Allison Tindale
Address supplied
9 October 2013

Bryce Johnson
Chief Executive
Fish & Game
PO Box 13-141
Wellington 6440

Dear Bryce,

Grave concerns regarding proposed reforms to the Resource Management Act 1991

I am extremely concerned about the proposed changes to the Resource Management Act 1991, announced by the Minister for the Environment, Amy Adams in August 2013. I am a qualified town planner with over ten years of planning experience in Australia (NSW), England, Wales and more recently New Zealand.

As the New Zealand Government, Summary of Submissions on The Discussion Document titled *'Improving our Resource Management System'*[1] points out, over 13,277 written submissions were received, the vast majority of which disagreed with key aspects of the proposed changes. A list of reputable organisations and groups raising serious concerns is attached.

The brief summary of submissions produced by the Ministry does not do justice to the full range of responses received or the strength of feeling expressed by many parties. As a result, I have done my own research, to show just how strong concerns are.

Consistent themes in submissions are:

1. Very poor quality of public consultation
2. Poor quality of research and evidence to support proposals
3. Bias nature of information provided
4. Lack of detail on specific proposals

The above concerns are shared by a wide range of parties, including those which generally support and generally oppose the proposals.

Turning to concerns raised by submitters, these are considered to generally fall under the following headings.

A. Concern about harm to the natural environment
B. Concern about harm to the built environment
C. Concern about the workability of reforms proposed
D. Loss of local democracy and increased central government powers

I believe the full range of proposals needs to be reconsidered, as they are largely ill conceived and/or unjustified. I do not believe that they will result in the maintenance or enhancement of environmental protection or lead to better decision making on resource consents. Changes to resource management legislation continue to fail to put quality decision making as a higher priority, then fast and low cost approval of consents. Even then, there is a very real risk that proposed

[1] As I do not believe the proposed changes represent an improvement, this document is hereafter referred to as the RMA Discussion Document.

changes designed to increase 'efficiency[2]' (i.e. speed and cost) will really just result in changes to the time process (increasing upfront effort) and transference of costs from applicants to Councils and ultimately ratepayers. Considerable doubt is raised that any of the alleged benefits will result. I suspect the proposals will add to and not decrease, existing costs, confusion and bureaucracy over resource management.

I consider that the Resource Management Act 1991 (RMA) is far from perfect and needs to be reviewed. Of more concern is that national advice/guidance provided by successive central governments, has fallen far below the standard set by English, Welsh and Australian (State) Governments. The situation is compounded by a frequent lack of knowledge of significant land constraints, in terms of natural hazards (including slope failure/ground instability), landscape value, biodiversity value and historic heritage value (listed buildings and archaeological/cultural sites).

Contrary to comments made by environmental groups, the RMA does not contain environmental bottom-lines and the consent process already allows harm to the natural and built environment. The success of the planning system in achieving good outcomes in urban environments is almost entirely dependent on the quality of District Plans, produced by local Councils. District Plans are produced in an environment with incomplete information, which makes it difficult to plan for and predict all eventualities. The general public largely does not, and remains unlikely to engage in the plan change process. Many members of the public continue to unrealistically expect to be notified of resource consents in their neighbourhood.

The situation is not helped by the absence of any planning definition of 'minor effects', with some organisations describing effects that would be considered moderate to severe elsewhere, as 'minor'. I am of the opinion that the planning system is already failing to protect the natural environment. For several reasons, including a lack of identification of environmentally sensitive land, adverse effects are not fully measured. New Zealand appears to heavily rely on the use of public land ownership to protect sensitive sites. This approach will lose its effectiveness over time as public budgets are progressively slashed.

However the proposed changes by the National Government fail to identify and properly address key issues facing the NZ planning system. The changes have all the appearance of a sham environmental consenting system. In that it maintains the appearance of a consent process (for public appearance sake), whilst progressively removing the ability of decision makers to turn down development with harmful effects and opponents of proposals from delaying consent decisions through submissions or appeals. A system which is unable to refuse poor development is a toothless and fundamentally pointless system. As BusinessNZ has pointed out, if the Government truly considers the consent process to be the obstructive and wasteful process that they portray it as, it would make far more sense (and be more honest and less financially costly) to significantly reduce the need for any type of consent/approval whatsoever.

Recent changes to section 6 of the RMA to include 'historic heritage' as a matter of national importance do not appear to have been effective in significantly improving the management of the country's historic resources, many of which remain under threat. It is likewise unlikely that merely identifying natural hazards as a section 6 matter, would lead to effective management of this complex issue. Especially as the most effective measures to reduce natural hazard risks (avoidance) have significant economic costs.

[2] Measures which decrease the time taken in reaching a harmful outcome , do not represent an efficiency gain.

Intentions to improve Maori participation in planning decisions, whilst admirable, would require significant financial resources to have any real effect. Furthermore the issue of water quality is intractably linked with future drainage infrastructure provision, as shortfalls in drainage infrastructure and general absence of active stormwater management, increasingly threaten the quality of water bodies. Measures which increase the speed of infrastructure approvals, could simultaneously reduce the opportunity for Maori participation in the protection of water quality.

I have put together extracts of documents from various reputable organisations, which elaborate on the concerns identified in points 1-4 and A-D above. These are taken from submissions on the RMA Discussion Document, unless otherwise identified. I have added some comments in square brackets [] to improve the readability of some quotes.

I would greatly appreciate if you would take the effort to read these detailed comments and use your connections to promote a greater understanding of potential impacts arising from the proposed changes. Concerns raised by environmental groups such as Fish & Game have been successful in obtaining some press coverage, although little attention has been given to comments by qualified planning professionals/associations that the proposed efficiency measures are unlikely to work in the intended manner. I would be happy to clarify any information.

Yours sincerely,

Allison Tindale

1. Poor Public Consultation.

A 5 week public consultation period for major reforms to the principal planning legislation is pathetic. This timing would have hindered the ability of Council's to get Elected Councillor endorsement of submissions in time. It is ridiculous that a longer period of consultation was given to Council's to comment on the proposed National Monitoring Strategy[3].

This view is well expressed in the following statements:

"Such a short time frame [for lodging submissions], added to a lack of education and public consultation prior to opening submissions is a denial of the spirit of the Select Committee process which seeks to give the public an opportunity to contribute to key legislation which affects them".
The Trustees of Physicians and Scientists for Global Responsibility

"The proposed changes…represent the most significant changes to the RMA since it was enacted in 1991…the very tight consultation period is of concern…"
Wellington City Council[4]

"NZPI members are therefore concerned by the all too short timeframes for submitting on such an important suite of proposals…many will not have the time or opportunity to engage and provide comment."
New Zealand Planning Institute

BusinessNZ commented that the short consultation period *"demonstrates an almost complete disregard for the views of submitters".*

2. Poor quality of Research and Evidence to support proposals

Information released by the Ministry for the Environment is considered to be of extremely poor quality and damaging to the reputation of the Ministry for the Environment (MfE). They have largely relied on one Government commissioned report and ignored the findings of early technical advisory group reports and the Ministry for Environment's 2005 report on the 'Value of Urban Design'. I agree with the comments of Forest and Bird in their complaint letter to the State Services Commissioner in April 2013 that:

"The quality of the paper [RMA Discussion Document] is so poor that it breaches State Services Commission Standards of Integrity and Conduct, in particular, the undertakings to:

- *provide robust and unbiased advice; and*
- *operate in a spirit of service to the community, having regard to the public good…*

[3] The proposed National Monitoring System is considered to be another ill conceived, ambitious and unnecessary project, that will not result in an improvement in planning outcomes. Detailed performance management which consistently fails to examine the quality of resource consent decisions and plan policies is an expensive waste of time.

[4] Draft Council Officer Submission from Wellington City Council on the RMA Discussion Document, reported to the Strategy and Policy Committee of Wellington City Council 21 March 2013.

The flaws in the process and policy analysis, in our view, are such that it is really not possible to put weight on any of the paper's recommendations. Everyone's time has been wasted on a process that has no credibility…"

The Summary of Submissions on the RMA Discussion Document prepared by the Ministry for the Environment, outlines that general comments raised by submitters included:

- *"issues and proposal set out in the discussion document do not appear to be well researched or developed and little evidence is provided to support them.*
- *The timeframe for consultation and submission was very short…"*

The summary of submissions makes clear that these concerns *"were evident irrespective of the submitter's position regarding the intent of the discussion document."*

The vast majority of proforma and unique submissions raised at least partial concern that the correct issues with the RMA had been identified. These concerns are further highlighted in the following comments:

"*The case for the proposed changes, either singly or in combination is not compellingly demonstrated"*[5].
New Zealand Institute of Economic Research

"The proposals lack the necessary and proven evidential basis on which such a significant degradation in local representation ought to be based…"

"We are concerned that this proposal has not been clearly thought through and overstates the case for change. Our legal advice is that the description of the existing RMA provisions and associated case law is inaccurate and this is surprising. Accordingly, we find there is a serious question as to whether the perceived problem actually exists.

…We do not think the scale of the 'problem' justifies this solution".
Local Government New Zealand

"*These changes are unsupported by rigorous policy analysis and are largely unnecessary. They are also likely to lead to greater uncertainty and increased costs, and so will fail to achieve the central stated objective of the reforms. The projected changes are a step backwards for environmental protection in New Zealand."*
Geoffrey Palmer[6]

"We do not agree with the assertion that the proposed changes are consistent with the court's [Environment Court] current approach…In our view, the changes will actually represent a significant departure from what currently occurs. Simply put, existing section 6 matters will be 'downgraded' in relation to the new matters to be included in the provision…We think that the courts may well determine that any matters deleted from Part 2 should be given less weight in the future...Deleting matters from Part 2 will inevitably impact on the way they are dealt with."
DLA Phillips Fox Lawyers[7]

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[5] New Zealand Institute of Economic Research Report dated 2 April 2013, attached to Local Government New Zealand's (LGNZ) submission on the RMA Discussion Document.
[6] Sir Geoffrey Palmer, Queens Counsel, Memorandum to Fish & Game New Zealand on the matter of the Government Reforms to the Resource management Act 1991, on matters of the Proposed Changes to Part 2 of the Act, May 2013
[7] DLA Phillip Fox, Letter to Environment Defence Society, August 2013

"The Council is also concerned that a number of assumptions contained in the discussion paper are based on incorrect information about current RMA practice…the changes are piecemeal…with a poor understanding of the pressures at work. A more fundamental review of the RMA is required to enable a wider, more strategic approach…

Overall there is a lack of clarity, a lack of factual base to understand the issues, a poor explanation of what is proposed and a somewhat confusing explanation of how it would be implemented".
Wellington City Council

"Serious evidence about the inadequacy of the RMA outcomes is not provided…there is not a sound basis for removing the important effects of the current environmental effects legislation…"
Wellington Civic Trust

"[We agree] with the Environmental NGOs that the report of the Technical Advisory Group ('TAG') is fundamentally flawed…The case has not been made for wholesale disruption of the existing system".
The New Zealand Council of Trade Unions

"The focus of the Discussion Paper appears to be almost entirely on whether the changes will make the RMA cheaper and more efficient for applicants, with scant consideration of whether environmental integrity is achieved or maintained."

"We consider that there are significant costs and risks attached to a number of proposals; nor are they likely to address the problems identified…"
Forest and Bird

"We wonder whether this poor targeting of the reform process may be partly caused by inadequate analysis…Initiatives to cut delays may cause new problems unless the benefits of RM processes are clearly acknowledged and understood…The emphasis of this reform seems to be on further cutting public input, rather than on increasing its effectiveness…The focus in reform should be on making hearing processes efficient and effective, not on further reducing community involvement. People do not make submissions unless they have real concerns."
New Zealand Conservation Authority

"We consider that better use of the current legislation would address many of the issues raised."

"We find the assertions regarding housing affordability to be offensively simplistic…
The Architectural Centre Inc.

"A number of members are concerned that consideration has not been given to the feedback received on sections 6 and 7 [of the RMA] from experts in the planning and resource management field. They note that there appears to be an overreliance on TAG material and expertise involved in the TAG report, when there was much discontent from equally qualified experts around the country. NZPI members also question the reasoning given for the deletion of some matters…The inclusion of specific principles on quality would appear to be fundamental to achieve good environmental outcomes, especially in urban planning".

"*…This is another example where the evidence to support this is lacking".*
New Zealand Planning Institute

"We find there is insufficient evidence to support all the changes that have been suggested…Management of resources including development of the built environment cannot solely

be driven by financial concerns…[We] are not convinced the problems are widespread…The emphasis in the discussion document and the two previous amendment/proposals on shortening timeframes may lead to poor decisions being taken or shortcuts that undercut potential to achieve the best outcomes for all."
New Zealand Institute of Architects

"The absence of careful consideration of the other elements…In failing to look more broadly for both the nature of the problems and solutions…will severely hinder the ability of the package proposed to deliver real and enduring economic and environmental gains".
BusinessNZ

In addition to the open letter to the Ministry for the Environment dated 3 September 2012 from several Environmental Non-Government Organisations (Environmental Defence Society, Forest and Bird, Fish and Game, Ecologic, Greenpeace New Zealand and WWF New Zealand). This letter states:

"There is no problem with the purpose and principles section of the RMA, and no justification for most the changes recommended…The recommendations will lead to lower environmental standards and place New Zealand well behind international good practice…Removing the directive terms 'protect', 'preserve', 'maintain' and 'enhance' will not decrease uncertainty but will lead to the degradation of highly valued environmental assets".

The Environment Defence Society pointed out in its recent media release of 10 August 2013 that the Environmental Minister has largely relied on information *"widely pilloried for its lack of problem definition and reliance on unsubstantiated anecdote. It has been derided amongst the resource management professions for its lack of intellectual rigour…[and] has been widely criticised by experts, environmental NGO's and business groups…".*

3. Bias nature of information provided

Overall commentary in the Discussion Document ignores:

- Councils in NZ compare favourably with Councils in NSW, England and Wales in relation to time taken to determine resource consents/planning applications.
- Resource consents in NZ are typically subject to less regulation than they are in NSW, England and Wales.
- There is typically greater statutory protection of historic heritage and biodiversity overseas in Australia, Britain and Europe.
- In 2010/11 95% of resource consents were processed within statutory time targets, including 95% of non-notified consents, 86% of limited notified consents and 87% of public notified consents[8].
- In 2010/2011 89% of resource consents were processed on a non-notified basis within 20 working days.
- In comparison, the average planning consent time in NSW is 71 days, with a lower median time of 45 working days[9] ;

[8] Ministry for the Environment, Resource Management Act: Two-Yearly Survey of Local Authorities 2010/2011, published September 2011 http://www.mfe.govt.nz/publications/rma/annual-survey/2010-2011/index.html

- 58% of all planning consents for 'major' developments[10] in England were processed within 13 weeks and 68% of all minor development decided within 8 weeks[11].
- 0.56% of all resource consents are declined in NZ, in comparison with 12% in England[12].
- 94% of all resource consents in NZ in 2010/2011 were processed without notification, with this figure rising to 96% for subdivision and land use consents[13] (the principle forms of consent in urban environments).
- Only 3.7% of resource consents were publicly notified in New Zealand, with a further 2.32% with limited notification.
- In comparison, all planning applications in England and Wales are notified and 77% of applications in NSW[14].

The failure to provide a balanced consideration of the existing situation is reflected in the following comments on the RMA Reform.

"*Pigeon-holing councils as being anti-development is patently incorrect. This particular section of the discussion document is very vague and lacks any credible evidential basis".*
Local Government New Zealand

The document has some aspects to it which undermine its credibility…the consultation document conveys strong negativity towards the RMA and Resource Consent process, this does not reflect the case for many participating in the process, and it is important to recognise the good that also comes out of the process."
The Architectural Centre Inc.

"The Government needs to be honest about whether it believes it is every acceptable to say no to development. If the aim is to convert a 0.56 percent declinature rate into a zero percent declination rate, the paper should say so".
Forest & Bird

"Chapter 1 makes a number of claims that we think are not warranted and are not supported by facts, only the opinion of the so-called Technical Advisory Group which has few genuine experts…

The methodology and epistemology of the document is too often reliant on asserts unsupported by facts…or single cases carefully choose to support the position the Ministers want…It amounts to policy by anecdote, rather than careful analysis of the extent to which perceived problems are

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[9] NSW Government Local Development Performance Monitoring 2011-2012 http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=u6oLbuYPeiA%3d&tabid=74&language=en-US

[10] Major development in England and Wales is defined as residential development for 10+ units or commercial development providing more than 1,000m^2 floorspace. This type of development is likely to be treated as minor development in NZ.

[11] Table P124 District Planning Authorities[1]: Planning decisions by speed, performance agreements and type of development England, Year ending March 2013 (Year ending March 2012) https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics

[12] These figures are not directly comparable, as more development in England requires consent than in NZ. Statistic sourced from the English Department of Communities and Local Government Table 120 January to March 2013 https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics

[13] Ministry for the Environment Ibid.

[14] NSW Government Ibid.

widespread…we find the need for the changes to be overstated and/or often mis-analysed. There is a strong bias to the interests of business…The Ministry for the Environment has failed in its role as a promoter of good environmental outcomes and must analyse the outcomes of resource management decisions rather than focus on the speed of decisions."

"This is simply a power grab… 'streamlining' has come to mean under the government the removal of processes for affected parties and the elevation of economic interests over all others…the imposition of central government agendas to override local democratic and due processes…The raft of changes proposed are complicated and in some cases are absurdly prejudicial to submitters and to justice."
Environment and Conservation Organisations of New Zealand Inc.

"The discussion document does not identify the positive aspects of the RMA…the document is too focused on the premise that the RMA impedes development…The discussion document neither outlines the successes of the RMA, nor includes date to show how, or if, environmental bottom-lines have been achieved. They [members] also express concern that the discussion document overstates the issues with the RMA by relying on anecdotal practice examples which may be the exception rather than the norm…Members have also cited the prevalence of out of date data and case studies with inaccuracies…as factors which undermine the credibility of the evidence and subsequent analysis."
New Zealand Planning Institute

"The quality of policy analysis in the discussion document is extremely poor, both in terms of objectively defining the problem, and analysing options for addressing it. It appears to rely heavily on anecdote and prejudice, not research…It doesn't address what could be done by more fully and effectively utilising the tools that already exist under legislation."
Forest and Bird[15]

4. Lack of detail on specific proposals

Insufficient detail is provided about the true nature of changes and this is reflected in submissions which provide conditional support. In particular, the national planning template will be developed within 2 years of the enactment of the Resource Management 2013 Reform Bill, when this template should form part of the proposed Bill and be subject to public consultation.

Proposed changes to the NSW Environment and Planning Assessment Act 1979 outlined in the NSW Government White Paper 2013, provide an indication of how great the scope for changes under a national template could be.

[15] Forest and Bird Campaign Text for Public Submissions on the RMA Discussion Document

CONCERNS RAISED BY SUBMITTERS

A. Concern regarding damage to the natural environment

The Summary of Submissions on the RMA Discussion Document prepared by the Ministry for the Environment, identifies Non-Government Organisations, Environmental Groups and Community Groups as strongly opposed to the proposed changes to Section 6 and 7 [principles] of the RMA. *"Predominantly based on the view that these changes represent a substantial shift in the purpose of the RMA away from environmental protection and sustainable management and towards unsustainable economic development".*

Almost every (99%) of proforma submissions and at least 81% of unique submissions raised some concern over the proposed changes to the principles contained in section 6 and 7 of the RMA. The sheer lack of public agreement with the proposals and strength of concerns is reflected in the following comments:

"The proposed changes to Part 2 will significantly and seriously undermine environmental protection under the RMA. These changes are largely unnecessary and will lead to greater uncertainty and cost in the application and interpretation of the RMA".

"Changes will significantly and seriously weaken the ability of the RMA to protect the natural environment and its recreational enjoyment by all New Zealanders…central environmental factors, such as amenity values, the intrinsic value of ecosystems and the maintenance and enhancement of the quality of the natural environment will no longer have to be considered at all.

The environmental principles that remain will be significantly weakened…They will inevitably limit the analysis of environmental impacts when assessing proposals against the purpose of the Act…"
Sir Geoffrey Palmer[16]

"O*verall, the changes proposed to sections 6 and 7 will weaken environmental protections and undermine the role of the Resource Management Act."*
Jan Wright, Parliamentary Commissioner for the Environment

Jan Wright added in her submission on the recently approved Resource Management Reform Bill that the NZ Government "*seems to suggest that the environment is the enemy of the economy".*

"*It is inevitable that if passed, the new law will significantly affect environmental outcomes, and those outcomes will be weakened…*

It is not correct to say that core environmental protections have been maintained in this Bill. The Government should be honest about its intention to change the outcome of decisions further towards prioritisation of economic interests…

This inconsistent approach to the inclusion and exclusion of principles is heavily weighted towards development-focused principles, and against environmentally-focused principles".
Forest and Bird

[16] Sir Geoffrey Palmer, Ibid.

"Overall we believe that the changes represent an attack on New Zealand's environmental protections and should be discarded". The proposed changes to the principle section of the RMA are *"a major backward step in relation to environmental protection".*
New Zealand Council of Trade Unions

"Many components of the proposed changes to the RMA weaken this country's environmental protection laws and restrict the ability of councils and communities to participate in issues affecting their own place of residence and the use of their natural resources. The changes suggest Government opposes sustainability and local democracy, virtual icons in New Zealand culture".
The Trustees of Physicians and Scientists for Global Responsibility

"We are also concerned that the consultation document appears to promote the mitigation of negative effects, rather than the preservation or protection of the environment…

We oppose the collapsing of the current s6 and s7…the proposal would replace the existing hierarchy into an opposition between environmental protection and economic benefits. We do not believe this to be appropriate".
The Architectural Centre Inc.

"*We oppose the proposals in the document to demote the significance of environmental considerations and to remove the hierarchy of matters in sections 6 and 7…"*

"We strongly oppose the removal of the principles 7(aa), 7(c), 7(d), 7(f) and 7(g) [of the RMA]. Each of these are strongly valued and are important to case law. Their proposed removal is an outrage…This move is the move of philistines…the removal of the principles listed above are bound to be read as a decision by Parliament that these matters do not matter…The clear aim of Ministers is to remove the opportunity to have environmental protection considered to be a necessary part of doing activities…this is wrong in ethics…"
Environment and Conservation Organisations of New Zealand Inc.

"[The] virtual absence of environmental standards … means there is a major hole in the Act's ability to deliver on its overall purpose of promoting the sustainable management of natural and physical resources."
Sustainability Council of New Zealand

"Some NZPI members are concerned that the changes have the potential to significantly weaken current national environmental legislation, leading to poor environmental outcomes owing to the trade-off between protection the environment and enabling economic growth. They assert that increased focus on improving economic growth and efficiency should not be at the efficiency of the environment."
New Zealand Planning Institute

"I oppose the RMA becoming an 'economic development Act' which will facilitate the Government's 'growth at any cost agenda'. The rewriting of the matters of national importance in Part 2 will see the importance of protecting the environment give way to more pollution and the destruction of natural beauty in our neighbourhoods".
Greenpeace[17]

"The proposed changes to Part 2 of the RMA will lower environmental standards across New Zealand. They replace environmental bottom-lines with an un-prioritised menu of conflicting

[17] Greenpeace Campaign Text for Submitters commenting on the RMA Discussion Document

environmental and development matters. That changes the thrust to the Act so that environmental values can be traded off with economic ones. At last week's EDC Conference, we learned that many of our environmental assets, such as biodiversity and freshwater, are already in decline. These changes will only make things worse."
Environment Defence Society[18]

"The proposals will considerably weaken the status of section 6 matters relating to the environment as they will be 'downgraded' by introducing new matters relating to development which are proposed to be 'upgraded'…This will lead to uncertainty, unclear jurisprudence and ad-hoc decision making".
Environment Defence Society[19]

"The existing matters in section 6 would be weakened by expanding the provision to include some of the section 7 matters (and also other matters not currently listed anywhere in Part 2)…

At a superficial level the same obligation to 'recognise and provide for' the existing section 6 matters will apply. However, the reality is that not all section 6 matters will be able to be 'provided for' in every case. The new list incorporates matters of a fundamentally different nature to existing section 6 matters, which will often conflict with them…"
DLA Phillips Fox Lawyers[20]

B. Concern regarding damage to the built environment

The Summary of Submissions on the RMA Discussion Document prepared by the Ministry for the Environment identifies:

"Particular concern was raised regarding the deletion of the 'amenity values' matter…Some Council's and planning practitioners, while indicating overall opposition to the deletions, were particularly strongly opposed to the deletion of 'amenity values' and 'quality of the environment' because they considered these were of particular importance in justifying may of the decisions made in making plans."

The importance of 'amenity values' is explained well in the open letter to the Ministry for the Environment dated 3 September 2012 from Environmental Defence Society, Forest and Bird, Fish and Game, Ecologic, Greenpeace New Zealand and WWF New Zealand. This letter states:

"'Amenity values' are the characteristics that influence and enhance people's appreciation of a particular area and are derived from the pleasantness, aesthetic coherence and cultural and recreational attributes of an area. Amenity values can be affected by, inter alia, noise, dust, smoke, smell, glare, light, shading, traffic, appearance, intensity and development. The concept is essential to the 'quality of life' and 'sense of place' which is so important in respect of the places that New Zealanders live, work and recreate in. Protecting amenity values is important in urban settings where densification is occurring in order to create more sustainable urban forms as well as rural areas where much recreation occurs".

[18] Environmental Defence Society Media Release 10 August 2013 'Government's announcement on RMA reforms are troubling'.
[19] Environment Defence Society, Position Paper on RMA Reforms, September 2013
[20] DLA Phillip Fox, letter to the Environment Defence Society, September 2013

"With removal of Section 7(c) amenity values, the importance to New Zealanders quality of living in urban environments appears to be diluted under suggested changes".
The Resource Management Law Association

"We find that the proposed changes to the RMA go against key urban design principles."
Department of Public Health, University of Otago

"HPA is concerned at what it sees as an attempt to weaken controls over historic heritage…

HPA submits that the changes proposed to sections 6 and 7 [of the RMA] in the discussion document together with the proposed changes in the Resource Management Reform Bill [now approved]…will exacerbate the demise of our historic heritage".
Historic Places Aotearoa

"The merging of Sections 6 and 7 of the current RMA will lead to the depreciation of the value of protecting and managing the natural and cultural heritage of New Zealand…We can only see the move from 'protection of historic heritage' to historic heritage as in principle having 'importance and value' as retrograde".
New Zealand Archaeological Association Inc

"The Council is concern that this change of wording [for historic heritage] significantly weakens the legislative mandate providing for safeguarding of New Zealand's historic heritage…The Council has concerns that the Council's position on providing for good use and management of historic heritage will be undermined…Weakening the legislative mandate to provide for protection of historic heritage would be a significant loss for Wellington City Council's ability to provide for maintenance of the highly valued heritage of the city…"

"At present, sections 7c [maintenance and enhancement of amenity values] and 7f [maintenance and enhancement of the quality of the environment] are the only matters in the RMA which can be interpreted as directly relating to good planning and urban design outcomes…The Council would be concerned if provisions to manage infill and protect the quality and character of our highly valued suburbs could no longer be protected…"
Wellington City Council

"Some members do not support the deletion of section 7(c) 'the maintenance and enhancement of amenity values', as this is a key factor in managing the built environment. It is not covered by the other principles, and is the basis for many planning assessments and affects the liveability of communities…

A number of members…believe that [existing] section 7 matters are important, and that the broad nature of section 5 could lead to these matters being easily overlooked or undervalued in the judgement process. A number of NZPI members do not consider the suggested new section 7 to be necessary or useful, and do not support its inclusion."
New Zealand Planning Institute

"We consider that the proposed changes place too much weight in favour of economic values over social values and seek the retention of amenity values currently in s.7 of the Act…There is little point in developing new places to live if the overriding objective of the RMA does not require the provision of amenity for the occupants".
New Zealand Institute of Surveyors

"Another risk arises from the omission of any matters specific to the pleasantness of urban environments. This is currently dealt with under s7, in terms of the requirement to have particular regard to 'amenity values'."
DLA Phillip Fox Lawyers[21]

"It is essential that local authorities determine how to provide land supply according to the wishes of their community". The Environment Defence Society raises concern that proposals will be used to justify environmentally and economically unsustainable urban sprawl, which is the antithesis of high quality urban form and sustainable management.
Environment Defence Society[22]

C. *Concern about the workability of reforms proposed to improve efficiency and effectiveness*

Local Councils and planning practitioners are best placed to judge the workability of the proposed reforms. It is of considerable concern that these groups have raised serious concerns regarding their workability. As several parties have identified, successful implementation would depend on the capability of Councils to handle higher workloads, in the absence of any additional funding identified. No real consideration has been given to whether this capability exists or the costs of building this capacity. The proposed 10-day consents, approved technical breaches and fixed fees could be implemented in such a way that nullifies any benefit from their introduction. Even if these initiatives result in some benefits, benefits should be balanced against cost considerations, to prove that they represent value for money. I am of the view that the high cost of implementing the changes, could be better spent to achieve better quality planning outcomes.

The Summary of Submissions on the RMA Discussion Document prepared by the Ministry for the Environment identifies, that strong concern was raised over the five-year timeframe for the development of the template plan as too short, and that specifying types of applications as being processed without notification was unjustified. Serious concerns regarding the workability of initiatives are highlighted in the following comments:

"[We have] *very real concerns about the concept of the 'single resource management plan' as conceived in the discussion document. We do not think it is workable as conceptualised and the practical implementation will require significant resources by Councils".*
Local Government New Zealand

"We do not think the timeframes proposed are workable – particularly given the significant requirements to amend council plans to reflect the new principles of the Act…We have already advised that some of the proposed changes will not deliver the outcomes intended".
Local Government New Zealand[23]

"There will be a significant transitional cost (e.g. litigation, redrafting statutory documents)…

The Law Society questions whether that significant change…will be achieved by the proposed reforms. One of the biggest concerns with this change is the removal of the hierarchy that has existed since the introduction of the RMA, and the watering down of principles which were previously

[21] Source: DLA Phillips Fox Lawyers, letter to the Environmental Defence Society. September 2013
[22] Environment Defence Society, Position Paper on RMA Reforms, September 2013
[23] Local Government New Zealand, Media Release 12 August 2013 'Work required to ensure RMA proposals achieve intended result".

considered to be 'matters of national importance'. These changes are likely to create considerable uncertainty, and will not necessarily result in more proactive planning."
Resource Management Law Association

"*The very dramatic amendments that are proposed, will result in considerable uncertainty and cost for all parties, including councils, the general public and developers…The requirement to adopt a new single plan within 5 years appears completely unworkable".*
Forest and Bird

"The discussion document does not address the complexity and costs of transitioning…"

"Significant plan development costs would be imposed on the local government sector (and the community) which will effectively prioritise the allocation of resources to the standardisation of plans ahead of substantive reviews of planning provisions to improve planning outcomes, or to address emerging issues".

"The Ministry for the Environment should be incentivising and assisting Councils…rather than imposing arbitrary legislation requirements on Councils which do not necessarily promote better practice and will add significant compliance costs on rate players and plan users".

"While the 10 working-day timeframe may appear to be a solution to reducing processing times and costs to applicants, it is unlikely to make a meaningful difference, relative to the costs/difficulties of establishing new processing systems".

"Council does not support a fixed cost [for resource consents] as additional time spent on applications above the fixed cost would be subsidised by the ratepayer…Less well prepared applications generally taking longer to process and a fixed charge would result in this type of application being subsidised at the cost of well preparation applications".
Wellington City Council[24]

"The Authority does not support the idea of having one plan per region. The proposal does not appear to be addressing a real problem, or to be particularly workable".
New Zealand Conservation Authority

"*We strongly disagree with this proposal to introduce the idea of 'very nearly permitted'…*

The Architectural Centre also warns against the apparent aim to increase prescriptive regulation in District or Unitary Plans. While this will remove ambiguity it will also mean that the District or Unitary Plans are less flexible in terms of potential ways to achieve good design outcomes…which sites outside the conventional thinking usually described for prescriptive regulation".
The Architectural Centre Inc.

"Local variations of effects on people and the environment may warrant different local approaches."

"We foresee this provision [approved exemption for technical or minor rule breaches] being used and abused with 'technical' and 'minor' subject to inflation and expansion of meaning…ECO opposes this provision which will invite people to 'try it on'."
Environment and Conservation Organisations of New Zealand Inc.

[24] Wellington City Council, Ibid.

"NZPI members regard the proposals as a very ambitious package of reforms that will demand significant resources from MfE and local councils to implement."

"The proposed principles do not reflect the range of matters that need to be considered in dealing with urban environments."

"NZPI members have concerns that the transitional period for many of these proposals will be substantial, leading to a long period of uncertainty for all, potentially increased costs, and uncertain outcomes…"

"*A number of NZPI members have concerns that while a standard form of plan could theoretically achieve efficiencies and time/cost savings, there would have to be a considerable amount of work undertaken to develop such an approach and to implement it throughout the country…Some members assert that the cost involved in developing this method would be more costly than the current approach…*

Some NZPI members have concerns that the proposal to enable preparation of a single resource management plan is particularly ambitious, and may complicate the process, e.g. require significant resources…"

The new 10 working day time limit for some types of consent is described as *"unlikely to result in any significant efficiency".*

"NZPI members do not wholly support this proposed change [for approved exemptions for some rule breaches] *because it has the potential to undermine the role of rules as providing environmental bottom lines, and erode the integrity of plans and established rules developed through a public process…They suggest that the RMA will need to explicitly provide councils with a cost recovery mechanism for handling requests for such exemptions…if these items are not specified, councils will have a propensity to apply a quasi-consent process that will negate the benefit sought by the exemption facility."*
New Zealand Planning Institute

The New Zealand Planning Institute recently confirmed its concerns that the proposed changes may not deliver the outcomes promised in its Media Release of 23 August 2013.

"Public participation in the development process can lead to more robust decision-making and ultimately improved quality of the built environment…Limiting submissions to only those matters triggering the need for resource consent disregards the concept that planning is holistic in nature. There is a danger that some people or issues will be sidelined in this effort to streamline resource consenting."

The New Zealand Institute of Architects does not foresee "*any actual savings of time"* from the proposed 10 working day time limit for consents. They also raise the possibility that fixed costs will financially penalise better quality applications.
New Zealand Institute of Architects

"The current consent timeframe of 20 working days is not an issue…A 10 day time frame for straight forward consents would be welcome but not imperative…The bigger issue is ensuring Councils are appropriately resourced…."
New Zealand Institute of Surveyors

"*While BusinessNZ considers the proposal for a shorter consenting timeframe seems instinctively appealing, it is not without its risks…BusinessNZ considers that simply mandating a shorter consenting time is not the right solution"...* BusinessNZ also identify the need for central government to fund the building of capability within local authorities.
BusinessNZ

"We understand that the intention of the reforms is to create more certainty by giving clear direction, including on what is nationally important. The proposals do not achieve this outcome. Merging sections 6 and 7 and adding other matters will simply create a longer 'shopping list' of principles that decision-makers can choose from. The reforms will perpetuate the uncertainty and subjectivity inherent in the current 'overall broad judgement approach…which has been developed and applied by the Environment and High Courts…That approach provides decision makers with an extremely broad discretion due to the lack of any clear tests or bottom lines, and is at odds with the original intent of Parliament".

"The new requirement to only recognise and provide for 'specified' outstanding natural features and landscapes carries a significant risk, because the Government has not made anybody responsible for identifying or mapping them. Past experience shows that local authorities are often reluctant to take on that responsibility given the costs involved".

"The proposed requirement to 'use best endeavours to ensure timely, efficient and cost-effective resource management processes' is also significant. It has the potential to discourage the uptake of collaborative processes and efforts to enhance Māori and other stakeholder participation".

"Of even more concern is the proposed subsection [7](d)…That new test…has the potential to result in suboptimal planning…Instead of adopting the 'best' approach local authorities will be focused on what is reasonably required…Including process requirements in section 7 will create more heat than light…"
DLA Phillips Fox Lawyers[25]

"EDS suggests that the [proposed national planning] *template needs to be developed through a more robust process than that suggested."*

"EDS also considers that a 'one stop hearing' will not result in the cost and time saving projected by the Government…There is no 'front end gain' to balance out the 'back end loss' in public participating rights in this process."

"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 interpretation challenges until new case law emerges which may take a decade. Implementation costs, we calculate, are likely to be in the range of $500 million to $1 Billion…"

"EDS has some concerns regarding the impact of this proposal [10-day consent process] *on quality decision making…"* The process exemption process is described as creating uncertainty and significant judicial review risk for local authorities, whilst having minimal benefit.

"The requirement to have regard to cost effective processes should not come at the cost of robust decision-making processes."

[25] Source: DLA Phillips Fox, Letter to Environmental Defence Society dated 2 September 2013 on 'Implications of Proposed Changes to Part 2 of the RMA'.

In regards to the proposed allowance of subdivision unless expressly restricted, EDS comment that *"it is very hard to see how it might work in practice and what the problem is that is being addressed. The compliance costs will be considerable for very unclear benefits. It seems a statement of far-right political ideology rather than a sensible law change".*
Environment Defence Society[26]

Poor options analysis, lack of quality engagement with local government and lack of implementation analysis (in terms of rigour and content) were identified as key failures of the central government identified in the Productivity Commission Final Report on 'Towards Better Local Regulation' released in May 2013[27]. Of considerable worry is that this report identifies that approximately two-thirds of Regulation Impact Statements (RIS), fail to meet the Treasury's quality assurance requirements. Bills with deficit RISs include the Heritage New Zealand Pouhere Taonga Bill (2011), National Policy Statement for Renewable Electricity Generation (2011) and Resource Management (Simplification and Streamlining) Amendment Bill (2009)[28]. I do not expect the RIS for the next RMA Reform Bill to perform any better than these.

D. *Loss of local democracy and increased central government powers*

The suggested changes to the RMA represent just as a great of threat to local democracy, as forced Council amalgamations. The suggested changes share several similarities to proposed changes to the NSW Environment and Planning Assessment Act 1979 announced in the White Paper. In this document, the NSW Government has openly admitted an intention to establish:

- Housing and employment targets set at a regional or Council level (by either central or regional government agencies).
- Ability of central government and new regional bodies to directly rezone land and draft planning provisions for growth areas (which cannot be reversed by Local Councils).
- Use of central government or regional body approval of 'Strategic Compatibility Certificates' as a method for large developers to override local planning provisions.
- State produced model development guides, where the NSW government outlines the assessment approach and matters for consideration for particular types of activities.
- State wide list of development which need to be assessed without notification and limitations on Council officer's discretion.

The proposed reforms in NZ are unclear about the level of force the MfE (or other government agencies) are willing to take to ensure Councils comply with new national directions for urban growth. The reforms 'open the door' for considerably greater central government dictation of outcomes for local government, and could take the RMA down the same path.

TBD Advisory commented "*The risk that local interests get overlooked increases the larger and more remote the local authority become"* [29] in their report on benefits and disbenefits arising from Council

[26] Environmental Defence Society, Position Paper on RMA Reforms, September 2013
[27] Productivity Commission Final Report 'Towards Better Local Regulation' May 2013, Overview, Finding 4.2 and Key points for Chapter 5
[28] Source: Productivity Commission Ibid. pages 70-74
[29] TDB Advisory, 'Government Options for the Wellington and Wairarapa Regions: An Economic and Financial Assessment' August 2013

amalgamations. The same risk applies to planning policies decisions made at a more centralised level of government.

The summary of submissions on the RMA Discussion Document released by the Ministry for the Environment, identifies that those opposing or concerned with proposed changes, commented that "*many of the changes, especially related to ministerial intervention and new processes for submissions and appeals to plans and consents, run counter to the principles of participatory democracy and subsidiary governance".*

A shift in decision making between local and central government is emphasised in the following comments:

"The proposals would significantly shift the balance of power between national and local government, taking power away from Local Government and allowing central government much more latitude to delve into local affairs…We recommend the perceived need for central government oversight of local government be advanced with more sophistication…"
Employers and Manufacturers Association

"*Some of the discussion document's proposals directly undermine local democracy…limiting the ability of communities to exercise their rights should not be lightly removed…Yet again, this raises fundamental issues of local democracy and should not lightly be introduced without a clear evidential basis to support the problem".*
Local Government New Zealand

"A number of changes will substantially limit the ability of submitters to put forward evidences as to the environmental impacts of proposals and for that evidence to be properly considered at all levels of the decision making process.

Proposals for greater central government intervention in planning and consent processes will create a shift from an 'effects-based' management approach to an 'activity-directed' approach, inconsistent with the central principles of the Act."
Sir Geoffrey Palmer

"The RMLA has some concern about the potential increase in plans becoming 'politicised' through interventions by successive governments (and ministers) and as might arise if the scope and any extent of application of any such power is not appropriately constrained to emergency or extraordinary situations".
Resource Management Law Association

"*It is important that the creation of a single resource management plan allows for community aspirations to be considered through the public consultation process. The content of regional and district plans should not be regulated to secondary importance in the scheme to achieve national outcomes…*

The national template should not include content which dictates the outcome of land use consents in specific zones or for particular activities, which may run counter to community values and expected outcomes as reflected in regional and district plans…

The Law Society is concerned that this concentration of decision-making authority may involve an emphasis on national directions and outcomes at the expense of community expectations".

In relation to the intention to reduce scope for submissions on consents and ability to lodge appeals, the NZ Law Society comments that "t*he fairness of the proposal is dubious …There is potential for material injustice".*
New Zealand Law Society

[The proposed changes will be] *"giving Ministers new powers which could be used to trump collaborative planning and resource consent processes".*

Each of these new [central government] *powers would see executive government reaching into democratic processes in quite inappropriate ways – tilting the balance of power. In particular, it risks exposing planning decisions…to lobbying influence; and politicisation of resource consenting and planning outcomes, which rely on a large measure of independence, expertise and local input into decision-making for their credibility…Not only does this undermine democratic, constitutional checks and balances on decision-making, it will not produce better outcomes".*

"The proposal [for Ministers] *to directly specify plan content is an inappropriate interference with local and regional autonomy…"*

"The proposal to set content for standardised zones and rules for particular activities is difficult to support as it could represent an inappropriate interference with district and regional autonomy, and is unlikely to adequately account for the significant biophysical, cultural and social differences that exist in different parts of the country."

"Government direction that particular activities are to processed without notification is not appropriate".
Forest and Bird

"*Overall, the proposals revert towards the old days of 'Think Big', where central government knew best what was good for local areas".*
Wellington Civic Trust

"We do not support the elements of the proposals that will abrogate local democracy and decision-making".
The New Zealand Council of Trade Unions

"Substantive changes to the RMA [are proposed] *that could be seen to reduce public input and opinion and best interests, on matters relevant to local conditions, areas, councils and communities, and to allow what verges on autocratic rather than democratic decision-making".*
The Trustees of Physicians and Scientists for Global Responsibility

"It is the officer's view…a number of proposed changes…appear to reduce local government autonomy through the provision of increasingly powerful tools of Central Government, constrain local community involvement and have significant resource implications (time and money) for Council."

"Limiting what aspects of a notified application that submitters may submit on seems contrary to, and erodes, the general participatory objective that underpins the RMA".

"Increased use of ministerial intervention powers could represent a shift away from local decision making or more centralised planning. This is a concern if it is done in an ad hoc manner on highly politicised issues rather than based on addressing significant resource management issues".
Wellington City Council[30]

"The current proposal gives the Minister unconstrained powers, not subject to independent oversight, to bypass all other parties to enforce a particular position over local communities".
New Zealand Archaeological Association Inc.

"*Reforms proposed seek to subjugate local democracy to Ministerial directions…We particularly do not support the centralisation of power with the use of 'Henry XVIII' clauses".*
Environment and Conservation Organisations of New Zealand Inc.

"The unifying principle behind the proposals is providing central government with the ability to dictate the outcome of any consent process."
Sustainability Council of New Zealand

"Members also have concerns that the capacity for political intervention could be used to impose a specific project that could impact significantly on the community or the environment."
New Zealand Planning Institute

"I oppose the Minister for the Environment having the power to insert provisions directly into council plans with no consultation. Several of the powers go well beyond government 'direction' and are more akin to law making in Russia or Eastern Europe, not New Zealand. They are about the government taking control – a return to the 'Think Big' days of Muldoon's National Development Act and are anti-democratic…

I oppose the proposed limits on the ability to make submissions. Public participation promotes better informed decisions and the interests of big business should not be placed over the public's right to participate in decision-making. This massive erosion of public participation is not only anti-democratic but removes the right of people to have a say in their own environment".
Greenpeace[31]

"Overall the proposals:

- *"Significantly affect your right to have your say in what happens where you live, by shifting decision making power away from communities into the hands of government.*
- *Remove important checks and balances on power of government (in summary, you might say they mistake 'direction' for 'dictatorship')…."*

Forest & Bird[32]

Although several parties support greater guidance by the central government, this appears to apply to setting good environmental principles and expectations, similar to those espoused in the:

- English National Planning Framework, 2012
- Planning Policy Wales, 5th Edition, 2012

[30] Draft Council Officer Submission from Wellington City Council on the RMA Discussion Document, reported to the Strategy and Policy Committee of Wellington City Council 21 March 2013.
[31] Greenpeace Campaign Text for Public Submissions on the RMA Discussion Document
[32] Forest & Bird Campaign Text for Public Submissions on the RMA Discussion Document

Rather than the more dictatorial style of governance evidenced in NSW. Nevertheless, the approved Housing Accord and Special Housing Areas Bill has the ability to make the RMA, Local planning provisions and community aspirations for their area, irrelevant in terms of planning for future urban growth expansion.

Organisations Raising Concern[33]

Government agencies and advocacy groups
Parliamentary Commissioner for the Environment, Jan Wright
New Zealand Conservation Authority
Local Government New Zealand
Wellington City Council
Several other Councils

Environmental Groups
Forest and Bird
The Environment Defence Society
Ecologic
Fish and Game
Greenpeace NZ
WWF
Environment and Conservation Organisations of Aotearoa NZ
Sustainability Council of NZ
Trustees of Physicians and Scientist for Global Responsibility

Legal Professionals
Former Environmental Minister, Geoffrey Palmer
NZ Law Society
Resource Management Law Association
DPA Phillips Fox Lawyers

Historic Groups
Historic Places Aotearoa
NZ Archaeological Association

Planning Professionals
New Zealand Planning Institute

Building related Professionals
Department of Public Health, University of Otago
The Architectural Centre
New Zealand Institute of Architects
New Zealand Institute of Surveyors

Other types of Groups
Wellington Civic Trust
New Zealand Council of Trade Unions

[33] This list is limited to those groups which have made their submissions public on their websites.