28 FEBRUARY 2013




LOCAL GOVERNMENT NEW ZEALAND SUBMISSION

In the matter of Resource Management Reform Bill:

To the Local Government and Environment Select Committee

28 February 2013

Submission by Local Government New Zealand

IN THE MATTER OF:

Resource Management Reform Bill

To the Local Government and Environment Select Committee

28 FEBRUARY 2013

Table of Contents

Introduction

1. *Local Government New Zealand* (LGNZ) welcomes the opportunity to submit on the Resource Management Reform Bill.
2. LGNZ wishes to be heard on this submission.
3. LGNZ is a member based organisation representing all 78 local authorities in New Zealand. LGNZ's governance body is the National Council. The members of the National Council are:
    - Lawrence Yule, President, Mayor, Hastings District Council
    - John Forbes, Vice-President, Mayor, Opotiki District Council
    - John Bain, Zone 1, Deputy Chair, Northland Regional Council
    - Richard Northey, Zone 1, Councillor, Auckland Council
    - Meng Foon, Zone 2, Mayor, Gisborne District Council
    - Jono Naylor, Zone 3, Mayor, Palmerston North City Council
    - Adrienne Staples, Zone 4, Mayor, South Wairarapa District Council
    - Maureen Pugh, Zone 5, Mayor, Westland District Council
    - Tracy Hicks, Zone 6, Mayor, Gore District Council
    - Len Brown, Metro Sector, Mayor, Auckland Council
    - Dave Cull, Metro Sector, Mayor, Dunedin City Council
    - Stuart Crosby, Metro Sector, Mayor, Tauranga City Council
    - Brendan Duffy, Provincial Sector, Mayor, Horowhenua District Council
    - Stephen Woodhead, Regional Sector, Chair, Otago Regional Council
    - Fran Wilde, Regional Sector, Chair, Greater Wellington Regional Council.
4. This submission has been prepared under the direction of the National Council. Councils may choose to make individual submissions. The LGNZ submission does not derogate from these individual submissions. Many councils have indicated that instead of submitting in their own right, they support this LGNZ submission.
5. The final submission was endorsed under delegated authority by Lawrence Yule, President, LGNZ and Fran Wilde, Chair, Regional Sector Group.
6. LGNZ wishes to be heard by the Local Government and Environment Select Committee to clarify the points made by this written submission as necessary.
7. LGNZ requests the opportunity to review the draft legislation before it is finalised.
8. The Resource Management Act (RMA) is one of the fundamental pieces of legislation to local authorities. The Productivity Commission has identified[1] that regulations made under the RMA are perhaps the most significant regulatory responsibilities local authorities have. We agree.
9. This Bill proposes changes to a number of areas which affect a council's role. We have considered these in the context of their necessity, workability and the potential to impose costs. There are four key areas of the Bill which this submission has focused on the changes to: state of the environment reporting; section 32 evaluations; consenting provisions; and the process for developing the Auckland combined plan.

[1] New Zealand Productivity Commission Draft Report "Towards better local regulation" December 2012

10. The change to sections 35 and 360 have the potential to be positive changes and we understand the drivers for national consistency in environmental monitoring. However the proposed amendments risk imposing significant additional costs onto councils. These costs arise by way of the proposed new regulations which will prescribe the information councils collect and how they go about this. Consequently, the two key matters that must be addressed are: funding of the new role/work for councils, and the need to ensure the regulations will be developed collaboratively with local government.
11. LGNZ supports the clarity given to some aspects of the requirements for evaluations under section 32. We note in our submission that it is inevitably difficult to legislate for good practice and we have identified some areas where drafting can be improved. A redrafted set of provisions is included in the schedule of amendments at the end of this submission.
12. We have not seen evidence of the need for changes to the consenting provisions and, to the contrary, argue that the sector generally is performing well regarding "timeliness." Any changes to the RMA provisions need to take into account that the bulk of applications are non-notified. The provisions need to reflect this and not create perverse outcomes. The changes to s 88 and to Schedule 4, in particular, would appear to be at odds with the Government's desire to streamline regulation and reduce red tape. In particular, the sector is concerned at the very complex way timeframes would be prescribed under the RMA. LGNZ suggests retaining the current approach to calculating working days. The changes proposed to the consenting regime will complicate what is a relatively straightforward part of the Act. We consider these changes in particular run counter to "simplifying and streamlining". If 6 month consenting is an objective for this government there are other options to achieve this whilst retaining the basic premise of the Act.
13. LGNZ applauds some of the changes proposed regarding the hearings process for the Auckland Unitary Plan as we have long advocated for less litigation and for a review of the role of the Environment Court in RMA plan and policy decisions. We have submitted on some aspects of the Auckland provisions. We do this in support of the submission of Auckland Council and also because we have an interest in the potential for new processes to be applied outside of Auckland.
14. We have considered in particular the role for Auckland Council in the new provisions and how best to achieve the right balance between public participation and an agile and timely process.

Part 1 Resource Management Act 1991

State of the Environment Reporting

Clauses 7 and 61 amendments to sections 35 and 360

15. The changes proposed in the Bill enable regulation(s) to be made that will specify what a council should monitor and how. The Bill proposes an addition to section 35: the duty to gather information, monitor and keep records. The proposed changes to section 360 (Regulations) would enable regulations to be developed to state the indicators a local authority is required to monitor to determine the state of the environment of its region or district. It will also determine the standards, methods or other requirements that are to apply to each indicator and will prescribe the manner and content and time limits for reporting.
16. Environmental reporting has been identified as a priority for this government and we agree there are gaps in the national reporting framework for New Zealand. The Ministry for the Environment's

discussion document *Measuring Up* canvassed a range of options designed to achieve independent and nationally consistent reporting on the state of the environment. That document included an option of amending the RMA to improve the consistency of environmental monitoring across regions for national reporting. Councils do not currently have legislative authority to provide information for a "national-level environmental monitoring and reporting system." Under the devolved RMA model, councils are obliged to focus their monitoring on their regional and district priorities, and these priorities (including methods and measurement framework) will sometimes differ from national priorities. The majority of current monitoring is funded from rates, levied on communities, to deliver the information required to inform these regional and district priorities. The infrastructure that delivers this information is paid for by ratepayers.

17. The National Institute of Water and Atmospheric Research (NIWA) recently announced that it would significantly reduce the number of monitoring sites used for water quantity and quality monitoring. These sites, essentially funded by government, represent a national contribution to environmental monitoring and councils have developed their monitoring programmes around these sites, using this data and that from their own sites. In light of the NIWA decision some councils are likely to pick up the sites and the associated increase in monitoring costs but NIWA's decision is yet another example of a cost transfer from central to local government.

18. Environmental information and reporting is "core business" for the Ministry for the Environment and we consider that it should have this role and be appropriately funded to carry it out. The recent Performance Improvement Framework for MfE undertaken by the State Services Commission specifically identified this as one area "needing improvement" both in terms of effectiveness and efficiency. The local government sector acknowledges that councils, and regional councils in particular, are an important component as one of the providers of the data for the current national environmental reporting system but it is important to recognise that the existing monitoring regime is not designed for national purposes.

19. The Regulatory Impact Assessment (RIS) acknowledges the extent of collaboration currently taking place across the local government sector in this area. Regional council special interest groups are making positive progress in developing standard approaches which are being adopted by councils. The Land and Water New Zealand (LAWNZ) website is one example of this sector driven initiative: http://www.landandwater.co.nz/ with potential to be explored for national reporting purposes.

20. The proposed changes to the RMA enable regulations to be set which will require councils to gather information, monitor, keep records and report. While we can agree that better environmental information is required, without the specific regulations it is not possible to determine fully the implications of this amendment and our key question is: "*How will this be resourced*?" There is no doubt there will be significant resourcing and practice implications for local authorities, not just regional councils. We draw your attention to the Regulatory Impact Statement (RIS) – which states that the costs of implementing new reporting requirements to local authorities are "*expected to be high (although variable by council). Unable to be quantified until the regulations have been further defined*[2]." We also draw your attention to the recent draft report of the Productivity Commission which extensively traverses poor regulatory practice and decision-making that moves costs onto local ratepayers simply because central government finds it convenient to do so.

21. The RIS states that the preferred option is to amend the Resource Management Act to enable regulations to be developed, as described above, but that "*regulations would not, however, be made immediately the intention is to allow local government to pursue the voluntary changes that are already underway, but with the knowledge that the Minster for the Environment has the ability to introduce*

[2] Regulatory Impact Statement Table 2: Summary impact assessment – environmental reporting, page 31.

regulations if sufficient progress has not been made[3]." This predicates the need for a clear process and the means to have the necessary "conversations" between officials and local government about "sufficient progress." We assume it is the regional and unitary councils that are the collectors and holders of the information required for environmental reporting. This does need to be confirmed and if it is not the case then territorial authorities need to be part of the process and "conversation" about "sufficient progress."

22. Regulations for data collection and monitoring have the potential to impose significant costs. It should not be assumed that the costs of funding this new (national) role should be funded by rates and if the amended Local Government Act is considered (specifically sections 3 and 10), it is unclear whether such a role meets the new statutory definition of a council's "purpose" under the Local Government Amendment Act 2012 (the new definition was unanimously opposed by local authorities who pointed out, amongst other things, the lack of legal certainty as to what the new definition actually means – a view that has recently been supported by legal advice commissioned by LGNZ). We submit that the matter of how the duties imposed by new regulations will be funded needs to be addressed at the same time as legislative change is made otherwise there will be (once again) a lack of integrated thinking and design of the overall regulatory schema. By way of example, the 2004/2005 amendments to the RMA introduced significant changes, many of these having a 'practice element' and imposing costs onto councils. The financial implications were costed and Cabinet directed officials to report back on estimates as part of the 2004/2005 budget bid for 'natural resource implementation and capacity building.' At that time, Cabinet agreed that the funding issue be included in the budget for 2005/06.
23. As noted above, the Productivity Commission's draft report discusses the issue of 'unfunded mandate.' The Commission defines an unfunded mandate as "a statute or regulation that requires local government to perform certain duties that are not accompanied by funding ..." It goes onto say that "imposing a national requirement can result in a different resource allocation decision than the local community might have made." This is an example of an unfunded mandate and unfortunately there are no principles yet to help address the funding matter or the ownership or the information.
24. The design of regulations is critical and, we submit, needs to be done in collaboration with local government. We would like to see this commitment made now and reflected in section 360. The cost of implementing the regulations(s) needs to be quantified and funding set aside by Central Government to fund their implementation at the time any regulations are made.
25. The changes to the s 360 provisions that refer to 'reporting' imply a role for councils beyond the collection and provision of information/data. Councils report on information/data at their own regional/district level and would continue to do this. We consider and submit that reporting at a national level clearly is the responsibility of central government not local government.

Recommendations:

- Regulations should be developed and designed collaboratively with local government and section 360 should be re-drafted to reflect this;
- Funding for the implementation and on-going costs of the national reporting system must be met by central government;
- Amend section 360 to remove the reference to "reporting" by local authorities; and
- Protocols for data management should be defined.

[3] Regulatory Impact Statement, page 31

Direct Referral Provisions to the Environment Court

Clauses 13, 14, and 15 amendments to sections 87E, 87F, 87G

26. These amendments will require councils to directly refer resource consent applications to the Environment Court where the value of the investment meets the threshold set out a regulation where the applicant has made a request for direct referral.

27. A key principle of the RMA is that resource management decisions are best made by communities affected by these decisions. *Local Government New Zealand* supports that principle.

28. The current provisions give the local authority discretion to either support or decline an applicant's request for direct referral and it is unclear what has prompted this change to be proposed to the RMA. The new provisions specify that a local authority would be able to defer direct referral only in 'exceptional circumstances', requiring discretion even with regulations. *Local Government New Zealand* considers that the current higher level of discretion should be maintained (i.e. accept or reject), rather than the more stringent discretion of 'exceptional circumstances'. *Local Government New Zealand* considers that the change reduces the ability for a council to make important decisions at a local level. Accordingly, we suggest that the existing s 87E provision should be retained to maintain a council's discretion in respect of requests from the applicant for a resource consent application to go directly to the Environment Court. The lack of definition of what constitutes "exceptional circumstances" also adds to legal uncertainty.

29. The Bill requires consent authorities to provide "reasonable assistance" to the Environment Court. We consider this term is unclear and vague. If the intention is that councils provide evidence to the court on their report then clause 14 should state this.

30. The changes clarifying the role of local authorities including cost recovery are supported.

Recommendations:

- Retain the existing provisions for direct referral and do not proceed with those provisions that provide for a regulation making power for an investment threshold; and
- Retain the provisions clarifying the role of local authority in direct referral provisions while clarifying the definition of the term "reasonable assistance."

Section 32 – Evaluation Reports

Clause 69 Requirements for preparing and publishing evaluation reports – new section 32

31. Although Section 32 fundamentally is recast by clause 69 of the Resource Management Reform Bill ("the Bill") much of the section does remain unchanged in substance. However, there are six changes of substance with potential implications for local government:

    i. Section 32 (1) sets out what an evaluation report must contain. Whereas the existing requirement is only for a report "summarising the evaluation". The Bill would require a report which includes the *evaluation* (i.e. identification of options and assessment of effectiveness and efficiency) and a summary of the *reasons* for deciding on the provisions;

    ii. Section 32 (1) (c) would make clear that Section 32 evaluation reports need only contain a level of detail that 'corresponds to the scale and significance' of effects anticipated from the proposal;

iii. Section 32 (2) (a) continues the obligation to assess effectiveness and efficiency by considering benefits and costs. However, clarification is provided that such costs and benefits:
    a. relate to environmental, economic, social and cultural effects;
    b. include (i) opportunities for 'economic growth' that are anticipated to cease to be available; and (ii) opportunities for 'employment' that are anticipated to be provided or reduced;

iv. Section 32 (b) specifies that "if practicable" the benefits and costs should be *quantified;*

v. Where a change to an existing plan is proposed, Section 32 (3) requires an assessment of the appropriateness of the new provisions to achieve the objective to consider both the newly proposed objective and the objective of the existing plan; and

vi. There are also changes (Clause 81) to the way in which the Act will require councils to prepare a Section 32 evaluation report and have regard to that report. In essence, the Bill amends Schedule 1, Clause 5, so that councils must prepare an evaluation report after it has prepared a proposed plan but before that plan is notified. The Bill also amends sections 61, 66 and 74 so that the councils must have regard to evaluation reports when preparing plans.

32. The Bill is trying to legislate for good practice. That is inevitably difficult and arguably pointless when that practice cannot be validly prescribed in detail because a single practice will not be universally applicable. The point is acknowledged in the Regulatory Impact Statement (RIS) where practice guidance and training is identified as a more effective method.

33. There is no single methodology or level of analysis that can be applied to assessment of plan provisions. Provisions (especially rules) of plans cover a hugely diverse range of issues with wildly different levels of impact. For many issues, to go beyond the relatively simple/unsophisticated assessment of likely effect, one-off methodologies and/or models are required. 'Good' analysis relies on good minds applying bespoke solutions to evaluation. That cannot be achieved through legislation.

34. The other key to 'good' value-adding Section 32 evaluation is to focus on issues that matter and not get caught in low value analysis of provisions with relatively low economic/environmental impact. The ability to sort the 'wheat from the chaff' and see the big picture risks and opportunities through the thicket of plan provisions is critical. That too, cannot be achieved through legislation.

35. The Select Committee should understand that Section 32 is not the only driver of analysis and that, in practice, the depth and quality of analysis does increase as the plan-making process unfolds. Appeals are invariably characterised by high quality analysis and evaluation of costs and benefit, much of it quantified (by councils and other parties). That concentration of effort is rational because it ensures scarce public resources are expended where there is real contention and not on issues that will not be in debate. Section 32 needs to be seen in that wider context.

36. Related to the above point, it is unrealistic to expect plan-makers to have a full and accurate understanding of the costs of every provision in a plan prior to notifying a plan. Plans are extremely complex often containing many hundreds of rules. To impose Section 32 obligations literally and remorselessly is to consign plan-making to paralysis by analysis and be counter-productive to the Government's agenda of speeding up plan-making and keeping costs down. The fairness, effectiveness and efficiency of a plan relies (at least in part) on gathering and testing information through the submission and hearings process. The facts will show that plans are often changed very significantly as a result of information coming forward through submissions and appeals. While that process has a cost for stakeholders that would ideally be avoided, there is no realistic substitute. The greatest incentive to accurately identify cost is experienced by those who would carry the burden on that cost.

37. Suggesting that the amendments proposed will improve the quality of plan-making may only serve to increase dissatisfaction with the Act and, in particular, with plan-making by raising expectations unrealistically.

38. All that acknowledged, *Local Government New Zealand* is not opposed to raising the quality of pre-notification plan analysis if that ensures the purpose of legislation is better promoted. There is undoubtedly room for improvement. *Local Government New Zealand* is also of the view that the obligations of Section 32 can be more simply expressed (as the Bill does). However, *Local Government New Zealand* considers that the role of legislative amendment in achieving improvement (if any) is to focus where analysis should be concentrated rather than perpetuating the unrealistic expectation that there can be detailed cost benefit analysis for all aspects of resource management planning.

39. The drive for amendment appears to have been driven by concern over a relatively narrow range of resource management issues and consequent plan provisions. We understand these include, in particular, the introduction of nutrient-loss limits in regional plans (and, to a lesser extent, limits on allocable flows and volumes) and urban limits. The desire for the impact of such limits (on the ability to change land use - and in some cases continue land use) to be identified, recognised and transparently taken into account in policy making processes, is understandable given the very significant economic effect of such provisions. However, the "broad brush" response of amending Section 32 is somewhat a case of the "tail wagging the dog." The issues of concern are a small subset of the hundreds of issues addressed by regional and district plans in regard to which there is typically little concern over whether the costs have been properly considered.

40. Finally, the amendment does not address the vexed issue about the relationship between requirements imposed by national policy statements (NPSs) and obligations under Section 32. In many cases, councils are faced with obligations (under an NPS) to take certain action and also to have regard to costs. Greater guidance is warranted on whether acting consistently with a national instrument removes the obligation for detailed analysis of cost. In the absence of that, Government is simply to passing to local government the implementation costs of its policy directives, which should have been addressed when the national instrument was developed.

41. Comment now is made on the issues that have particular substantive changes.

Report Requirement

42. The amendment would potentially expand the scope of the report required. Technically, while a summary of the reasons for adopting the provision is required, the full evaluation is required to be included in the report. That does seem to contrast with the current wording which makes clear that the report need only contain a summary of the evaluation. On the face of it, the amendment could substantially broaden the scope of the report required.

43. The scope of the evaluation report has been broadened and will impose additional cost on councils. It should be adequate for the report to summarise (or simply cross reference) material that may be included in other supporting documents.

Recommendation:

- Amend the Bill with the word "summarise" added after the word "must" in the opening line and the word "examine" deleted from section 32 (1) (a) and (b) and the word "summarising" deleted from section 32 (b) (iii). Section 32 (1) (c) should be made a new sub section (1A).

Corresponding scale and significance

44. The proposed amendment [(32 (1)(c)] is a positive change as it acknowledges the need for councils to tailor and prioritise effort albeit that it may only confirm current practice.

45. There is an argument that the provision does not go far enough and that Section 32 should clearly differentiate between provisions that warrant concentrated evaluation and those for which a lower level evaluation is sufficient.

46. Greater certainty would be provided by the Act expressly providing for two levels of assessment with:

    i. A low level assessment ("explain and justify") undertaken for provisions that are "rolled over" from existing plans and/or provisions that have a low level effect; and

    ii. A detailed assessment required for provisions that and new and/or have a high anticipated effect (which includes identification of costs and benefits).

47. It is accepted, however, that it would be difficult, if not impossible, for the Act itself to prescribe which provisions ought to be subject to which assessment pathway. That question is most properly left to the discretion of local authorities.

Recommendations:

- Retain the amendment as proposed in section 32(1)(c); and
- Amend the Act to provide expressly for two levels of assessment as described above but retain discretion for local authorities to decide which evaluation pathway to apply to which provisions.

Specification of environmental, economic, social and cultural effects

48. The clarification that assessment of costs and benefits is to include environmental, economic, social and cultural matters is positive but only confirms current practice. A recent survey of local authorities indicated that virtually all assessments under the current Act address all four dimensions.

Recommendation:

- Retain the amendment as proposed.

Specific reference to economic growth and employment

49. The amendment highlights one specific effect (economic growth) and a subcomponent of that effect (employment). By identifying these matters, the Bill implies that they are to be elevated in importance above environmental, social and cultural benefits or costs. Even if it does not make that inference in a legal sense, it is inevitable that such an inference will be taken by stakeholders and risks upsetting the balance or 'overall judgement' that decision-makers must apply to questions of whether policy is appropriate to promote sustainable management (as defined in section 5).

50. Other specific matters include:

- Reference to assessing opportunities "for economic growth that are anticipated to cease to be available" ignores the very real possibility that plans open up opportunity for economic growth (such as zoning an area for development). It also raises the question of what the starting position is. That is relevant when you consider that, because of the presumption of Sections 11, 12, 13, 14 and 15 of the Act, plans (especially regional plans) *enable* economic growth opportunities by including rules providing access to resources that would otherwise need resource consent. The words "provided or reduced" as used in section (2)(a) (ii) would seem more balanced;

- There also will be debate about the meaning of what "cease to be available". If it means opportunities that were available under a previous plan, but will no longer be available under a new plan, then the provisions may not deal with the issue it appears aimed at. That is for two reasons.

First, in many cases provisions of concern are entirely new and do not replace any previous provision. Previous resource use (such as nitrogen loss) may have always been in breach of the Act but was simply never enforced – these are legal questions that have never been fully tested. Second, in many cases it is not economic growth opportunities that cease to be available that is the issue in contention but rather economic growth opportunities that continue to be foregone (i.e. the opportunities were never available and still will not be under the new plan). The uncertainty will simply create more scope for debate that local authorities will need to manage;

- The approach of singling out economic growth and employment invites speculative analysis. District and regional plans provide all manner of opportunities through rules allowing for certain resource use that are not necessarily ever taken up or not taken up in full (for example a district plan might provide for a ten story building but a developer may decide to build only six stories). To suggest that you can anticipate growth and employment on the basis that plan provisions might theoretically provide for a given level of development would be misleading. Conversely, to suggest that some reduction in what a plan provision enables necessarily reduces economic growth and employment may be equally flawed if there was no prospect of plan provisions being used to their full capacity;
- The above issues aside, the level of economic analysis required to anticipate economic and employment growth, is beyond simply predicting the growth that is enabled or reduced in a given area from a given set of plan provisions. Proper economic analysis would consider that the investment that does not occur in a sector and/or one area due to a new plan provisions will be diverted into another sector and/or another area. Hence the true economic cost will not necessarily be the cost of growth forgone in a plan area. This invites debate about (a) whether the effect on economic growth is assessed economy-wide or just within a single sector; and (b) the scale at which the effect on economic growth is to be determined – i.e. there might be a local or regional economic growth cost but no net national cost (because the investment is simply made elsewhere); and
- In summary, the approach invites speculative and/or overly simplistic analysis. Far from simplifying analysis and debate, the Bill risks greatly enhancing that debate which could prove costly for both councils and stakeholders.

Recommendations:

- Delete section 32 (2) (a) (i)-(ii); and
- If there is a desire for greater specificity about the nature of effects for which benefit cost assessment ought be undertaken, include a more comprehensive and balanced list (possibly as a new Schedule to the Act).

Quantification of cost and benefits

51. The risk to the balance of considerations is amplified by the likelihood that economic growth (in value add/GDP terms) and employment are often far more likely to be quantifiable than are environmental and cultural costs.

52. Provided the effect of plan provisions on land use/production can be calculated or modelled it is a relative straightforward task for an economist to estimate the effect on GDP and employment. Thus for at least some provisions (such as nutrient limits and water allocation limits/choices) reasonably reliable quantified data will be obtainable. However, information on the benefits associated with those provisions (in terms of in-stream, recreational and cultural values) is much more difficult to quantify and

hence decisions makers will be presented with an asymmetry of information on which to make policy decisions.

53. Furthermore, local government foresees a specific problem with accessing, what may often be, commercially sensitive information in order to attempt to quantify costs and benefits. This information will not be readily available from business potentially benefiting from/restricted by plan provisions.

54. Finally, while there are economic/research methodologies by which certain costs and benefits can be quantified these methods by no means represent an exact science and may prove to be misleading. This is particularly true when results from one study in one locality are transferred for use in another context. Furthermore these methods are often very expensive to commission and in our opinion will be beyond the financial means of most local authorities to undertake or commission. While that is the hard truth the wording of the Act will encourage some stakeholders to adopt an unrealistic expectation of councils could and should do to quantify costs. Again that may serve to heighten tensions around plan making.

Recommendation:

- Any call for quantification should be balanced with a provision clearly stating that quantified costs and benefits are to be given no additional weight in any assessment relative to unquantified costs and benefits simply because they have been quantified.

Assessment against both old and new objectives

55. Proposed Section 32 (3) introduces a new dimension to the section. It is not entirely easy to understand but (as noted above) it seems to suggest when a plan is changed an evaluation of whether the policies and rules/methods are the most appropriate way to achieve the objective must include an assessment against the newly proposed objective **and** the existing plan objective. It is not clear what is proposed by this amendment but it seems nonsensical.

56. When plans are changed often a whole suite of provisions are introduced (i.e. objectives, policies and rules). The objectives either replace existing objectives that are no longer considered appropriate, or add to the existing suite of objectives on the basis that the existing objectives do not adequately reflect what the new policies and rules seek to achieve.

57. The proposed amendment adds a requirement for assessment that will often be irrelevant.

Recommendation:

- Amend proposed section 32 (3) by adding the words “if those objectives are relevant and not superseded by the objectives of the proposal.”

Timing of, and giving effect to, the evaluation report

58. There is a timing/sequencing issue raised by the change, with Clause 5 of Schedule 1. It states that a local authority that has prepared a proposed plan must then prepare an evaluation report and have regard to it when deciding whether to proceed with the plan. However sections 61, 66 and 74 say that the council must prepare a plan in accordance with the evaluation report.

59. In other words, sections 61, 66 and 74 expect the evaluation report to be available prior to the preparation of a plan while Clause 5 of Schedule 1 implies it is to be prepared after the plan is prepared.

60. Furthermore, the terminology used in Clause 69 (proposed sections 32, 32AA and 32A) and in Clauses 8 (proposed clause 51 of the First Schedule) are inconsistent. Sometimes reference is made simply to a "proposed standard region or plan". Elsewhere the words "or change" are included. Nowhere are the words "or variation" used.

61. It is clear from Section 43AAC that "proposed plan" includes a change or a variation to a plan/proposed plan. Hence reference to "or change" in proposed section 32 (6) and in 32 (3) is redundant and confusing. It begs the questions of whether section 32 evaluations are always required for changes to plans (as "change is not included in section 32(2)) or required at all for variations. Logic would suggest that evaluations are required for all these situations but the proposed wording gives cause for argument. This is compounded by the use of the term "change" in proposed section 32AA to mean an amendments to proposed provisions after the initial evaluation was undertaken (i.e. as a result of submissions/hearings). Whereas elsewhere the term change is used to mean a formal change to a policy statement or plan under the First Schedule.

Recommendation:

- Resolve the inconsistency in the Bill as to the expected timing of the preparation of the evaluation report and the confusion caused by inconsistent and unnecessary reference to "change."

Requirements for undertaking and publishing further evaluations

62. A consent authority is already are required to undertake an evaluation after it has considered submissions if it proposes to change the provisions from those notified (section 32(2). However, there is currently no specific obligation requiring a specific report for that second (further) evaluation and is often demonstrated by the decisions report. Section 32AA(1)(d)(ii) continues to provide for this evaluation to be part of the decisions report. The section should require the decision-making record to "summarise the evaluation report" rather than "in sufficient detail." That change would provide the appropriate level of evaluation.

Recommendation:

- Amend section 32AA(1)(d)(ii) to refer to "summarising the evaluation report" rather than "in sufficient detail."

Resource Consent Hearings

Clauses 86, 99, 100

63. *Local Government New Zealand* considers that some of the changes proposed are positive – they provide additional guidance about how hearings should be run. Pre-circulation is often done by councils and we support the RMA reflecting this good practice. Councils advise that where this is done, the length of hearings can be reduced and therefore their associated cost. The Bill (rightly) places the onus for pre-circulation onto the applicant and the submitter but we note there is no mechanism to actually require this is done. Councils will encourage/instruct but can do no more.

64. The statutory timeframe for a publicly notified application (130 working days) compared to a limited notified application (100 working days) implies that a publicly notified process is likely to require more time to make a decision and/or be more complex. In practice limited notified applications can still deal with similarly complex and time consuming issues.

65. A limited notified application can be served on a high number of affected parties and draw a high number of submissions raising complex issues. A consent authority should not be discouraged from using the limited notified process over the fully notified process but the proposed timeframes may do this.

66. We agree with the submission of Wellington City Council that the limited notified period of 100 working days is extended to 130 working days where notice is served on 10 or more affected parties.

Recommendation:

- Amend section 103A to provide that the timeframe of 100 working days to complete a limited notified application is extended to 130 working days where notice is served on 10 parties or more.

Resource Consent Processing and "6 Month Consenting"

Clauses 19, 87, 90-107, 120-121

67. *Local Government New Zealand* supports a number of the amendments which relate to the processing of resource consents. In particular, these changes are supported: the proposed change to section 133A to allow a consent authority 20 working days (up from 15) from the date the resource consent is granted, to correct minor mistakes (clause 19); the proposed change to allow 20 working days to decide whether an application should be notified (clause 97).

68. The Bill introduces a new framework aimed at achieving a 6 month timeframe for "medium sized" projects. "Medium sized" projects comprise notified and non-notified applications for resource consent, for the purpose of this Bill. We understand the changes are driven by a desire to achieve certainty with respect to timeframes for notified and limited notified applications and we can support this objective however we have identified some concerns about the new approach to calculating timeframes.

69. It is worth pointing out that not all notified and non-notified consents are "medium sized" and you will hear of specific examples from individual councils. Some nationally significant projects choose not to use the Board of Inquiry or direct referral process.

70. We are unconvinced there is a problem with timeliness which needs to be fixed. Only six percent of applications for resource consent in the 2010-2011 period were notified and 95% per cent of all resource consent applications were processed on time. 87% of notified applications were processed on time in this period. The RIS includes some statistics about the average and median number of days elapsed for councils to process a sample of 204 notified consents across 14 consent authorities. That study does not include analysis of what lead to the delays and where responsibility for the delays rests. Waikato Regional council in particular has analysed their data and will submit separately on this. They found that it is not a simple matter that the council is at fault for delays and that section 37-based delays are generally the responsibility of applicants i.e. it is for the applicant's benefit that the delay occurs. The most common reasons are to consult with affected or interested parties after lodging the application and then to consult with submitters following the close of submissions. The driver here is to avoid an expensive hearing.

71. The existing tools – sections 91, 92,95E and 37 will remain and will continue to provide the opportunities to extend timeframes either at the applicant's request or because of a requirement by the consent authority. The "6 month timeframe" will be exceeded through the use of these provisions, often at the request of the applicant (for the same reasons as described above). Even if it is accepted there is a problem – the new framework introduced by the Bill is cumbersome and complex and the new sections 88B and 88BA are of particular concern to consent authorities.

72. These new sections – 88B and BA – change introduce a new methodology for timeframes for notified resource consents. The new concept of "deadlines" is introduced for various provisions under the Act along with "deadline's calculation day." The provisions which have deadlines are:

    - The notification decision;
    - The hearing start date for a notified application;
    - The hearing end date for a notified application;
    - The decision notification date on a non-notified application where no hearing is held; and
    - The decision notification date on a notified application where no hearing is held.

73. The provisions describe how any of these deadlines can be "deferred" in the event that processing includes any "on hold" events. These are the same "on hold" events that currently exist in the RMA e.g. s91, s92(1), s92(2), s95(3) etc. The way these "on hold" events impact on timeframes is fundamentally different as a result of subsections (3) – (5). Under these provisions the stopping of the clock does not occur on the actual day the "on hold event" actually happens e.g. a request is made for further information, but rather on a date determined with reference to the "deadline's calculation day." The basis for determining "working days" is fundamentally changed. We have identified issues of principle but also very practical implications for councils. The new provisions are very complex and it has been pointed out that because of this there is the potential for variable understanding, interpretation and, therefore, application. This will apply to council staff but, importantly, also to applicants.

74. A council's information technology system will need to be able to accommodate the new provisions and our feedback is that this will be difficult. Every time the RMA survey is changed there is a resource implication as councils change their IT systems to adapt to the need for new/different information. We are advised by councils that the changes proposed by the Bill will be significantly more challenging. Any changes will have to be funded by rates, this is unbudgeted, and the cost has not been acknowledged in the RIS. We suggest there must be a more simple way of achieving Government's objectives around "six-month consenting." This would need to include a timeframe specifying the time limit for the completion of a hearing for a notified and a limited notified application from the close of submissions. The total number of working days is prescribed in section 103A and the Discount Regulations already require a discount to be paid if these timeframes are not achieved.

75. The current, simpler approach with respect to timeframes under the RMA should be retained and amendments made to achieve "6 month consenting." It is unclear why this basic premise of the Act (the way that working days are calculated) needs to be changed. Neither staff nor council staff experience difficulties currently with the current approach. The feedback to date from councils is that the amendments proposed are far too complex and will do nothing to achieve simplification of the RMA.

76. The changes proposed to these sections of the Act, when taken together with the changes to Schedule 4, we consider will do a disservice to applicants, will create a barrier for those applicants seeking a resource consent, and will impact negatively on councils wanting to offer a positive service to applicants (good customer service).

Recommendations:

- Delete clause 91; and

- Develop a simpler way of amending the RMA to achieve "6 month consenting" for notified and limited notified applications for resource consent.

Clause 92 - Excluded time periods relating to further information (Section 88C)

77. The RMA currently specifies that two requests for further information can be made in relation to notified applications and that "the clock stops" for both requests. Requests are often made for further information after submissions are received because submissions often raise issues that need to be followed up by way of further information before a hearing. This is one of the values of a submission and the public notification process.

78. Clause 92 Section 88C (excluded time periods relating to further information) provides that only one request can be made for further information with the "clock stopping." While we appreciate the timeframes are being pared back wherever possible in order to arrive at a "6 month timeframe" it does not make sense to remove the second provision. It is assumed that applicants will agree to extend the timeframes (using s 37 provisions) or request their application is suspended (new s 91A provision) while additional information is provided. However, the council needs to be able to control the process and not rely on an applicant's agreement. If further information is required following the close of submissions the council needs to request it and "stop the clock" until it is provided – the provision of further information will often reduce the length of the hearing (and associated cost). The fallback position is that an application can be declined if information is not provided but this is a poor second to the current situation.

79. This provision also introduces an amendment that the excluded timeframe relating to the provision for further information does not start until the third working day after the date the request is made. The current provisions allow the clock to stop when a request is made. The status quo is simple to work with – for councils and applicants. This amendment effectively penalises councils and, more importantly, is likely to result in an increase in the number of applications not accepted under s 88 for processing.

Recommendations:

- Retain the status quo regarding requests for further information in relation to notified applications; and
- Delete section 88C (5) which replaces section 88C(2)(a).

Clause 94 Section 88E amended (Excluded time periods relating to other matters)

80. This new provision provides for the applicant to provide in writing their intention to gain written approvals and that the time allowed for that process starts with that date. *Local Government New Zealand* opposes this change. We consider it is an unnecessary requirement for the applicant to give notice in writing of their intention to gain written approvals. It is a requirement of the Act that written approvals of affected parties are provided if the applicant does not want the application notified. We submit is an extra, unnecessary step in the process and is contrary to any objectives regarding "streamlining."

Recommendation:

- Delete section 88E (4).

Clause 96 Applicant may have processing of application suspended (new section 91A)

81. This section is strongly supported and confirms a practice that is common among councils. There are many reasons why an applicant may want to suspend their application – but the same reasons will also apply to non-notified applications and the ability to suspend an application (at the applicant's request) should be extended to all applications for resource consent.

Recommendations:

- Retain new section 91A; and
- Extend the provision to all applications for resource consent.

Clause 96 Application may be returned if suspended after certain period (new section 91C)

82. Clarification is sought regarding the status of returned applications. The Bill does not provide that the application formally lapses or is cancelled and its status after it is returned is unclear.

Recommendation:

- Amend section 91C to state that an application returned under this section is cancelled.

Clause 98 - Time limit for submissions (new section 97)

83. The effect of this new section is that the submission deadline collapses if a council receives written submissions or written approvals from all affected parties before the 20th working day after notification. Logistically, it will be problematic if hearing dates cannot be identified in advance for a number of parties involved. Commissioners are typically booked well in advance and require some certainty as to when the hearing is anticipated to take place. Applicants could incur increased hearing costs for the increased administrative time which will potentially arise (rescheduling a hearing). Additionally, hearing venue availability at shorter notice can be difficult and could necessitate the hiring of a more expensive venue at the applicant's expense. Council planning staff will face difficulties in planning workloads around hearings as dates are subject to change. The moveable dates will also add to the administrative burden of hearings.

Recommendation:

- Delete new section 97.

Clause 100 Time limit for completion of hearing for notified application (section 103B)

84. *Local Government New Zealand supports* the intention behind the pre-circulation of applicant's evidence and submitter's evidence and considers this to be good practice. We do note, however, there is no way of ensuring the briefs will be pre-circulated by either an applicant or a submitter and there is no 'easy fix' to this.

Schedule 4 Replaced - Clause 121

85. We have considered the proposed amendments to section 88 in conjunction with the new Schedule 4. There has been a great deal of discussion about these provisions by councils and we consider there is a need to get the right balance between certainty and flexibility. Overall, we submit that the proposed changes to Schedule 4 have not struck the right balance. The majority of applications requiring resource consent are simple, not complex, and the Schedule 4 provisions need to fit these applications in particular.

86. The amended Schedule 4 states that an assessment of the activity's effects on the environment (AEE) include such detail as corresponds with the scale and significance of the effects that the activity may have on the environment. This flexibility is supported. However, we question why some of the information in the amended Schedule 4 pertaining to the information required in all applications is specified as being mandatory. We consider the following information required by the Schedule should correspond with the scale and significance of the effects that the activity may have on the environment and should not be required of all applications:

    - (1)(f) an assessment of the activity against the matters set out in Part 2;
    - (1)(g) an assessment of the activity against any relevant provisions of a document referred to in section 104(1)(b);
    - The assessment under **subclause (1)(g)** must include an assessment of the activity against:
        (a) any relevant objectives, policies, or rules in a document;
        (b) any relevant requirements, conditions, or permissions in any rules in a document; and
        (c) any other relevant requirements in a document (for example, in a national environmental standard or other regulations).

87. The provisions need to be flexible to fit both the smaller, simpler applications (yard encroachments, discharge permits) and the complex applications (wind farms). The provisions have been written for the complex, wind farm application and will fit these applications well. In particular, the new 1(1)(f) and (g) result in a significant 'raising of the bar' in relation to the complexity of applications that will now be required to be submitted. Many complex applications will already meet this standard and the majority of these applications will be prepared by a resource management professional.

88. The work that will be required on application forms will be difficult and time consuming – given the range of types of applications councils receive (regional councils in particular). In most cases the type of informant lodged now with an application for resource consent is commensurate with the scale and complexity of the activity. Most councils report they do not experience difficulties in making the decisions and being able to justify their decision to accept/reject an application for resource consent based on the current provisions of the Schedule 4.

89. The vast majority of consent applications are made by modestly resourced small to medium companies and individuals. The new changes to Schedule 4 are such that it will be almost impossible for any applicant to make an application without the assistance of a professional resource management practitioner. This will be the case for what are currently relatively straightforward applications for example for water takes, waterway structures, small discharges, and minor residential resource consents. This will add to the cost to applicants for these sorts of applications and for simple applications this is unnecessary churn. We believe that these changes will make obtaining a resource consent more of a barrier than is currently the case and we suggest that these provisions need to be reviewed. If the proposal in the Bill is the intention of Parliament, then the increased cost to the applicant needs to be acknowledged and addressed.

90. *Local Government New Zealand* does not support requirements 1(1)(f) and (g) – Assessments against Part 2 and policy documents – neither in principle or from a practical perspective. In principle, it is the applicant's role to lodge their application and the consent authority's function to assess it and make a decision. The consent authority must do its own assessment irrespective of whether the applicant does and duplication will result. To require such assessments risks confusing the roles and functions of the applicant and consent authority in the process.

91. Most applicants will not be equipped either to (a) identify the relevant aspects of Part 2 and policy or (b) assess their proposals against it. The first problem could potentially be addressed via pre-lodgement meetings or discussion. However, in practice these usually don't occur as they are unnecessary for simple applications. For complex applications pre-lodgement meetings are encouraged, are commonplace and are good practice. If, as a result of these provisions, pre-lodgement meetings are now required for most applications, they will add both time and cost for both parties - counter to the Government's intention to streamline the process.

92. In addition, it is noted:

    - 1(1)(c) – duplicates the requirements of Form 9 of the RM (Forms Fees and procedure) Regulations;
    - 1(1)(d) –is unclear in its meaning and requires clarification as to the particular activities that should be described; and
    - 1(1)(e) – duplicates the requirements of Form 9 of the RM (Forms Fees and procedure) Regulations.

93. In relation to 6(1) and the replacement of the word "should" with "must" requires that every AEE must now have a section that explicitly addresses each of the matters in (a) to (f) irrespective of whether it is relevant, i.e. similar to a tick-box approach. That differs from the current approach whereby the AEE need only include an assessment of matters if they are relevant. Application forms will need to be amended accordingly to ensure that applicants are explicitly required to respond to each of the (a) to (f) matters. Again, this is counter to streamlining or efficiency.

Recommendations:

- Amend Schedule 4 to state that sections 1(1)(f) and (g) are not mandatory but should be included in an application corresponding to the scale and complexity of the activity;
- Retain the discretion in section 88 (3)(A);
- Remove duplication between the Forms and Regulations and the Schedule in relation to section 1(1)(c) and section 1(1)(e);
- Clarify section 1(1)(d); and
- Amend section 6(1) so that an assessment of an activity should only address relevant matters not all matters.

Part 2 Local Government (Auckland Transitional Provisions) Act 2010

94. *Local Government New Zealand* supports the overall approach taken in Part 2 of the RM Reform Bill, which inserts new provisions into the Local Government (Auckland Transitional Provisions) Act 2010 (LGTPA), designed to streamline the delivery of the first Auckland combined plan. We applaud the Government's response to the development of the Auckland combined plan and many of the provisions

of the Bill are supported. We submit in support of Auckland Council on these matters and we consider that aspects of the "streamlined process" may have applicability for planning processes outside of Auckland and we await discussion of these as part of the 2013 Bill. There are a number of aspects of these provisions which need to be reconsidered and we have focused only on the more significant ones. These are discussed below.

95. The key matters are:

- The moratorium on variations under proposed section 121 of the LGATPA (the following references to sections are to proposed sections of the LGATPA);
- The Hearings Panel not being limited to making recommendations within the scope of submissions under proposed section 139;
- The weight the Hearings Panel must give to the Auckland Plan when making recommendations under proposed section 140;
- What rules in the Auckland combined plan will have immediate legal effect under proposed section 147, and the related question of what weight the plan is to have on and from notification; and
- The members of the Hearings Panel under proposed section 155.

96. Clause 125 of the Bill inserts new sections 115 to 163 into the LGATPA. The specific sections are referred to by section number below.

Section 121 Restriction on amendments or variations to Auckland combined plan

97. We understand the intention that as much of the Auckland combined plan will be made operative approximately 3 years after notification and this is one of the reasons for the moratorium on variations. To remove this tool will mean that Auckland Council is unable to address material information or a change in circumstances that arise after the plan is notified. In addition, the Hearings Panel needs to be able to direct the Council to initiate a variation – through the Schedule 1 process. While the new provisions do allow for a hearings panel to make recommendations on matters which are outside of the scope or submissions or further submissions – this does not provide for any public input. The variation process does provide for public input via submissions. Councils tend to initiate variations reluctantly as the preference is that a plan change/plan review process is as smooth and uncomplicated as possible. However, sometimes circumstances warrant the promulgation of a variation. Auckland Council needs to retain the ability to promulgate a variation to its own plan and to provide for public input on new matters via a variation process.

Recommendation:

- Amend section 121 so that variations are able to be promulgated by Auckland Council.

Section 139(2) Hearings Panel recommendations not limited by scope of submissions

Section 143(3) Auckland Council may accept recommendations beyond the scope of submissions

98. These sections provide that the Hearings Panel is not limited to making recommendations within the scope of submissions and that Auckland Council may accept such recommendations. This is a significant departure from the existing law – clause 10(1) of Schedule 1 requires that a consent

authority give a decision on the provisions and matters raised in submissions. There is established case law on this specific provision.

99. *Local Government New Zealand* is concerned at the unfettered discretion given to the Hearings Panel by this provision. Firstly, there will be no opportunity to consider and address a matter outside of the scope of submissions and no "right to be heard." Secondly, we endorse the submission of Auckland Council – that the power to make recommendations beyond the scope of submissions blurs the boundary between adjudication (the proper role of the Hearings Panel) and plan making (which is the proper role of Auckland Council as the democratically elected local authority).

100. This provision should be amended to ensure that any changes recommended to the proposed plan by the Hearings Panel are within the scope of submissions.

Recommendation:

- Delete sections 139(2) and 143(3).

Section 140(3) status of the spatial plan (Auckland Plan)

101. This subsection requires the Hearings Panel to ensure that regard has been had to the Auckland Plan when complying with subsection 1(f) in respect of section 66 of the RMA (which relates to the preparation and changing of any regional plan). This is the only requirement for the Hearings Panel to consider the Auckland Plan. This goes to the nub of a problem the local government sector has identified previously – the way the planning statutes (Local Government Act, Land Transport Management Act, the Resource Management Act) "talk to each other". In the case of Auckland, the Local Government (Auckland Council) Act (LGACA) is also part of their planning framework. The interrelationship of the statutes is a matter which extends outside of the Auckland Council jurisdiction and we hope to see some consideration of their relationship soon.

102. The influence which a planning document prepared under one planning statute is able to have on subordinate documents is the issue needing to be addressed. In the case of Auckland, the LGACA required that the Auckland Plan be a comprehensive and effective long-term strategy for Auckland's growth and development, and provide a basis for aligning the council's implementation plans, regulatory plans and funding programmes. Anticipating its links to RMA plans and strategies, the LGACA specifically required the Auckland Plan to explicitly identify the existing and future location of and mix of: (a) residential, business, rural production, and industrial activities within specific geographic areas within Auckland; and (b) critical infrastructure, services, and investment within Auckland (including, for example, services relating to cultural and social infrastructure, transport, open space, water supply, wastewater, and stormwater, and services managed by network utility operators).

103. The primary means by which the Council, as a regulatory authority, can enable these outcomes is through the Auckland combined plan.

104. The Auckland Plan was adopted in March 2012, following comprehensive engagement with community and stakeholders on the plan's content and direction. In accordance with the LGACA's direction, central government, infrastructure providers (including network utility operators), the communities of Auckland, the private sector, the rural sector, and other parties were involved throughout the plan's preparation and development.

105. We agree with Auckland Council that the Hearings Panel should be required to ensure that the Auckland combined plan "be consistent with" the Auckland Plan given the high level of community buy-in to the Auckland Plan. Without greater legal weight in the panel's decision-making, the Auckland Plan

will not achieve its purposes as set out in the LGACA, and positive outcomes from the Auckland Plan in relation to matters such as land supply and urban growth cannot be assured.

Recommendation:

- Amend section 140(3) to require the Hearings Panel to require that its recommendations are consistent with the spatial plan for Auckland prepared and adopted under section 79 of the LGACA 2009.

Section 147 RMA provisions relating to legal effect apply

106. This subsection states that sections 86A to 86G of the RMA apply, with all necessary modifications, to a rule contained in the proposed plan. Section 86B(3) of the RMA provides that a rule in a proposed plan will have immediate legal effect if the rule: (a) protects or relates to water, air, or soil (for soil conservation); or (b) protects areas of significant indigenous vegetation; or (c) protects areas of significant habitats of indigenous fauna; or (d) protects historic heritage; or (e) provides for or relates to aquaculture activities.

107. The issue of when and which RMA provisions have legal effect is of interest to the sector generally and should be considered as part of the 2013 Bill.

108. Under section 86B many rules in the Auckland combined plan will have immediate legal effect: that is effect from the date the plan is publicly notified. Other rules in the proposed plan will only have legal effect after the Hearings Panel has made its recommendations, and the Council made a decision on those recommendations. We are advised that this period is likely to be in the order of three years. We agree with the Auckland Council that this has the potential to significantly delay opportunities to take advantage of positive outcomes the Auckland combined plan is likely to enable on matters such as affordable housing, extensions of the Rural Urban Boundary (RUB), and the availability of land for commercial and industrial development.

109. We also note that those rules with a focus on protecting natural resources (and that have the potential to constrain development) will have immediate legal effect while rules that have a focus on the built environment (and have the potential to encourage development) will not have immediate legal effect.

110. We have considered the detailed submission of Auckland Council on this matter and we agree that giving the entire plan immediate legal effect will provide greater certainty to the public, business community and other stakeholders. We also support the Council's case that the Auckland combined plan should have greater weight than the operative regional policy statement and operative regional and district plans.

Recommendation:

- Amend section 147 so that the provisions of the Auckland combined plan have immediate legal effect on and from the date of notification; and
- Insert a new provision that gives the Auckland combined plan greater weight than the operative regional policy statement and operative regional and district plans.

Section 155 Minister for the Environment and Minister of Conservation to establish Hearings Panel

111. We agree with the submission of Auckland Council that the Council should partner with central government in appointing the hearings panel. Auckland Council is best placed to be able to identify the potential members with local knowledge.

112. The Auckland combined plan will ultimately be Auckland Council's plan, on behalf of the community of Auckland. The decision on whether or not to accept the Hearing Panel's recommendations will be made by elected representatives of the Council. Again this suggests the Council should be involved in the decision-making around the membership of the panel.

Recommendation:

- Amend section 155 to reflect that the Ministers and Auckland Council jointly establish the Hearings Panel and have the right to appoint members.

Schedule of Recommended Changes

Part 1 Resource Management Act 1991	
Clauses 7 and 61 State of the Environment Reporting Amendments to Sections 35 and 360	Regulations should be developed and designed collaboratively with local government and section 360 should be re-drafted to reflect this.
	Funding for the implementation and on-going costs of the national reporting system must be met by central government.
	Amend section 360 to remove the reference to "reporting" by local authorities.
	Protocols for data management should be defined.
Clauses 13, 14, and 15 Direct referral provisions to the Environment Court	Retain the existing provisions for direct referral and do not proceed with those provisions providing for a regulation making power for an investment threshold.
	Retain the provisions clarifying the role of local authority in direct referral provisions while clarifying the definition of the term "reasonable assistance."
Clause 69 Requirements for preparing and publishing evaluation reports new section 32	Replace the provisions in the Bill with the text below "Recommended Redraft of Section 32."
Clauses 87, 90-107, 120-121 Resource consent processing	Delete clause 91.
	Develop a simpler way of amending the RMA to achieve "6 month consenting" for notified and limited notified applications for resource consent.
Clause 92 Excluded time periods relating to further information (Section 88C)	Retain the status quo regarding requests for further information in relation to notified applications.
	Delete section 88C (5) which replaces section 88C(2)(a).
Clause 94 Section 88E amended (excluded time periods relating to other matters)	Delete section 88E (4).
Clause 96 Applicant may have processing of application	Retain section 91A.

suspended (new section 91A)	Extend the provision to all applications for resource consent.
Clause 96 Application may be returned if suspended after certain period (new section 91C)	Amend section 91C to state that an application returned under this section is cancelled.
Clause 98 Time limit for submissions (new section 97)	Delete new section 97.
Clause 100 Time limit for completion of hearing for notified application (section 103A)	Amend clause 100 to provide that the timeframe of 100 working days to complete a limited notified application is extended to 130 working days where notice is served on 10 parties or more.
Clause 121 Schedule 4 replaced	Amend Schedule 4 to state that 1(1)(f) and (g) are not mandatory but should be included in an application corresponding to the scale and complexity of the activity.
	Retain the discretion in section 88 (3)(A).
	Remove duplication between the Forms and Regulations and the Schedule in relation to section 1(1)(c) and section 1(1)(e).
	Clarify section 1(1)(d).
	Amend section 6(1) so that an assessment of an activity should only address relevant matters not all matters.

Part 2 Local Government (Auckland Transitional Provisions) Act 2010	
Section 121 Restriction on amendments or variations to Auckland combined plan	Amend section 121 so that variations are able to be promulgated by Auckland Council.
Section 139(2) Hearings Panel recommendations not limited by scope of submissions **Section 143(3)** Auckland Council may accept recommendations beyond the scope of submissions	Delete sections 139(2) and 143(3) be deleted.
Section 140(3)	Amend section 140(3) to require the Hearings Panel

Status of the spatial plan (Auckland Plan)	to ensure that its recommendations are consistent with the spatial plan for Auckland prepared and adopted under section 79 of the LGACA 2009.
Section 147 RMA provisions relating to legal effect apply	Amend section 147 so that the provisions of the Auckland combined plan have immediate legal effect on and from the date of notification.
	Insert a new provision that gives the Auckland combined plan greater weight than the operative regional policy statement and operative regional and district plans.
Section 155 Minister for the environment and Minister of conservation to establish Hearings Panel	Amend section 155 to reflect that the Ministers and Auckland Council jointly establish the Hearings Panel and have the right to appoint members.

Recommended re-draft of Section 32

Taking into account the analysis in the submission, the redrafting (track changes) of Clause 69 of the Bill is as follows (noting that some alternative or supplementary changes have also been suggested in the above analysis):

32 Requirements for preparing and publishing evaluation reports

"(1) An evaluation report required under this Act must include a summary evaluation of—

"(a) ~~examine~~ the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and

"(b) ~~examine~~ whether the provisions in the proposal are the most appropriate way to achieve the objectives by—

"(i) identifying other reasonably practicable options for achieving the objectives; and

"(ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and

"(iii) summarising the reasons for deciding on the provisions~~; and~~

"(1A) The evaluation report under subsection (1) must ~~(c)~~ contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

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

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

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

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

"(b) if practicable, quantify the benefits and costs referred to in **paragraph (a)**; and

"(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

(2A) Despite subsection (2) (b), the person deciding on the provisions to be included in a standard, statement, regulation or plan must assess both quantified and non quantified costs and benefits and must not make the determination on the basis on whether the costs or benefits are quantified or unquantified.

"(3) If the proposal will amend an existing standard, statement, regulation, or plan, the examination under **subsection (1)(b)** must examine the objectives of both the proposal and the existing standard, statement, regulation, or plan if those objectives are relevant and not superseded by the objectives of the proposal.

"(4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of the region or district that is the subject of the evaluation.

"(5) The person who must have particular regard to the evaluation report must make the report available for public inspection—

"(a) as soon as practicable after the proposal is made; or

"(b) at the same time as the proposal is publicly notified.

"(6) In this section,—

"**objectives** means,—

"(a) for a proposal that contains or states objectives, those objectives:

"(b) for all other proposals, the purpose of the proposal

"**proposed plan** has the same meaning as given in Section 43AAC

"**proposal** means a proposed standard, statement, regulation, or plan for which an evaluation report must be prepared under this Act

"**provisions** means,—

"(a) for a proposed plan ~~or change~~, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan ~~or change~~:

"(b) for all other proposals, the policies or provisions of the proposal that implement, or give effect to, the objectives of the proposal.

"32AA Requirements for undertaking and publishing further evaluations

"(1)A further evaluation required under this Act—

"(a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the **changes**); and

"(b) must be undertaken in accordance with **section 32(1) to (4)**; and

"(c) must, despite **paragraph (b)** and **section 32(1)(c)**, be undertaken at a level of detail that corresponds to the scale and significance of the changes; and

"(d) must—

"(i) be published in an evaluation report that is made available for public inspection at the same time as the proposal is publicly notified; or

"(ii) be referred to in the decision-making record ~~in sufficient detail~~ summarising the evaluation to demonstrate that the further evaluation was undertaken in accordance with this section and be included in the public notification of the proposal.

"(2) To avoid doubt, an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with **subsection (1)(d)(ii)**.

"(3) In this section, **proposal** means a proposed statement, plan~~, or change~~ for which a further evaluation must be undertaken under this Act

If there is a strong desire to retain greater specification of the scope of costs and benefits to be addressed then these should be set out in a Schedule of the Act that might read as follows:

SCHEDULE 1A

Matters to be considered in the assessment of costs and benefits – In determining the costs and benefits associated with the provisions of a standard, statement regulation or plan for the purposes of Section 32 (1) the following matters will be relevant:

(a) Adverse effects on/enhancement of the quality of the physical environment including visual effects and landscape values.

(b) Adverse effects on/enhancement aesthetic, recreational, scientific, historical, spiritual or cultural of values of people and communities

(c) Adverse effects on/enhancement of ecosystems including biodiversity values and availability and reliance of habitat for indigenous species.

(d) Adverse effects on/enhancement of values of significance to Maori

(e) Added or reduced risk to the health and safety of the community or the environment associated with natural hazards or hazardous substances.

(f) Potential positive or negative effects on economic output and employment.