are ultimately borne by the New Zealand community. This is not to say that many of the changes to-date have not been worthwhile. The issue is with the layering of on-going changes. The RMA needs to create simple procedures, and only introduce additional processes where complex or non-compliant proposals or issues justify special consideration against, clearly defined assessment criteria.
- there are conflicts between the aims of the Act and its implementation
- it fails to address contemporary environmental and community planning issues and

- of continuing frustration by professionals, the industry and the community about the approvals process. The perception by many in the industry is that community consultation sometimes leads to reactionary decision-making based on political rather than planning merit considerations.

We understand that concerns have been raised about the performance of local government in resource management processes however are not convinced the problems are widespread. It is important that the regulators remain viable and able to engage with applicants creatively in order to achieve the best outcomes.

We agree that resourcing is a critical factor in council performance and would support initiatives that would help councils retain a sufficient number of staff and also staff of appropriate capability. The emphasis in this discussion document and in the two previous amendment/proposals on shortening timeframes may lead to poor decisions being taken or shortcuts that undercut potential to achieve the best outcomes for all. Resource capability will be essential if quality decisions are to be made. This will be a challenge for smaller councils or regions where development pressures are infrequent. The Minister may wish to consider appointing an 'expert panel' to assist such decision making. The costs of this could be met through a transfer of the resource consent fee.

On the other hand we support initiatives to improve service performance and expect that the best results will be achieved by encouraging and citing examples of good service performance rather than by simply putting penalties in place to discourage poor performance.

We wholeheartedly support initiatives taken to require resource management processes to take account of known natural hazards. There will of course need to clear guidance from government in areas where conflict between the RMA and other legislation arises. The most obvious of these conflict areas is in the management of historic heritage.

The Institute looks forward to a resource management system that better meets industry and public expectations and delivers better planning and development outcomes for the country. The Institute and its members are keen to assist the Government and agencies to respond to these issues and find workable solutions.

Proposal 1: Greater National Consistency and Guidance

Do you agree with **proposal 3.1.1 – Changes to principles contained in sections 6 and 7 of the RMA**?

Yes in principle, we are supportive of the direction of change proposed in sections 6 and 7 of the RMA. We have however identified a number of specific comments and questions.

Could proposal 3.1.1 be improved?

Yes, there are a number of opportunities to improve the principles, for example:

- 6(b) and 6(h), it is unclear how these principles would relate to each other and how differences would be managed. For example, 6(b) seeks to protect specified features and landscapes from inappropriate subdivision, whereas 6(h) just recognises the importance and value of historic heritage. This is a significant issue and needs clear and consistent interpretation as it relates to iwi and listed heritage items.

- 6(g) it is unclear how these principles encourage or support the provision of land for public purposes

- 6(k) would be improved if the functions and importance of cities and urban centres was

recognised. The effective functioning of the built environment is seen through the workings of a city and/or urban centre. It also needs to be clear under this principle that the different land uses – commercial, residential, industrial, employment are all important and any loss is evaluated.

- 6(m) would benefit from the recognition of both efficient and cost-effective infrastructure. With limited funds available at central and local government levels, cost effective infrastructure needs to be duly recognised. It is a key issue in support of delivering affordable housing.

Are there any issues relating to proposal 3.1.1 that you think have not been considered?

Principle 6(k) is clearly motivated by concerns over supply of land for development. We consider that there is a tension between such expansion and the need to protect and preserve this land for other productive purposes, particularly for agriculture our main export industry. We note that none of the fourteen principles directly addresses this. A new principle addressing the value of land used for agricultural or other primary industry production is needed.

Are there any costs and benefits of proposal 3.1.1 that you think have not been considered?

Please refer to the issues identified in response to how 3.1.1 could be improved.

Do you agree with **proposal 3.1.2 – Improving the way central government responds to issues of national importance and promotes greater national direction and consistency**?

Interestingly, the Context section of this clause in the discussion document highlights the powers and tools currently available to central government. Very rarely if ever have these been used. We think that attention and energy should firstly be trained on these tools and powers; how can they be used to enhance resource management? We believe that National Policy Statements should be written in a number of important areas and would welcome the opportunity to work with government over their preparation.

In addition, the Institute would welcome the addition of key criteria for decisions included in the legislation rather than simply being left to a guideline. Some of the key issues to be addressed include:

- the circumstances around the Minister's powers must be clearly identified (e.g. the matter raises a major issue of policy for New Zealand and/or a region and/or nationally/regionally significant development and/or nationally significant infrastructure)
- when the decision on an application has been unreasonably delayed, to the disadvantage of the applicant
- when affected parties should be afforded procedural fairness by being given the chance to make representations under relevant time-frames prior to the Minister making a decision on exercising his/her powers (e.g. call-in, directing plan changes, etc.). As a consequence of a Supreme Court decision, the Queensland Government had to amend its Ministerial powers

to duly recognise the rules of natural justice/procedural fairness[1].

- Can this power be exercised following a request from the applicant and/or local authority?

Could proposal 3.1.2 be improved?

Please refer to the issues identified in our response above.

Are there any issues relating to proposal 3.1.2 that you think have not been considered?

Please refer to the issues identified in our response above.

Are there any costs and benefits of proposal 3.1.2 that you think have not been considered?

Please refer to the issues identified in our response above.

Do you agree with **proposal 3.1.3 – Clarifying and extending central government powers to direct plan changes**?

In part we agree with this proposal.

In principle, we support the idea that central government should play a more active role in RMA decision-making and this clause identifies opportunities in the current legislation for this to take place. We understand and support the existing tools and encourage government to become adept at using them where necessary. Beyond that we consider that the first listed bullet point on p 40 provides an additional useful tool to ensure that important issues of the day are addressed in a council plan.

Initiatives that would enable government to directly require or make changes to a council plan need further thought and refinement. We believe this should be a power rarely used and only in exceptional circumstances. The discussion document also fails to acknowledge the role played by private plan changes in responding to issues. Council plans are a reflection of how the citizens of a community would like to see their local environment change over time. Council plans have been developed and amended over long periods of time and through rigorous processes that include public consultation. Often this has also included hearings in front of the Environment Court. To enable change to be directed by central government, perhaps without the benefit of local knowledge, would deny the importance and relevance of these processes.

While there are other initiatives in this discussion document that would help improve the quality of those plans and the processes of managing development there is little evidence to suggest there will be benefits from enabling direct Ministerial intervention, as is suggested in the second and third bullet points on p 40. It would be beneficial to understand where and how such a Ministerial power would have been used to-date. If such a Ministerial power were to be used, strong evidence and justification would need to be publicly available.

In addition, the matters identified in our response to 3.1.2 will need to be addressed.

Could proposal 3.1.3 be improved?

Please refer to the issues identified above and those made in response to how 3.1.2 could be

1 *Landel Pty Ltd v Hinchliffe & Anor,* (2009), Supreme Court of Queensland

improved.

Are there any issues relating to proposal 3.1.3 that you think have not been considered?

Should the decision be taken to amend the RMA giving power to central government to direct plan changes, the following matters would need to be considered:

- Will the Minister have a time frame to enforce a directed plan change? As there is no prescribed time frame to complete a plan change in the RMA, what will be the lever to implement a Minister's direction, particularly where it is subject to Environment Court appeals?
- Will there be a requirement for the Minister to advise the Council and/or landowners of the proposed directed plan changes?
- Where the Minister directs a plan change – who will fund the plan change and who will front and fund any appeals?
- Where the Minister directs a plan change – will mediation be an option to resolve appeals – even if there is a departure from the Minister's direction?
- Where the Minister directly amends an existing operative plan – will he/she publish a guideline for the decision maker to implement the provision?
- Will directed plan changes be amended through subsequent plan change reviews, that is, currently there is a 10 year review requirement? If yes, then how will the provisions be maintained if the new plan is subject to appeal?
- Will the Minister have powers to amend anomalies or unintended consequences of directed plan change provisions?
- What notification and/or consultation requirements will apply where the Minister has initiated a plan change?

Are there any costs and benefits of proposal 3.1.3 that you think have not been considered?

None additional to those listed above.

Do you agree with **proposal 3.1.4 – Making NPSs and NESs more efficient and effective**?

Yes, but would encourage the Government to consider changing the relationship between National Policy Statements and/or National Environmental Standards and Regional Policy Statements. Rather than adding complexity and potential for inconsistent decisions, there would be advantages in providing scope for NPS or NES to include specific regional policy statement details rather than having no NPS or NES but a proliferation of RPS requirements.

Given the importance of the built environment to the productivity of New Zealand, the Institute would support the work on the Urban Design NPS being restarted as part of these latest reforms. The Institute in its submission on the Government's "Building Competitive Cities" document (2010) identified the need to explicitly recognise the urban environment and key aspects of a National Policy Statement. The Institute would welcome the opportunity to work with officials on developing this work further.

Could proposal 3.1.4 be improved?

Please refer to the matters we have noted above.

Are there any issues relating to proposal 3.1.4 that you think have not been considered?

Please refer to the matters we have noted above.

Are there any costs and benefits of proposal 3.1.4 that you think have not been considered?

Please refer to the matters we have noted above.

Beyond the suggested additional matters for sections 6 and 7, are there any matters of national importance that should be covered in Part 2 of the RMA?

Please refer to the issues identified in response to how 3.1.1 could be improved.

What matters should additional NPSs and NESs cover?

The following matters should be considered for NPS and/or NES:

- Housing, employment lands and residential development
- urban planning and design – the existing Urban Design Protocol and Public Places Urban Spaces (both with MfE) documents could inform such a policy statement
- national and/or regional infrastructure – e.g. transport, airports, rail, sewerage, stadia, events and function spaces, etc.
- natural hazards – earthquakes, sea level, flooding, etc.
- heritage, particularly in relation to earthquake strengthening
- supply and use of energy
- protection and management of 'prime agricultural lands'

Another issue that needs to be addressed through the resource management system is site amalgamation. At the moment, a range of built environment outcomes and the financial viability of development proposals is often impacted (or compromised) by the inability to assemble land parcels. The issue of site amalgamation could be addressed through a number of proposed changes, for example, it could be:

- recognised and supported in the proposed section 6 principle – 6(k)
- included in a NPS and/or NES on housing, employment lands and residential development
- included in the national template through definitions and standard terms and provisions

Again, the NZIA would raise its hand to be an active participant in any projects to develop National Policy Statements, particularly those concerned with the built environment.

Proposal 2: Fewer Resource Management Plans

Do you agree with **proposal 3.2.1 – A single resource management plan using a national template that would include standard terms and conditions**?

Yes, this is a welcome change to the resource management system. As identified earlier in this submission, the objectives need to be simplicity, cost effectiveness, technologically savvy and enabling consistent interpretation. The Auckland Unitary Plan, at 7,000 pages does not provide a good example of the benefits of a single plan.

The Institute's members would welcome the opportunity to work with Government on the national template and standardised definitions. Our broad and diverse member base, and extensive experience would help identify the key terms and definition elements. Our eight branches across the country would also be able to provide local context and insight.

Could proposal 3.2.1 be improved?

Yes, there are several aspects of this proposal that could be improved. For example:

- Councils should be required to prepare a consolidated operative plan within a designated time frame. Only exceptional variations should proceed as stand-alone plan changes.
- The national template needs to address infrastructure funding and establish a consistent urban hierarchy (e.g. central business area, town centre, village, etc.).
- The review mechanisms of plans need to be simplified and applied consistently. Currently, Councils have the option every 10 years of initiating either a "rolling" or a "comprehensive" review. Experience and practice would suggest that for time, cost and political reasons, rolling reviews have been the preference. However, this has resulted in a proliferation of plan change variations, which ultimately add to the complexity, costs and delays of development.
- It will need to be clear that changes to the national template do not trigger plan change notification requirements – maybe just consultation with appropriate stakeholders. The Institute and its members are keen to assist on this issue.
- A key consideration will be what level of protection is provided to existing plans and provisions as they are transferred to a single plan environment. Current provisions are often the result of Environment Court or mediation outcomes. A single plan should not re-litigate provisions that have been previously resolved.
- In addition, it needs to be clear what litigation will be available (if any) on the national template provisions. It is unclear what would happen where Council provisions are appealed but rely on the national template from a definition and/or umbrella provision. What role will Government play in resolving litigation (either through Environment Court, mediation and/or through the Act)?
- It is also unclear how the current work on national on-line consenting will work with the national template plan approach. Whilst we support both initiatives, they need to be consistent.

Are there any Issues relating to proposal 3.2.1 that you think have not been considered?

Please refer to the issues identified in response to how 3.2.1 could be improved.

Are there any costs and benefits of proposal 3.2.1 that you think have not been considered?

Please refer to the issues identified in response to how 3.2.1 could be improved.

Do you agree with **proposal 3.2.2 – An obligation to plan positively for future needs e.g., land supply**?

Yes, we agree that there is a need for councils to plan proactively. We consider that councils

should strategically plan for future growth and development of all aspects of the built environment and its use. However, this also needs to be supported by other mechanisms. As outlined throughout our submission, these other mechanisms could include:

- adding to section 6 principles – cost effective infrastructure
- having appropriate NPSs and NESs for the built environment
- redefining the relationship between NPSs and NESs and Regional Policy Statements
- providing suitable provisions to encourage and/or support land amalgamation

We understand there are current concerns about the supply of land for housing development. However, land supply on its own will not deliver affordable housing outcomes. This needs to be supported by cost effective infrastructure investment.

Government infrastructure investment priorities and timing need to be appropriately recognised in the resource management system (e.g. National Policy Statement) because they impact on land values and other subsequent infrastructure investment. A good example of this is the Roads of National Significance programme.

Supply of land for greenfield development is but one area where housing can and should be developed. Councils should be encouraged to plan for growth in a range of scenarios including infill development that can make better use of existing infrastructures. Often development controls that envisage low density development restrict the extent to which existing areas can be intensified. While councils should be directed to plan proactively there is a need to also look within the rules of the plan to ensure they do not impede development initiatives that address strategic goals and planning policies. As identified previously, land amalgamation provisions need to be considered as these often inhibit and/or restrict infill development and subsequently housing affordability.

Could proposal 3.2.2 be improved?

Yes, some ideas for consideration include:

- requiring councils (through amendments to the Local Government Act) to clearly identify in its long term plans and accompanying financial strategy's the funding commitments to support future needs.
- developing an agreed definition on land supply. For example, this could be done through the establishment of a housing and employment land supply programme. This would guide the effective management of land supply across New Zealand for residential, commercial and industrial purposes. Under such a programme, the following would be available:
    - total amount of land needed and annual rolling targets to reflect changes in the market and changes to the rate of population growth
    - serves to ensure there is land capacity to meet annual housing and employment targets and the capacity is spread equitably across the region
    - helps infrastructure agencies with planning to ensure that infrastructure and urban development is effectively and efficiently coordinated
    - provides a spatial guide to Council's to help align regional and local implementation strategies

- land supply monitoring could capture:
    - **residential land development activity**
        - proposed allotments in subdivisions
        - approved allotments in subdivisions
        - completed allotments in subdivisions
        - building approvals
        - other information – median section size, share of infill verses greenfield development
    - **residential land supply**
        - the level of supply
        - current land subdivision applications
        - annual land development
    - **residential demolition and re-subdivision**
        - the level of demolition and re-subdivision activity
        - net dwelling increase on demolition/re-subdivision sites
        - replacement rates on demolition sites

Are there any issues relating to proposal 3.2.2 that you think have not been considered?
Please refer to the issues identified in response to how 3.2.2 could be improved.

Are there any costs and benefits of proposal 3.2.2 that you think have not been considered?

Please refer to the issues identified in response to how 3.2.2 could be improved.

Do you agree with **proposal 3.2.3 – Enable preparation of single resource management plans via a joint process with narrowed appeals to the Environment Court**?

Yes.

The Independent hearings panel proposed changes are positive. The Institute would encourage the Government to consider how "specialist panels" (e.g. urban design panels) could be used in support of the Independent panel.

As identified in the Institute's submission on the Government's "Building Competitive Cities" document (2010), urban design panels can be significantly helpful if they are appropriately constituted and the recommendations are mandated in the consent decision process rather than simply acknowledged.

The narrowing of Environment Court appeal matters is also supported. Whilst there are positives in the proposed 'rehearing' approach to appeals, it is unclear what this will mean for 'technical experts' used in either the development of the provisions or called as 'expert witnesses' to the Environment Court. These matters will require clarification.

One option for the Government to consider would be the role of "specialist panels", for example, urban design, to support the Environment Court's 'rehearing process' and/or Minister's decisions where the call-in powers or directed plan change requirements are exercised.

Could proposal 3.2.3 be improved?

Please refer to the matters identified above.

Are there any issues relating to proposal 3.2.3 that you think have not been considered?

Please refer to the matters identified above.

Are there any costs and benefits of proposal 3.2.3 that you think have not been considered?

Please refer to the issues identified in response to how 3.2.3 could be improved.

Do you agree with **proposal 3.2.4 – Empowering faster resolution of Environment Court proceedings**?

Yes, absolutely.

Could proposal 3.2.4 be improved?

A range of matters would need clarification should the proposed approach be implemented. For example:

- should the Environment Court agree on the 'experts' required at time of scheduling the hearing?
- should the scope of questions and issues for the Court be identified prior to the hearing?
- are there opportunities to streamline the statement of evidence requirements?
- will there be a time-frame for the release of the Courts decisions?

Similar issues and questions are raised in respect to the mediation of appeals.

Are there any issues relating to proposal 3.2.4 that you think have not been considered?

Currently there have been instances where the Court's decision has gone outside of the parameters of the original decision and of the advice given by technical experts during the Court proceedings. Will the Environment Court still have the power to make decisions outside of the original decision or the advice of the technical experts – if it is now to become a 'rehearing'?

Are there any costs and benefits of proposal 3.2.4 that you think have not been considered?

Please refer to the issues identified in response to how 3.2.4 could be improved.

Do you agree with our assessment that better quality plans and plan-making processes would significantly reduce costs and delays, including those associated with consenting and appeals?

Yes.

Who should be responsible for making final decisions on resource management plans?

With the introduction of a national template, further thought will be needed around responsibilities and accountabilities. For example, how is the integrity of the national template maintained if there is no involvement from Government.

For time and cost efficiency we believe that resource management plans should not be decided in

the Environment Court. There may instead be good reason to share final responsibility between the council and the government. One possible scenario would see the council prepare and submit a statement to the Minister on the consistency of the plan with the national template, discuss issues of local concern and how these have been accounted for in the plan and then identify areas where the plan is inconsistent with the template. The Minister could have a prescribed time-frame to respond, which then enables the council to formally adopt the plan or plan change.

Proposal 3: More efficient and effective consenting

Do you agree with **proposal 3.3.1 – A new 10-working-day time limit for straight-forward, non-notified consents**?

While we agree that this proposal is sound we do not consider that there will be any actual savings of time. This is because of the need to engage with council officers at an early stage to agree the proposal and to ensure that sufficient information is assembled before the application is finally lodged.

Could proposal 3.3.1 be improved?

The proposal could be improved as noted below.

Are there any issues relating to proposal 3.3.1 that you think have not been considered?

The proposal does not discuss the cost of meetings and of any review processes that would be required before the application for resource consent is lodged. How would such costs be assessed and how would they be charged? We are aware that some councils currently offer one or more meetings to discuss proposed developments with intending applicants. Although these meetings generally generate useful discussion leading to improved understanding of the project and its effects on both sides of the table, they also carry little weight when the application is finally lodged. Such approaches may need to change to enable applicants for resource consent to receive clear and certain advice on the quality and merits of the application.

Are there any costs and benefits of proposal 3.3.1 that you think have not been considered?

Ultimately we wonder whether this proposal will give rise to benefits of shorter application times. Given that the whole of the application will need to be agreed to fit within strict parameters it is likely that the time required to obtain resource consent will be front loaded before the application.

Nevertheless we agree that the proposed change is sound.

Do you agree with **proposal 3.3.2 – A new process to allow for an 'approved exemption' for technical or minor rule breaches**?

We consider that the proposal could lead to lower costs for some projects as well as improved timeframes. However, there is also a real chance that the 'opportunity' to be exempted from resource consent will cause many long and perhaps arduous discussions between applicants and council officers over the nature of these exemptions. Accordingly, there will need to be clear definitions of allowable breaches – perhaps not in the legislation but more usefully in the council plan, handy to the relevant rule - and not just examples.

Another matter is that of creep. This is where standard practice or the default position with respect to any rule in the plan becomes the rule **plus** the minor breach. This may signal that

monitoring performance in relation to this change, if it is adopted, is necessary to evaluate the actual effect in practice.

Could proposal 3.3.2 be improved?

Only by taking account of the matters raised above.

Are there any issues relating to proposal 3.3.2 that you think have not been considered?

Only those matters that are raised above.

Are there any costs and benefits of proposal 3.3.2 that you think have not been considered?

Only those matters that are raised above.

Do you agree with **proposal 3.3.3 – Specifying that some applications should be processed as non-notified**?

Yes, this is a sound proposal.

Do you agree with **proposal 3.3.4 – Limiting the scope of consent conditions**?

Yes, this is a sound proposal.

Do you agree with **proposal 3.3.5 – Limiting the scope of participation in consent submissions and in appeals**?

We support the rights of affected parties to make submissions on proposals requiring resource consent, bearing in mind that the need for consent is a signal that the proposed activity falls outside the standards set by the community. Public participation in the development process can lead to more robust decision-making and ultimately improved quality of the built environment. Having stated that we are also conscious that there are many example cases of submitters using a scattergun approach to try to dislodge a development proposal, raising matters that are well beyond the reasons why the consent was required.

We are therefore non-committal to the proposed amendment and caution that any decision to limit, through the legislation, the rights of people to participate fully in resource consent processes must be exercised with great caution and care.

Could proposal 3.3.5 be improved?

Limiting submissions to only those matters triggering the need for resource consent disregards the concept that planning is holistic in nature. There is a danger that some people or issues will be sidelined in this effort to streamline resource consenting. Should this proposed amendment proceed it is important that it also includes clear guidance to submitters, to councils and to those who will ultimately make the decision.

In addition, the proposed notification tests will need to be clarified.

Are there any issues relating to proposal 3.3.5 that you think have not been considered?

These are noted above.

Are there any costs and benefits of proposal 3.3.5 that you think have not been

considered?

These are noted above.

Do you agree with **proposal 3.3.6 – Changing consent appeals from de novo to merit by way of rehearing**?

Yes.

Could proposal 3.3.6 be improved?

Please refer to the issues identified in response to how 3.2.4 could be improved.

Are there any issues relating to proposal 3.3.6 that you think have not been considered?

Please refer to the issues identified in response to how 3.2.4 could be improved.

Do you agree with **proposal 3.3.7 – Improving the transparency of consent processing fees**?

Yes, in principle.

Could proposal 3.3.7 be improved?

Could there be an option developed for small applications whereby the cost is the lesser of the fixed rate or the hourly rate defined by council's fees (set out in the long term plan)?

Are there any issues relating to proposal 3.3.7 that you think have not been considered?

Is there an opportunity to make pre-lodgement meetings mandatory and free? The benefit of this would be an agreement to provide a clear scope of issues and requirements and issues to be addressed in an application.

Are there any costs and benefits of proposal 3.3.7 that you think have not been considered?

Our profession prides itself on being able to provide accurate and complete information on what is required to construct new development proposals and the effects this will generate. We are concerned that a fixed fee for resource consent applications will be set at a level that will enable councils to not run into a deficient when processing even the poorest standard of application. This is the principle of 'working to the lowest common denominator'.

Where fixed processing fees are set in this manner we believe our clients will incur a financial penalty.

Do you agree with **proposal 3.3.8 – Memorandum accounts for resource consent activities**?

Yes

Could proposal 3.3.8 be improved?

There is an opportunity to improve this proposal by requiring the revenue, the capital investment and operating costs. This will provide a clearer picture of the investment and costs associated with consenting activities. Hopefully it will also encourage council's to share more services and

infrastructure.

Do you agree with **proposal 3.3.9 – Allowing a specified Crown-established body to process some types of consent**?

Yes, in principle, but there would need to be clear reasons spelled out in the legislation for the Minister to be able to exercise such powers. Otherwise there are concerns that resource management could become politicised.

Could proposal 3.3.9 be improved?

This proposal could only become acceptable to us by addressing the issue identified above.

Are there any issues relating to proposal 3.3.9 that you think have not been considered?

Please refer to our response to how proposal 3.3.9 could be improved.

Are there any costs and benefits of proposal 3.3.9 that you think have not been considered?

Please refer to our response to how proposal 3.3.9 could be improved.

Do you agree with **proposal 3.3.10 – Providing consenting authorities tools to prevent land banking**?

Agree with the concerns around the timely release of land, but consider there to be other alternatives.

Could proposal 3.3.10 be improved?

Yes, there needs to be recognition of the positive aspects available through land banking. These could be recognised through the national template which could recognise land that is suitable for "potential urban use", and then it is formally rezoned and developed.

Land banking also provides flexibility to respond to changing circumstances and market requirements. It is not financially prudent for a developer to release all land at once – given the costs of subdivision, infrastructure, holding costs, finance and development sales.

The suggested land supply monitor in section 3.2.2 would assist with the management of land banking.

Are there any issues relating to proposal 3.3.10 that you think have not been considered?

It is important to recognise that land availability is influenced by other matters such as finance, conditions of consent, infrastructure investment.

Are there any costs and benefits of proposal 3.3.10 that you think have not been considered?

Do you agree with **proposal 3.3.11 – Reducing the costs of the EPA nationally significant proposals process?**

Yes.

Proposal 4: Better Natural Hazard Management

Do you agree with **proposal 3.4.1 – Learning the lessons from Canterbury**?

Yes.

Could proposal 3.4.1 be improved?

Natural processes only become hazards and disasters because of the effect they can have on human settlements. As with many of the proposals discussed in this document there is a need for government to provide clear guidance on matters raised under the heading of natural hazard management. There will be tendencies to argue that such hazards can be accommodated in the detailed design of development proposals. In this way we foresee overlap between the RMA and the Building Act.

It is clear that government will need to take a leadership role by establishing clear thresholds around when engineering approaches can or cannot be relied upon. These thresholds will likely change over time as technologies improve. Government will also need to provide guidance on the relative weighting to be given to threats of natural hazards in decisions taken under the RMA.

Are there any issues relating to proposal 3.4.1 that you think have not been considered?

In addition to matters noted above we consider that there is an opportunity available in the national template to respond to natural hazard issues.

Are there any costs and benefits of proposal 3.4.1 that you think have not been considered?

Only those noted above.

Proposal 5: Effective and Meaningful Iwi/Maori

Do you agree with **proposal 3.5.1 – Enabling iwi/Maori participation in resource management planning**?

Yes.

Proposal 6: Improving Accountability Measures

Do you agree with **proposal 3.6.1 – Improving accountability measures**?

Yes.

Could proposal 3.6.1 be improved?

Yes, it would be beneficial for any reporting and accountability measures to be delivered through an on-line environment. For example:

- The Department of Planning and Community Development in Victoria (Australia) has an online system to support the automated collection of consent returns from 80 councils and has standardised reporting. The centrally stored data enables analysis to inform decisions but also comparative analysis across council's and regions.[2] The information collected from

2 Department of Planning and Community Development, www.dpcd.vic.gov.au/planning/planningapplications

council's includes:

- what is the consent application for
- the value of the works proposed
- how long they take to process
- how many objections have been received

Are there any issues relating to proposal 3.6.1 that you think have not been considered?

Please refer to the issues identified in response to how 3.6.1 could be improved.

Are there any costs and benefits of proposal 3.6.1 that you think have not been considered?

Please refer to the issues identified in response to how 3.6.1 could be improved.

How flexible or prescriptive should reporting requirements be?

If the information is to be used to support analysis, inform decisions and provide a comparative basis, there needs to be some level of prescription. There would however be benefit in allowing councils to provide other information which it considers appropriate.

Summary

In summary, we believe there are some exciting and well considered proposals for change to the Resource Management Act outlined in the discussion document *Improving our resource management system*. In particular we are pleased with proposals to reduce the number of resource management plans and to require these to be developed on the basis of a national template. These changes will help provide greater clarity and certainty in the use and interpretation of the documents by those who rely on them. We also believe there is additional potential to engage further with technology to ensure the resource management system is easier for professionals and the public to engage with. Our submission highlights the proposals we agree with as well as those we are less certain about and those we do not consider to be necessary at this time. We note there are few change proposals that are not considered worth pursuing.

Throughout our submission we have offered constructive suggestions as to how the change proposals can be enhanced. At the very high level of the principles contained in sections 6 and 7 of the Act we believe improvements can come through addressing potential conflicts between proposed principles 6(b) and 6(h), by expanding on 6(g) to address land supply issues, by extending 6(k) to recognise the importance of cities and urban centres and in 6(m) by recognising the importance of cost effective infrastructure. A new principle needs to be added to recognise the value and importance of productive land to balance with principle 6(k). We have also gone into considerable detail around matters of process, including a possible scenario for monitoring of housing and land supply throughout the country.

A change we wholeheartedly support is that which would require councils to plan proactively for future growth. We consider that this would help direct development efforts and investment more effectively and provide more of a patnership approach rather than an overreliance on developer led change, as is the case currently.

While the discussion document has raised useful ideas for changes to the legislation to improve efficiencies of resource management, we are of the view there are existing tools that could be used now to enhance regulatory planning. We note that government is currently able to provide guidance through National Policy Statements and National Environmental Statements. We believe

these tools should be used now to address a number of issues currently frustrating resource management processes. We have outlined the key issues requiring to be addressed in the body of our submission.

Finally, we wish to record our interest and willingness to remain involved in this process. The NZIA has demonstrated interest and capability in developing creative solutions to issues concerning the built environment and our members possess a wide range of capabilities to help government refine initiatives to improve the Resource Management Act. We look forward to continued engagement with government over these matters.