Submission of Civic Trust Auckland

Improving our resource management system: A discussion document

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Civic Trust Auckland

Civic Trust Auckland (CTA) is a non-profit public interest group, incorporated in 1968, with activities and interests throughout the greater Auckland region.

The aims of the Trust include:

- Protection of natural landforms
- Preservation of heritage, in all its aspects
- Encouragement of good planning for the city and region.

The Trust works to assist the various regional and local authorities and other relevant bodies to save and preserve all heritage of importance and to help construct a better future built environment. The Trust therefore has a great interest in the proposed reforms to the Resource Management Act (RMA) as outlined in the MFE's discussion document "Improving our resource management system".

CTA has submitted on recent Auckland draft plans as well as government discussion documents and bills, including "Building Competitive Cities" and the Resource Management Reform Bill (parts 1 and 2) and we were represented at the 28 March hearing on the latter. We attended the public meeting about the discussion document at Ellerslie, Auckland on 25 March.

Quotes from the discussion document are in *italics.*

Chapter 1

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

No. The issues repeatedly described in this chapter that are said to be of concern to the public, such as in the following two paragraphs, are presented without being backed up by data.

"The Government continues to hear concerns that resource management processes are cumbersome, costly and time-consuming, and that the system is uncertain, difficult to predict and highly litigious. The system seems to be difficult for many to understand and use, and in discouraging investment and innovation. The outcomes delivered under the RMA are failing to meet New Zealander's expectations." (pg 2)

"New Zealanders tell us they want more action to make resource management simpler, less costly and more effective. They want the RMA to deliver better outcomes - environmentally and economically." (pg 15)

Two surveys are referred to in 1.4.1 (pg 15) to support the claim that the people of New Zealand want changes to the RMA. One is "Kiwis Count*",* which "draws on the experiences of 1,161 New Zealanders who completed the survey between April 2012 and September 2012". The part of this survey that is relevant to environmental issues on page 13 states that, "The overall service quality score for the Environment & Recreation group was 76, up from 75 in June 2012. The large increase in the score for *National environmental issues or the resource management act* was not quite enough to register as a significant increase due to the relatively low usage compared to other services. Visits to national parks account for the majority of interactions in this service group."

The sample size for this group is in the appendix on page 26 under "National environmental issues or the Resources Management Act". In 2009 it was 255 people and in June 2012, 57 people and in Sept 2012, 61 people. This is a small sample and it is not clear how many of the people in the sample were answering questions specifically on the RMA (and the questions are not provided).

The second survey referred to in 1.4.1 is "Perceptions of Firms On Business Compliance", a study from 2003, ten years ago using a number of focus groups and a telephone survey of 400 business owners and managers. The discussion document at page 15 states that the RMA, as one of 11 areas of legislation that affects small or medium sized business, is *"ranked among the worst three - negatively affecting business dynamics across eight of nine factors".* The questions in the survey were about factors restricting export growth, and includes the following information, "New Zealand business people … when they were asked to select from a list of factors where the 'effort and distraction of complying with New Zealand regulations' was included, this was not the top factor. This place instead went to the 'conditions and regulations placed by overseas governments' (see Figure 7). … it is heartening that in the context of a study on the relationship between growth and business compliance, that the New Zealand government was not automatically blamed for restricting growth."

Such data as provided in chapter 1 does not support the claims that New Zealanders want changes to the RMA.

The TAG prefaced its recommendations by stating that it had re-examined the priorities of contemporary New Zealand. However, the TAG report did not cite any evidence for this either.

We suggest that New Zealanders value our country's environmental resources as much today as we did 20 years ago, if not more, and that the matters of national importance as described in the RMA are even more important to New Zealanders now. We offer some data: 88% of respondents to a 2011 survey of a cross-section of the Auckland population (as quoted in the Auckland Plan, paragraph 314) "believe that protection of historic heritage is important". A 2004 Growth and Innovation Advisory Board survey found that 87% percent of New Zealanders consider the environment is important or very important to them. People surveyed rated the quality of the natural environment as the third most important aspect of New Zealand, behind only quality of life and the quality of education: www.mfe.govt.nz/publications/ser/enz07-dec07/chapter-2.pdf. 50,000 people marched in Auckland in 2010 to protest against mining in conservation land.

Chapter 3 – Section 3.1
Do you agree with proposal 3.1.1 – Changes to principles contained in sections 6 and 7 of the RMA?

No, except for the addition of the following to the list of principles / matters of national importance: (l) "the risk and impacts of natural hazards".

The RMA contains core principles for protection of the natural and built environment, designed to address the adverse environmental impacts of economic development. As stated in the Minister's foreword to the discussion document, the RMA is *"our primary environmental statute"* (pg 5). She adds that *"there are still opportunities to significantly improve the planning aspects of the system"*.

CTA's view is that changes to planning processes do not require changes to the principles of the RMA, neither is it necessary or desirable to change their description in the Act from "Matters of national importance" to "Principles".

Page 20 of the TAG report stated that, "New Zealand spends far too many resources on process; and arguably not enough on environmental enhancements". We suggest that it would assist the process and address problems of cost and timeliness if district and unitary plans had clear, well-defined rules. This does not necessitate changing the principles of the RMA.

Deletion of several principles / matters of importance because they are "already effectively encompassed in section 5 of the Act" is not justified because *all* Part 2 matters are encompassed by section 5. Deleting some matters and not others signals that those matters which are retained are more important that those which are not.

We submit that all these matters need to be included in the checklist of key matters to be considered by decision-makers within the part 2 hierarchy.

At the public meeting in Ellerlsie on 25 March Douglas Berne from the MFE stated that the Minster is “quite emphatic” that the proposed reforms are “not designed to try and undermine the environment. It’s simply to try and provide a single list that’s actually going to be used by decision makers”. Mr Berne went on to state that some councils do not know the RMA well, and that at one meeting attended by many councillors he asked who was aware of section 6 and 7 and “barely a single hand went up”. We therefore submit that “the single list” in section 6 needs to be a complete list, and there should be no assumption of familiarity with section 5.

The current weighting between sections 6 and 7 reflects the purpose of the RMA, viz 5(1) “The purpose of this Act is to promote the sustainable management of natural and physical resources”.

Combining sections 6 and 7 would give section 7 matters the same weight as section 6 matters and thus weaken the primacy of the current matters of national importance. Section 7 provides for other matters which while not of national significance are important regionally and locally. Combining the two sections will make decision-making more difficult and will increase the level of discretion decision-makers will have, leading to greater uncertainty of outcome and increased litigation costs.

Changing or removing the directive language in section 6 signals a reduction in the level of protection for these values. We object to the directive language being removed from the principles relating to aquatic habitats, public access and historic heritage. We note that the protection of historic heritage as a matter of national importance was raised from a section 7 to section 6 matter in 2003.

The addition of “specified” to (b) and (c) implies that if something is not specified then it is not protected under the Act. In the case of historic heritage, much of our built heritage has not been identified, let alone adequately assessed.

Section 6(f) currently reads: "the protection of historic heritage from inappropriate subdivision, use, and development". The proposed new wording at (h) is *"the importance and value of historic heritage".* CTA’s submission on “Building Competitive Cities” requested that 6(f) be strengthened. The proposed wording is a weakening of this matter of national importance, with less certainty as to how the importance and value of historic heritage is recognised and provided for.

Furthermore, CTA questions why the wording of 6(f) is proposed to be changed in this way when 6(a) remains exactly the same and 6(b) (though suffering a one-word addition) also retains the wording about protection *“from inappropriate subdivision, use and development”.*

The proposed additional principle of *“the effective functioning of the built environment including the availability of land for urban expansion”* suggests that urban expansion is occurring everywhere in New Zealand but some smaller centres are, in fact, reducing in size. The addition of this principle would seem to justify urban sprawl. Submissions from the Auckland population on the Draft Auckland Plan were strongly against urban sprawl and this is reflected in the Auckland Plan. We submit that local communities should be able to determine the level of growth in their centres.

Regarding the proposed requirement 7(5) to *"achieve an appropriate balance between public and private interests in the use of land"* does not provide clear direction or certainty as the term "appropriate balance" are ambiguous.

Pressures on both our natural and our built environment have been intensifying over recent years, partly as a result of population growth. We submit that, in response to this, the RMA should be strengthened, not weakened, with the list of principles / matters of national importance retained.

We further note that the changes will involve considerable costs and will increase uncertainty in the short term, as they will require the review of all regional and district council plans as well as National Policy Statements. The changes will render much existing case law obsolete, providing uncertainty until case law emerges. The consequences of introducing these changes at the same time as appeal rights are narrowed does not appear to have been considered.

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?

Greater policy direction from central government is a positive step in some areas, such as NPSs and NESs. However, greater policy direction does not require direct central government intervention in plan making.

CTA opposes the proposals to direct that some issues of national importance be decided by central government rather than the local council.

Simplifying and improving the RM process can be achieved without the need for central government to intervene in local democracy.

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

No. Local communities and their councils should be able to determine the plans for their area. We opposed central government having the power to direct plan changes with no consultation.

There is a risk that in a future government a minister may promote and approve a project which may have harmful consequences for the environment.

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

Yes. National consistency could be achieved through the existing tools of national policy statements and national standards. These are the tools for improvement, rather than through changes to individual plans. We support prioritising NPSs and NESs and better resources for the Ministry for the Environment to produce these standards and policies, particularly with regards to water quality, coastal environments, food production,

sustainable power production and heritage. However, opportunities for public input must be made available.

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?

No, and the additional matters should not be included, aside from (l) *"The risks and impacts of natural hazards".*

What matters should additional NPSs and NESs cover?

NPSs and NESs should cover all section 6 matters. In view of the fact that 85% of the public live in the urban environment and heritage is the only urban matter of national importance, an NPS on heritage would have broad appeal.

Section 3.2
Do you agree with proposal 3.2.1 – A single resource management plan using a national template that would include standard terms and conditions?

We agree that commonly used terms and conditions should be standardized and support a standard structure for resource management plans.

We would like to see improved guidance and consistency for rules pertaining to historic heritage. This would align with an NPS on heritage.

We suggest that a national planning support system be provided for new plans, including structured systems for researching what is and is not permitted on a specific site and statistical "open government data" available to the public.

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

Any changes to the RMA should ensure that the provision of new greenfield and brownfield land for housing takes into account the costs and sustainability of infrastructure including: transport and the provision of other infrastructure, the provision of environmental and recreational amenities including sufficient tree coverage to sustain air quality, ensuring that the costs of the new developments do not impose an unfair or adverse burden in costs or loss of environment and amenities."

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?

The success of combining regional and district plans will depend on adequate protections to ensure local and regional resource management matters are taken into account. These more localised plans are where specific areas should be identified for preservation or for growth

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

Yes. These proposals of to expand the Environment Court's power to enforce timetables, strengthening the provisions requiring parties to undertake alternative dispute resolution options, and amending the RMA to realise the full benefits of electronic case management are all positive. Additionally, the Environment Court should be better resourced.

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. But we consider that this can be done by correcting minor faults in the existing processes. At the public meetings about the discussion document MFE officials emphasized that the proposed changes were about improving RMA processes.

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

The Environment Court's independence and oversight is an important check on planning decisions.

Section 3.3
Do you agree with proposal 3.3.1 – A new 10-working-day time limit for straight-forward, non-notified consents?

This would depend on the nature of the consent. To qualify for the 10-day time limit applications need to provide clear and complete application documents.

We further note that large businesses have more ability to have people available at any time to respond to notifications than a household or small business. Procedures need to be put in place to safeguard the average citizen's interests. Affected parties should be warned well in advance that an application (or a change in a NES or NPS or any other planning matter) is due for submissions.

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

No. Rules should be clear. Introducing approved exemptions creates uncertainty.

Furthermore, we see a difficulty in the interpretation of "technical", "minor" and "very minor" as well as the word "affected" - in relation to whether neighbours (or the wider public) is affected or not.

We note that, with regards to heritage assessments, incomplete resource consent applications by building owners have in the past been accepted by councils as complete.

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

No. Only 4% of resource consent applications were notified in 2010/11.

Page 7 of the discussion document says *"Planning … would be developed using a process designed to facilitate better public participation in the early stages of plan development".* Already the public has objections to non-notification and has been seeking more notification, not less. Restricting notification limits a community's ability to have a say about developments which affect them. The council officers or council elected members will be making decisions without the public and the community being able to have an interest in the types of things that they may well have an interest in.

Greater certainty and upfront engagement is achieved by notification and thus more opportunity for discussion at the front end.

Notifications are sometimes inaccurate and incomplete and can change during the consents process.

Cost savings can be achieved through improving administrative processes and making sure all information is available before a resource consent application is notified. This could go a long way towards enabling decision making that avoided inappropriate development.

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

No. It is important that conditions can be imposed which relate to all environmental effects. Mitigation of one adverse effect could cause other adverse effects.

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

No. Submissions and appeals provide the opportunity for public participation, adding to the diversity and quality of the information provided and helping to produce better decisions. It is a key aspect of our resource management system.

"Affected parties" is *already* too limited as a definition, as neighbourhoods and the general public are also affected by planning decisions about individual sites, not just the immediately adjacent neighbours. Furthermore, "minor" effects in one neighbourhood accumulate to become significant and irreversible effects on a wider basis. We need better and more consultation with communities, not less. CTA would like to see an increase in the level of community consultation and involvement and in the availability of information about resource consent applications.

Reducing the role of the Environment Court and restricting the scope of appeals would reduce access to justice and undermine public confidence in RMA decision making. The Environment Court provides important independent expert oversight of consent and planning processes, and ensures high quality outcomes.

In the discussion document at page 17 it is stated that, *"Time is also an issue. A 2008 survey found first generation plans took an average of 8.2 years to finalise and become 'operative', and an average of 5.6 years to move a plan from 'notification' through to being fully operative."*

The document this data is taken from, the 2008 "Analysis of timeframes for the development of policy statements and plans under the Resource Management Act" states that "The vast majority of time is taken up in the period following the issuing of council decisions through to making the RMA plan operative. Principally this involves the Environment Court mediation and hearing times.

"Indeed the first four stages together, take on average 537.7 days, whereas the final stage, resolving appeals through the Environment Court, takes longer at 732 working days. … Efficiencies in the plan preparation could be gained in this part of the process through a speedier appeals system."

We note that this analysis did not recommend removing appeal rights but improving the process.

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

No. The provision of information relevant to hearings, especially oral evidence, needs to be better than current standards for this to be democratic.

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

Yes. This will provide more certainty to applicants.

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

Yes. This would provide more transparency and accountability.

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

No. The Crown has appropriate involvement in matters of national importance processes and should not be intervening in matters of regional and local importance.

Do you agree with proposal 3.3.10 – Providing consenting authorities tools to prevent land banking?
No comment.

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

Yes, in general, but we do not support deleting the draft decision stage or reducing the period for comment.

Section 3.4
Do you agree with proposal 3.4.1 – Learning the lessons from Canterbury?

We have agreed to adding the matter / principle about natural hazards to part 6. The tools to be developed and the changes to consent requirements proposed are not specified so we cannot comment on them.

Section 3.5
Do you agree with proposal 3.5.1 – Enabling iwi/Māori participation in resource management planning?

Yes.

Section 3.6

Do you agree with proposal 3.6.1 – Improving accountability measures?

Yes.

Date of submission: 2 April 2013 Signature:

Secretary, Civic Trust Auckland