Submission of Civic Trust Auckland

Resource Management Reform Bill

We wish to appear before the committee at a public hearing.

Contact Name: Mrs Audrey van Ryn
Position: Secretary
Organisation: Civic Trust Auckland
Phone (daytime): 09 368 1516
Phone (evening): 09 368 1516
Mobile: 021 035 4431
Email: cta@civictrustauckland.org.nz
Postal address: PO Box 74 049 Greenlane

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.

Our submission addresses matters pertaining to parts (1) and (2) of the Resource Management Reform Bill, i.e.
(1) amendments to the Resource Management Act 1991
(2) the Local Government (Auckland Transitional Provisions) Act 2010.

We acknowledge the intention of the Bill to make improvements to the consenting process, provide for the delivery of Auckland's Unitary Plan and to make additional technical and operational changes.

Quotes from the Bill are in *italics.*

(1) Amendments to the Resource Management Act 1991

"Clause 7 amends section 35 to provide the context and a reference point for regulations made under the new section 360(1)(hk) set out in clause 61 (which relates to indicators or other matters by reference to which a local authority must monitor the state of the environment of its region or district). The amendment also corrects cross-references to other sections."

"Clause 13 amends section 87E to require consent authorities to refer applications for a resource consent directly to the Environment Court if the value of the investment in the proposal is likely to meet or exceed any threshold amount prescribed by regulations, unless exceptional circumstances exist."

"Clause 38 amends section 198C [and] *Clause 41 amends section 198I to require territorial authorities to grant requests to refer requirements relating to designations or heritage orders directly to the Environment Court if the value of the investment in the proposal is likely to meet or exceed any threshold amount prescribed by regulations, unless exceptional circumstances exist."*

CTA objects to the inclusion of provision in the RMA for regulations yet to be drafted. Such regulations should be subject to democratic scrutiny before inclusion in an Act of Parliament. We therefore request that clauses 7, 13, 38 and 41 be deleted from the Bill.

"Clause 12 amends section 76(4A) to clarify the extent to which a rule protecting a tree or a group of trees may be included in a district plan. The tree or group of trees must be specifically identified in a schedule to the plan by street address or legal description, or both, and, in the case of a group of trees, must satisfy the definition in new section 76(4B)."

CTA opposes the clause 12 amendment and requests that it be deleted for the following reasons.

The amendment does not provide a simplifying and streamlining approach but instead would require complex and time and resource consuming work. Councils are unlikely to have the capacity to carry out the specific identification that would be required.

The amendment would remove blanket protection of urban trees in district plans, including local authorities' ability to provide ongoing protection for residential bush protection zones around reserves, for vegetation on Auckland's volcanic cones, protection for coastal trees such as the pohutukawa around the Waitemata Harbour, for riparian margins, catchment areas and for native bush areas in cities.

Without tree protection rules, Councils would be unable to stipulate mitigation measures under consent conditions, in order to replace the loss of mature trees.

The RMA promotes the sustainable management of natural and physical resources "while (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems …" (section 5(2)). The presence of trees in cities is necessary to meet the reasonably foreseeable needs of

future generations and to safeguard the life-supporting capacity of air, water, soil and ecosystems.

Removing tree protection rules is also inconsistent with the principles and purposes of the RMA (Part II), sections 5, 6, 7, and 8 as currently enacted.

Protection of biodiversity and other special features in which trees have a role is also addressed in New Zealand Coastal Policy Statement 2010, the Hauraki Gulf Marine Park Act 200 and Waitakere Ranges Heritage Area Act 2008.

Native bush and mature trees within city boundaries are often the last remnants of a significant ecological and environmental heritage. Trees themselves provide substantial amenity values for communities as a whole, they contribute to property value, and urban communities in particular suffer when trees are removed. Aside from the well known benefits of providing a habitat for fauna, particularly native species; reducing storm water run-off and erosion; improving air and water quality; contributing to cliff stabilisation; providing protection from sun, wind, noise and visual intrusion; and their aesthetic value, trees are living things, taking many years to attain maturity within the communities which cherish them.

"Clause 69 replaces section 32 with new sections 32 and 32AA. New section 32 sets out the requirements for preparing and publishing evaluation reports. New section 32AA sets out the requirements for undertaking and publishing further evaluations…
New section 32 clarifies certain aspects of section 32 and adds further requirements, particularly concerning the anticipated economic effects of the proposed standard, statement, regulation, or plan being evaluated (the proposal)…"

The proposed changes to section 32 contain a requirement to provide a cost-benefit analysis of all proposed plan provisions, *"with particular attention being drawn to the opportunity costs for economic growth that are anticipated to be lost (but not those to be gained), as well as the opportunity costs for employment that are provided or reduced".* This serves to emphasise economic growth and employment at the expense of the environment and is, in our view, inappropriate in the context of the RMA. Environmental benefits can be difficult to measure but the purpose of the RMA must always be borne in mind.

While more comprehensive cost benefit analysis (including the economic value derived from heritage) would obviously better inform decision making, CTA has concerns about the level of complexity and costs that would arise from the requirement for economic forecasting.

If it is intended that all plan provisions are required to provide a cost-benefit analysis as proposed, this would seem to undermine the purpose and principles of the RMA and the implications of this need to be further evaluated.

CTA requests that the proposed changes to section 32 be deleted from this Bill and be reviewed fully at a later stage, as part of the planned further review of the RMA.

"Clause 90 amends section 88

• to require an application for a resource consent to include all information required by new Schedule 4 in accordance with that schedule (which now requires other information in addition to an assessment of environmental effects):
• to allow a consent authority 10 (up from 5) working days to determine that an application is incomplete."

CTA supports the proposed new Schedule 4's objective of ensuring the required information is provided at the of time application lodgements.

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(2) The Local Government (Auckland Transitional Provisions) Act 2010

"Clause 124 amends section 5, which empowers the making of transitional regulations for a limited period of time. New section 5(4) authorises the making of transitional regulations for the purposes of preparing the first Auckland combined planning document under new Part 4 of the Act (as inserted by clause 125). Under new section 5(6), the Minister is prohibited from recommending the making of regulations under new section 5(4) unless he or she is satisfied that the regulations are necessary or desirable for the development of the first Auckland combined plan and are consistent with the purposes of the Act as set out in section 3(2). New section 5(7) sets out the date on which any regulations made under these new provisions are revoked with no further legal effect."

CTA opposes this provision, which would allow regulations to add to or override Part 4 at any time without legislative amendment.

5(4)(b) provides that the Unitary Plan would not be required to give effect to any national policy statement issued under the RMA. We consider this to be inappropriate, considering the importance of national policy statements.

New section 129 authorises the Hearings Panel to direct that a conference of experts be held for the purpose of clarifying a matter or issue relating to the proposed plan or facilitating resolution of a matter or issue relating to the proposed plan. The Auckland Council may attend a conference under this section only if authorised to do so by the Hearings Panel.

CTA considers that restricting Council's attendance at a conference is inappropriate, as the participation of Council's planning experts at such a hearing would surely be useful. We request that this section be reworded to remove this restriction.

"New section 139 requires the Hearings Panel to make recommendations on the proposed plan after it has finished hearing submissions, including any recommended changes to the proposed plan. Recommendations are not required to be limited to the scope of the submissions and may also address any other matters relating to the proposed plan identified by the Panel or any other person during the hearing process. The Hearings Panel must provide the recommendations, in a report, to the Council within the time frame set out in new section 141 (see new section 139(3)). The report may also include matters relating to any consequential alterations necessary to the

proposed plan arising from submissions and any other matter that the Hearings Panel considers relevant to the proposed plan arising from submissions or otherwise."

CTA is concerned that section 139 does not limit the recommendations of the Hearings Panel to the scope of submissions on the Unitary Plan. Recommendations should be based on adequate evidence provided through the submissions process. Furthermore, in the event a recommendation not covered by the scope of submissions were accepted by Auckland Council, there would be no provision to appeal. CTA considers the lack of appeal rights would be inappropriate.

We therefore request this provision for recommendations not required to be limited to the scope of the submissions be deleted from the Bill.

"New section 140 sets out the matters that the Hearings Panel must have regard to, take account of, include, or ensure compliance with, in formulating its recommendations. This includes the spatial plan for Auckland prepared and adopted under section 79 of the Local Government (Auckland Council) Act 2009."

This new requirement that the Hearings Panel must "have regard to … the spatial plan for Auckland" does not reflect the Auckland community's understanding of the relationship between the spatial plan and the unitary plan. Auckland Council's website states, "The Auckland Unitary Plan will be a key tool in implementing the Auckland Plan, which sets the strategic direction of the region's growth over the next 30 years … [and will] reflect the high-level development strategy in the Auckland Plan".

Mayor Brown, in a meeting with the Civic Trust Auckland Board in March 2012 stated that that the Unitary Plan would "back up" or "underpin" the Spatial Plan. The Trust's understanding, and that of other heritage and other groups throughout Auckland, which, along with CTA have made substantial submissions on the spatial plan, is that the unitary plan would give effect to the spatial plan.

We request that there be included in the Bill recognition that the Auckland Unitary Plan gives effect to the Auckland (Spatial) Plan.

"New section 141 requires the Hearings Panel to provide its report under new section 139(3) to the Auckland Council no later than the date that is 50 working days before the expiry of 3 years from the date on which the Council has notified the proposed plan in accordance with new section 120, unless new section 142 applies. New section 142 authorises the Hearings Panel and the Auckland Council to request the Minister for the Environment to extend the deadline under new section 141 for up to 1 year."

Civic Trust Auckland is concerned that the Unitary Plan for Auckland will not have legal effect until the submissions process is concluded and the Hearing Panel's recommendations have been accepted by Auckland Council. Although there is a lengthy period in which to await the potential improvements of the Unitary Plan, an unacceptable and immediate risk to heritage would exist upon notification. We submit that measures to provide robust protection for historic heritage and the natural environment be given legal effect upon notification of the Unitary Plan.

"New section 149 specifies the rights of appeal of a submitter on the proposed plan, being those under new sections 150 and 152. These are the only appeal rights available."

CTA objects to the rights of appeal provided for in section 152 being only on questions of law.

"New section 155 requires the Minister for the Environment and the Minister of Conservation to establish a Hearings Panel. The Panel comprises a chairperson and 3 to 7 other members, all of whom the Ministers must appoint jointly after consulting the Auckland Council and the Independent Māori Statutory Board."

CTA is of the view that both local and central government should have a role in appointing the members of the Hearings Panel for Auckland's Unitary Plan, drafted in the interests of Auckland residents and ratepayers.

CTA supports a model that has a mix of elected councillors, because of their awareness of local knowledge and issues, and independent commissioners for their particular expertise.

We submit that at least one experienced / retired Environment Court judge be appointed to the Hearings Panel.

We submit that only those members of the Hearings Panel who were present during submissions on a particular issue are involved in the formulating of recommendations that relate to that issue.

We submit that more than one Hearing Panel be appointed, in order to assist in the timely delivery of Auckland's Unitary Plan.

Date of submission: 28 February 2013 Signature:

Secretary, Civic Trust Auckland