Building
5140

Civic Administration

838-842 Fergusson Drive
Private Bag 907, Upper Hutt

Tel: (04) 5272169
Fax: (04) 528 2652
Email: askus@uhcc.govt.nz
Website:

www.upperhuttcity.com

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Committee Secretariat
Local Government and Environment
Parliament Buildings
Wellington

Email: LocalGovernment.Environment@parliament.govt.nz

Upper Hutt City Council Submission: Resource Legislation Amendment Bill 2015

Thank you for the opportunity to submit on the Resource Legislation Amendment Bill 2015, (hereafter referred to as RLAB

Upper Hutt City Council's (UHCC) submission is structured as follows:

- General submission matters
- Policy matters
- National direction (Part 2, s30/31, NPS, NES, new regulation power)
- Resource consent matters
- Conclusion

Under each subject heading we have briefly described what we are referring to in the opening paragraph, provided commentary and made a recommendation which clarifies our overall position.

We **wish to be heard**.

1.0 General submission matters

1. Our submission has focussed on headline issues, however we note that there are numerous technical or drafting amendments required to make other provisions workable. Other Councils and LGNZ have identified those, so we have not canvassed them in our submission.

2. The amendments don't appear to be responding to an identified "problem" but are more akin to a philosophical shift. If this is the case, then the Government should be explicit about that, rather than introducing piecemeal, inconsistent changes. UHCC is concerned that insufficient time has been allowed to effectively judge the effects of previous changes to the RMA.
3. The amendments have the potential to erode the principles that the RMA is based upon; particularly devolved decision-making and public participation. The Government needs to think about how it sees national consistency vs local autonomy. If Government's intention is to centralise resource management practices it should be more explicit.

4. We are of the view that the Government should be considering the integration of the RMA with other legislation and taking a more strategic approach to the improvements required to the RMA. The various amendments to the RMA appear to be at odds with each other, and don't appear to be incremental steps towards a clear outcome.

5. Further analysis needs to be undertaken to determine whether some of the changes will result in the time and costs efficiencies which the Government is seeking. We have concerns that, in some instances, the opposite effect will occur and that additional direct costs to both Councils and applicants may be greater than the efficiencies promise.

6. There is a significant shift towards loading of provisions into regulations, which will be developed or expanded on, at a later date. This means that significant policy shifts (e.g. changing which category of consents must be fast-tracked) can occur without being open to debate or dialogue through the legislative change process.

7. UHCC considers that a preferable approach to considering change to planning legislation would be to prioritise the current 'Blue Skies Thinking' work stream rather than continuing to tinker with the RMA pending the conclusion and consideration of this work.

2.0 Policy matters

National direction (Part 2, s360, s30/31, NPS, NES, new regulation power)

National Planning Template

8. The Bill would enable the Minister for the Environment to develop a National Planning Template (Template Plan) to address matters that the Minister considers are nationally significant, require national consistency, or to address procedural matters.

Commentary

9. UHCC supports the efficiencies, greater consistency, customer focussed, user friendly framework it would likely provide if done well.

10. We would like to see clarification on what 'searchable' means in terms of an online plan. If a sophisticated approach is required, then the lead in time will need to be longer as councils will need to factor in obtaining funding through the

Annual Plan and/or LTP process. In addition the introduction of the NPT should be integrated with putting a plan online, to reduce duplication and unnecessary rework.

11. UHCC support MfE taking a staged approach to preparation of the NPT. Considering structure and definitions first, then work collaboratively with local government on the next stages / phases.

12. Combining a mix of mandatory and flexible options would suit the realities of the diverse places we manage. For example structure and definitions, consistency in rule drafting could be mandatory with a pick list of options on topics that are different between places. This would maintain the ability of Councils to respond to local issues.

13. Given a public process is required for developing the NPT, council implementation should be streamlined. We do not see the need for a five year transitional period if a council has notified a plan. Creates unnecessary uncertainty and rework.

Recommendation

14. UHCC **supports** the concept in principle alongside aligning with LTPs and undertaking further analysis on the realities of implementation which address the issues raised above.

Part 2 - Natural hazards

15. The Bill proposes to add a single matter of national importance to section 6, "the management of significant risks from natural hazards". It extends natural hazard consideration to earthquake-related matters and beyond inundation, subsidence and other flooding related risks.

Commentary

16. This addition should be supported by national direction in the form of an NES or NPS to address underlying tensions and conflicts. We think the amendment in isolation does little to manage the conflict between matters in s6.

Recommendation

17. UHCC **supports** this addition.

Councils Functions & building development capacity

18. The Bill proposes to amend the functions of both regional councils (s30) and territorial authorities (s31) to require them to ensure their land has sufficient residential and business development capacity to meet long-term demand.

Commentary

19. UHCC has concerns about the lack of problem definition. For example we need further clarity around what "development capacity" means. We are concerned

that this provision may bind councils into providing enabling infrastructure with no certainty investment could be recouped.

20. UHCC notes that while councils can zone land for development, it can't make people sell and/or develop it. The addition does not get around land banking.

21. It is important to clarity the role of a regional council and territorial authority, given both have the same proposed function. This could lead to unnecessary duplication and confusion in practice.

Recommendation

22. UHCC **supports** in principle.

New regulation making powers (s360)

23. The Bill proposes new regulation making powers for the Minister. It specifically proposes new national regulations for fencing stock out of water bodies. The Bill also includes powers to make regulations to:
    a) permit specified land uses;
    b) prohibit local authorities from making specified rules or types of rules;
    c) specify rules or types of rules that the regulations override;
    d) prohibit or override rules or types of rules that duplicate, overlap or deal with subject matter in other legislation;
    e) require public notification for the withdrawal or amendment of rules;
    f) require consent authorities to fix certain fees; and
    g) prescribe how councils undertake monitoring, including models that may be used.

Commentary

24. We believe the Minister (and MfE) already have many other existing ways of achieving the outcomes sought, such as through consultation and early engagement, making submissions, hearings and appeals, and declarations to the Environment Court. There should not be a need for regulation at the end of a democratic process. The Minister can also use NPS, NES and in future a NPT. If MfE were effectively engaging in existing democratic processes, these regulations should not be required.

25. The National Monitoring System is still very new and requires time to bed in. By giving it time the evidence required to identify issues will emerge.

Recommendation

26. UHCC **opposes** these measures. The significant override of local democratic processes is not supported by the evidence provided which provides no clear problem definition.

Requiring councils to seek approval to exceed planning timeframes

27. Currently the RMA requires councils to make decisions on policy statements, plans or changes within two years of notification, but this time frame is able to be extended under section 37 (power of waiver and extension of time limits). The Bill proposes to remove the ability for councils to use section 37 to extend planning

timeframes, and prevent councils from exceeding the two year timeframe, unless the Minister grants permission. Current dissatisfaction with the length of the planning process suggests that the Minister is unlikely to be lenient in granting extensions; however it is not clear that there will be consequences in exceeding the timeframe without permission.

Commentary

28. The Council will lose its ability to decide for itself whether to extend the timeframe of a plan change thus reducing its autonomy to manage plan changes, noting that UHCC uses this provision extremely sparingly.

Recommendation

29. UHCC **oppose** this change.

Minimising restrictions on land

30. The concept requiring decision-makers to minimise restrictions on the use of private property now appears as new section 18A (procedural principles). This is supported by a change to section 85 which currently establishes that compensation is not payable in respect of controls on land.

Commentary

31. There is considerable uncertainty around the impact of these changes in practise. In particular, the definition of "reasonable use" refers to "actual and potential effects" however it is not clear how this will deal with cumulative effects where land use on one property may be minor but the cumulative effect of the same land use across multiple individual properties is significant.

Recommendation

32. We **support** this approach in general.

Changes to the process for National Policy Statements (NPSs) and National Environmental Standards (NESs)

33. The Bill proposes changes to NPS and NES processes, to provide for combined development between the two with intentions to broaden what they can provide for.

Commentary

34. We cannot predict what effect these changes will have on Council. We understand the proposals do not change Council's obligation to give effect to NPSs and NESs, however the content of these documents may be far more directive which could affect our ability to implement them.

Recommendation

35. In general we **support** this change.

New monitoring requirements

36. The Bill contains changes to strengthen monitoring requirements.

Commentary

37. We support councils being accountable for their processes, and having greater efficiency and effectiveness. UHCC also supports greater consistency in data collection and monitoring, which would allow for better reporting at a national level.

38. Depending on the content of the regulations, this will significantly increase the time required to gather information and monitor plan effectiveness. We would like to note it would require significant additional resources in order to do this justice.

Recommendation

39. We **support** the intent despite the additional workload it would bring.

Collaborative and Streamlined processes

40. Councils would have three options to develop plans under the RMA; the existing Schedule 1 approach: a collaborative planning process: and a streamlined process

Commentary

41. The principle of the two new processes have merit, however in reality we're not sure how practical they are. Going to the Minister using the streamlined process will likely disenfranchise the community for example, however, there may be times it is helpful. The collaborative approach has potential, however, there are a lot of layers of review involved and consensus would likely take a long time to be reached using the proposed method.

42. Further consideration needs to be given to how these proposed amendments interface with democratic principles of natural justice, fair process and a right to be heard.

Recommendation

43. UHCC **supports** the two new approaches proposed in principle.

Improving iwi involvement

44. The Bill improves processes for iwi to be involved in RMA decision making in three main ways: iwi authorities would have a mandatory role in planning processes; iwi authorities could enter into detailed arrangements with councils, called iwi participation arrangements and more consideration would be given to particular iwi interests in resource consent and plan processes, including those contemplated under Treaty of Waitangi settlement arrangements.
45. UHCC notes that this provision will have funding and resourcing implications for councils, in particular those councils which have traditionally had fairly weak iwi participation in RMA processes.

Recommendation

46. UHCC **supports** the concept.

3.0 Resource consent matters

47. There are a large number of amendments to the resource consent process, some of which give significant new powers and obligations to consent authorities, applicants, submitters, and central government. These include:
    - 'Fast track' provisions
    - Introduction of Approved Exemptions
    - Boundary Activities
    - Notification provisions
    - Requiring submissions to be struck-out in certain circumstances
    - Loss of appeal rights to the Environment Court
    - Removal of the ability to charge a financial contribution on a resource consent

10-day 'fast track' pathway for certain consent applications

48. The Government has signalled it intends to introduce greater proportionality into the consent process by halving the processing time for certain consents. The Bill proposes to introduce a 10 day 'fast-track' process for controlled activity applications however it also introduces powers to make new regulations listing further types of fast track applications.

49. The majority, if not all, Councils aim to process consents efficiently and determine applications within the minimum timeframe possible, whilst still ensuring the application is assessed robustly. At times, due to unanticipated complexities or higher lodgement numbers, consents are issued towards the end of the 20 working day period. The changes are inconsistent with the RMA amendments introduced in 2013, which increased the time limits for deciding notification from 10-20 workings days and the and the timeframes for accepting/rejecting applications under s88(3) to ten working days.

50. The new change will also likely give rise to "queue jumping". An applicant who has lodged their application earlier, but which has a restricted discretionary, discretionary or non-complying status, will be reprioritized to a lower order if controlled activity applications are lodged, in order to meet the more stringent timeframe requirements.

51. The level of corresponding assessment has not been decreased to allow for the faster turn-around. The proposed change to the RMA requires the same level of quality assessment and outcome, within a shorter timeframe. This, by necessity, has resourcing implications as Councils will be required to resource for peak times. Alternatively, smaller Councils will outsource some of the consent processing and will likely cost-recover the consultant cost, therefore controlled activity consents may be issued faster, but may come at a greater cost. There are already examples of Councils e.g. Wellington City Council, who offer a fast track service, however the cost of those consents are double or triple the normal

deposit fee. Other non-planning experts who provide input into consents will also need to resource the 10 working day turnaround.

52. An alternative regime, if the Government is concerned with a certain proportion of consents being processed within ten working days, is setting a proportional target level for Councils to assess within 10 working days. This could be a percentage of total consents processed, and the individual Council determines how it achieves that target. This will allow Councils to choose consents best suited to faster processing, rather than relying on assumptions as to consent complexity due to activity status or forcing Councils to "queue jump" certain consents during busy periods.

Recommendation

53. The Council **supports** the intent of a fast-track timeframe for identified consents, however **opposes** the current criteria used to identify those consents which will be subject to fast-tracking provisions. An alternative framework whereby a target is set for the proportion of consents to be processed within 10 working days – suggested as 20%, would be supported.

Introduction of "Approved exemptions"

54. The Bill proposes that Councils be given discretion to classify activities as "permitted" where only very minor or technical breaches have triggered the need for resource consent. Often rules determine that consent is needed but the breach is so marginal, or the circumstances of the breach are so particular, that the activity has no discernible effect. The provision is an attempt to allow permission to be given without the applicant and Council incurring costs in administering a consent process which serves no practical purpose. Factors relevant to the exercise of this discretion.

55. The requirement for consent to be obtained can be waived in the following circumstances;

- The breach is very minor, technical or similar (ie. Very nearly permitted)
- Neighbours are unaffected or are only affected to a minor degree
- The environment is affected to a very minor degree

56. Whilst the proposed exemption powers could be applied across a range of activities, in practice it is unlikely the provisions will be widely used for the following reasons;

(a) Continual use of these provisions has the ability, over time, to undermine the integrity of the District Plan by allowing "effects creep" and changing the baseline for permitted activities.

57. A similar level of assessment as a straight-forward consent will still need to be undertaken, including a site visit, to determine whether the "tests" are met and to determine whether full and detailed information has been provided by the "applicant". Therefore there will be minimal efficiency-gains for Council, albeit that detailed assessment reports will not be required.

58. A number of key terms in the Bill are either undefined or ill-defined and will impact on the useability of the provisions and the level of risk borne by Councils in

adopting the provisions. Further clarification of terms should be included in the amendment.

Recommendation

59. The Council **supports** this proposal but notes the concerns with the drafting and uncertainty around key terms.

Introduction of Boundary Activities

60. The Bill proposes that an activity will be deemed permitted if it is a "boundary activity" as defined by the Act, and the written approval of the relevant neighbour is provided. In this situation, no consent is required and a "notice" is issued by a Council advising that the activity is permitted.

61. We generally support the intent of the provision as it will remove the need for some small scale, inconsequential resource consents, where the only affected party has given approval. We are concerned that the current drafting creates uncertainty and does not recognise the complexity of boundary activities and rules, nor the existing use rights regime. It also shifts the permitted baseline and will possibly start to undermine the District Plan provisions which have been developed with/by the community. In particular the premise of the provision appears to be that effects from this type of proposal are limited to 'neighbour to neighbour' effects, however it is likely that the cumulative effect of boundary activity "exemptions" will have, , have wider effects on patterns of development and urban form, over time.

62. The provisions should not rely on Councils having a complex layer of information e.g. GIS topographical information, which would allow them to determine if there are *other issues* e.g. earthworks non-compliances, which should be considered. Many smaller, less resourced Councils do not have the same level of contextual information as larger Councils and this will expose them to risk. Instead, the Act provisions should require a more robust standard of information to be included in the application, rather than just the matters (height, shape and location of the activity on the site) that are currently proposed. This will ensure Councils are able to identify all possible regulatory breaches and avoid the need for further costs and delays for applicants.

63. As with the "Approved Exemption" provisions outlined above, the Bill as currently drafted, has ill-defined terms which are critical to the implementation of the provisions. These need to be clarified if the provisions are to be retained.

Recommendation

64. The Council **supports** this provision but notes there are a number of technical uncertainties in the drafting which need to be addressed.

Notification Provisions

65. The Bill makes major changes to the provisions which govern the public notification process. The proposal involves residential activities in a residential zone AND subdivision activities anticipated by District Plans.

66. In particular, the following changes are proposed;
    - No provision for public notification for certain activities (unless special circumstances exist); controlled activities; boundary activities; subdivisions; or residential activities that are restricted discretionary or discretionary. There is provision in the Act to encompass additional activities in the future.
    - An option to consider and discount effects that have already been anticipated in the Plan
    - A requirement for Councils to identify the specific effects of the proposal at notification stage. Submissions are then limited to those matters only and no additional matters can be introduced by way of submission or evidence at a hearing.

67. Additional changes have been proposed to the limited notification provisions, which further constrain which activities can be captured by limited notification AND which people/groups must and may be considered affected. As with fully notified consents, if adverse effects are already anticipated by the District Plan, they may be disregarded AND the consent authority must record the effects that are the basis for its decision that a person is affected.

68. These changes are significant and seem disproportional to the number of notified consent which are assessed nationally each year. No information has been supplied as to the justification or reasoning behind such a fundamental shift in the Resource Management Act.

69. The approach of limiting submissions to issues identified by planners assumes "perfect information" which is often not the case. There will likely be significant time delays and cost implications, as a significant degree of information upfront to ensure Councils are not missing critical information. Currently some of those issues are "flushed out" during the process; however the amendments will not allow additional information/effects to come to light during the submission and hearing process. The result on occasion will be less than desirable planning and community outcomes, sitting alongside a disengaged community.

70. Exactly how this change may affect planning documents is not clear, but it means the content of planning documents has an increasingly significant effect on the pathway and outcome of consent applications. This means, as much as possible, plans will need to be clear about outcomes they seek to achieve and the environmental effects they anticipate. This is a significant structural shift in our current District Plan and will require significant resource to review and amend the Plan accordingly.

Recommendation

71. Council **oppose** the changes as they are a disproportionate response to perceived issues, and will result in a fundamental shift in the ability for communities to actively engage in planning outcomes.

Require submissions to be struck-out in certain circumstances

72. As noted above, the Bill will amend the notification regime by requiring all consent authorities to identify the specific effects of concern when notifying an

application. Following notification, a submission (or parts of a submission) will now be required to be struck out of the consent process if it:

- does not have a sufficient factual basis
- is not supported by any evidence
- is supported by evidence that purports to be expert evidence but it is not
- is unrelated to an activity's actual or likely adverse effects

73. Submitters may object by way of section 357 objection, during the hearing, to the decision to have all or part of their submission struck out. If this right is exercised, significant delays to the notification/hearing process will result (and worst case scenario, the hearing process will need to be restarted) – it is far more efficient to allow them to be heard.

74. Following the Council hearing, any appeal to the Environment Court will be limited to the matters raised in the person's submission. If a submission has been struck out in whole or part at the Council hearing, the submitter will retain no right to appeal that the consent decision to the Environment Court, on the basis of matters struck out of the submission.

75. These requirements are in addition to the existing requirements that submissions are not frivolous or vexatious, do not disclose unreasonable or irrelevant cases, and that it would abuse the hearing process if they were allowed to be taken further.

76. These amendments will likely mean hearings will be run differently. Evidence from submitters will need to be confined to the effects that were the reason for notification. The amendments will also demand sufficient testing and scrutiny of evidence in submissions. It may sometimes be necessary for the panel to make decisions to strike out submissions where they do not meet requirements; a decision which is likely to be contentious.

77. There is the potential for challenge and costly legal delays if there is mis-identification by Councils of issues, which result in people being unable to participate or limited as to the scope of their involvement. The Act provisions allow a submitter to lodge an objection to being limited as to scope of involvement.

78. Additional costs will be incurred by the applicant as Councils will be required to assess all components of submissions against the above criteria, in order to determine whether they should be struck-out. Additional delays and costs will also be experienced by Councils and applicants if submitters exercise their right to object to their submissions being struck-out in whole or part.

79. In reality, poorly prepared submissions or those lacking factual or expert basis, are given less weighting by decision-makers than those which are more reliant on experts and factually based. It is questionable therefore whether these changes will result in greater time efficiency/cheaper processing costs or better decisions. Instead, the process could get delayed with numerous objections as to whether part or all of a submission should have been struck out.

80. We are of the view that the changes to the RMA in 2013, which required pre-circulation of evidence, should be given time to "bed in" to determine whether it is addressing perceived matters of efficiency and/or frivolous/ vexatious public participation. On that basis and above we do not support this approach.

Recommendation

81. The Council **opposes** the proposal to require parts or whole submissions to be struck-out in certain circumstances.

Loss of appeal rights to Environment Court

82. The Bill proposes significant changes to the appeal rights regime and removes the ability to appeal a decision on a resource consent for:
    - A boundary activity or subdivision, unless the subdivision is a non-complying activity
    - Residential activity occurring on a single allotment unless it's a non-complying activity (note this will likely include community housing, boarding house etc, as they are considered residential activities).

83. The Bill also proposes that a submitter can only appeal in respect of a provision or matter raised in the person's submission.

84. This change is a fundamental shift to the RMA and would appear to be designed with the intent of precluding or limiting public participation. This seems counter to the general participatory objective that underpins the RMA. It affects both submitters and appellants rights and essentially means the first stage council hearing process is a "one stop shop".

85. There is an implicit assumption in the amendment provisions that residential activities are fairly straightforward, however that is not always the case (particularly where activities have moved from permitted/controlled into a discretionary activity status). Should the Act start to link public participation in notified application/appeal rights to activity status, Councils may tend to introduce a greater number of non-complying activities to ensure all the matters and effects can be canvassed and communities allowed to participate genuinely in planning outcomes for the places they live and work in.

86. The proposed amendment appears to be based on the flawed assumption that all planning "issues" are flushed out during the plan making process and therefore it is unnecessary to "duplicate" public participation at the consenting stage. It is impossible to anticipate every eventuality in the plan making process, and make rules accordingly. Similarly, communities are likely to become far more engaged in the planning process when something directly affects them – therefore people who have not participated within a policy making process, will nevertheless participate in a resource consent process.

87. As with the proposed amendments to the proposed notification amendments, the proposed appeal provisions seem unnecessarily wide-ranging, given the low numbers of numbers of applications affected by any real or perceived inefficiencies.

88. Existing plans, and specifically activity classifications, are based on the existing provisions of the RMA. Those plans may not appropriately reflect activities that should or should not be subject to this limited appeal right, particularly as most second generation plans have moved away from using non-complying status, in favor of discretionary activity status to better clarify those matters that should be considered at the consenting stage. Significant investment will therefore be

required by Councils to review and amend Plan provisions to ensure they are fit for purpose within the new planning regime.

Recommendation

89. Council **opposes** this proposal.

Regulations introducing a fixed fee regime

90. Costs of obtaining consent can vary considerably and be relatively uncertain for applicants, so the Bill introduces a power for regulations to be made requiring a fixed fee be charged by consent authorities for processing applications or council provides an estimate of costs in advance. The potential scope and design of the regulations is not yet clear, but they could potentially require UHCC to set a capped fee for applications.

91. While this creates certainty on one level it also means applicants are not paying the true costs of their consent. The net result will be cross-subsidising between applicants through 'overs and unders'. In reality some of the costs of consent will also likely be borne by ratepayers to a greater degree than occurs already.

Recommendation

92. Council **opposes** this proposal.

4.0 Conclusion

Thank you for the opportunity to submit on the proposed Resource Legislation Amendment Bill 2015. In summary this Amendment Bill represents a shift in philosophical approach which we interpret as loading public participation into the policy development stage and precluding and/or reducing community involvement at the consenting stage. There is a more directive, and centralised approach emerging which has the potential to disenfranchise communities and reduce autonomy of Councils. This is evidenced by the use of NES's and NPS's for example.

On the positive side there is a much stronger emphasis on iwi input which while having a significant impact is a step in the right direction. There is an attempt to create expediency and efficiency which has led to the redefining of a number of processes and timeframes - some of which are positive, some not so - all of which, however, would have significant implications on resourcing and costs for Council if they were implemented.

Yours sincerely

His Worship the Mayor, Wayne Guppy

Contact: Nic Etheridge, Planning Policy Manager
Nicola. Etheridge@uhcc.govt.nz ,Phone 527-2169