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Secretariat
Local Government and Environment Committee
Select Committee Services
Parliament Buildings
WELLINGTON 6160

28 February 2013

Submission on the Resource Management Reform Bill 2012

To the Local Government and Environment Committee

Thank you for the opportunity to provide comment on the Bill.

The following paper is Wellington City Council's submission in respect to the Resource Management Reform Bill.

We have put forward some suggestions that we hope will provide assistance in the future drafting of the Bill.

Yours sincerely

Warren Ulusele

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Submission to: **Local Government and Environment Committee**

Bill: **Resource Management Reform Bill 2012**

From: **Wellington City Council**

Date: **February 2013**

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Submission on the Resource Management Reform Bill

To the Local Government and Environment Committee

INTRODUCTION

1 The following is Wellington City Council's submission in respect to the Resource Management Reform Bill 2012.

2 The Resource Management Act 1991 is one of the primary tools driving local government decision-making and planning. In terms of shaping development it is one of the most potent tools available to local government.

3 Wellington City Council (**WCC**) recognises that these amendments are being introduced to *"avoid unnecessary costs and long, drawn-out processes for all parties".*

4 We are supportive of the intent to streamline the RMA in order to create a resource management system that enables growth and good environmental outcomes in a timely and cost-effective manner. However WCC is concerned that the proposed Bill will not result in the improved outcomes anticipated.

5 WCC's submission is that the Bill will add further complexity to the RMA; it has the potential to increase rather than decrease costs to all parties involved, which is counter to economic growth; and, it may actually lead to more protracted timeframes for completing planning processes.

6 This submission raises a number of issues and provides comments both supportive of and opposed to different aspects of the Bill. This submission also identifies where the Bill is unclear or creates uncertainty.

7 WCC wishes to be heard in support of this submission.

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SUBMISSIONS

Resource consent key issues

Clause 91 - Deferral of deadlines sections 88B and 88BA

8 These sections introduce a new methodology for calculating deadlines which is fundamentally different to what currently exists and is extremely confusing.

9 The existing approach is understood by the vast majority of participants in the process. The new methodology complicates a previously straight-forward and well-understood system. Because of its complexity, after numerous reads, WCC still cannot be confident of how to interpret it. WCC is concerned that its officers will be spending considerable amounts of time explaining the new methodology to applicants and submitters, or that it may take an approach that was not intended due to the uncertain wording of the new provisions.

10 The new methodology requires calculations to be made by reference to a raft of dates and time periods: The 'deadline', the 'deadline calculation date', the 'time allowed for a process' the time while the 'clock is stopped' and the time during which the 'deadline is deferred'. The rationale for adding this complexity is unclear.

11 WCC has no issue that timeframes should be imposed. However, there is no valid reason why those timeframes cannot 'stop' when a valid statutory step is taken by the Council or applicant (such as requesting further information or seeking a suspension) and 'restart' when that step has been completed (ie, information provided or notice given to come off suspend). WCC requests that further consideration is given to the deferred timeframes as the amendments as proposed are too complex and do nothing to simplify the process.

Example

12 The closing date for submissions is not included as a 'deadline' in section 88BA. As such, it appears not to be deferred if the clock is stopped for a process. This will be problematic in some cases. If a report is sought under section 92(2) after notification, the closing date for submissions will not change as a result of the clock being stopped while that report is prepared. As a result, submissions may have to be lodged before submitters have the opportunity to review the report.

13 To compound the problem, the closing date for submissions is also the 'deadline calculation date' for concluding the hearing. Deadline calculation dates are not 'pushed out' where the clock is stopped (since section 88B(4) only applies to deadlines). Therefore, no extra time will be given for completing the hearing either.

14 Similar issues will arise if an application is suspended after notification. Both the closing date for submissions and the deadline for concluding the hearing will be unaffected, potentially leading to nonsensical outcomes whereby submissions and hearings need to proceed for suspended applications.

15 In addition to the concerns above, a change to how timeframes are determined will require an update to Council's information technology system. The change

proposed is challenging and any upgrade to Council's IT system has a financial implication.

Submission:

15.1 WCC does not support the system for the 'deferral of deadlines' as proposed and seeks to retain the current system.

15.2 If the proposed system in the Bill is retained, WCC seeks the inclusion of the closing date for submissions as a 'deadline', and for section 88B(4) to be extended to apply to 'deadline calculation dates' as well as 'deadlines'.

Clause 92 - Excluded time period for further information request under section 88C

16 Currently the 'extended period' for further information requests starts on the day the request is made. The Bill effectively removes the ability to stop the clock for the three day period beginning with the day the request is made regardless of whether or when the applicant responds. There is no apparent logic to removing 3 working days from the excluded period.

17 This approach would seem to favour an applicant who has not submitted a thorough application over an applicant who has. Often further processing cannot occur until the further information is received and as such, priority will be given to completing the formerly 'incomplete' application first as effectively the processing planner may have 'lost' three days in processing time. In addition to this, the planner will spend time writing a section 92 request and spend time considering the further information received, so losing 3 working days is even more challenging.

18 Such a change to timeframes would also increase the administrative burden on Council staff in terms of ensuring that the three days 'lapse' is accurately applied. To enable the complex 'deferred' stop to be captured, the Council's computer database would need to be upgraded, which has an associated cost.

Submission:

18.1 WCC does not support the 'deferred stoppage' as proposed for further information requests and seeks an amendment so that the clock stops on the day further information is sought (as is current practice) not 3 working days later.

Clause 98 - Closing date for submissions on limited notified applications

19 The new section 97 requires that the submission deadline will 'collapse' if the Council receives written submissions or written approvals from all affected parties before the 20th working day after notification. For example, if all submissions are received on Day 10 the conclusion of the hearing runs from that day, not Day 20. This results in the whole process being shortened and less time to plan for the hearing and those who need to prepare and attend. Logistically it will be very problematic if hearing dates cannot be firmly identified in advance and will create uncertainty for all parties and potential increased cost for applicants. Practical realities require that hearing arrangements are organised as soon as possible (usually at the time that application is notified). Examples of the potential logistical impact of collapsed time frames are:

19.1 Commissioners - are typically booked well in advance of the hearing occurring and require clarity as to when the hearing is anticipated to take place. Failure to provide that clarity may reduce access to experienced and skilled commissioners.

19.2 Applicants - could incur increased hearing costs for the increased administrative time associated with reorganising hearing dates (brought forward at short notice because of collapsed time frames). Additionally, hearing venue availability at shorter notice can be difficult to secure and could necessitate the hiring of a more expensive venue at the applicant's expense. Experts and lawyers are often involved in a number of matters and may have difficulty with their availability if they are not able to plan and coordinate their various appearances.

19.3 Council staff - will face difficulties in planning workloads around hearings dates subject to change. The moveable dates will also add to the administrative burden of hearings.

19.4 Submitters - often work and need to arrange time off to attend Council hearings, in some cases arranging for somebody to fill in for them.

Submission:

19.5 WCC does not support the 'collapsing' of the closing date for submissions on limited notified applications. WCC therefore seeks an amendment to confirm that the closing date for submissions is the 20th day after notification, and it does not occur earlier where all approvals or submissions are provided prior.

Clause 100 - Time limit for completion of notified and limited notified hearings

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

21 For example, a limited notified application could be served on a large number of people and draw a large number of submissions raising complex issues. Conversely, a publicly notified application may draw only a few submissions limited to a few issues and yet would have a longer timeframe. In 2012, for example, five applications to WCC were limited notified with notice being served on, respectively, 43, 34, 1, 27 and 18 parties.

22 It is suggested that the limited notified period of 100 working days be extended to 130 working days where notice is served on 10 parties or more.

Submission:

22.1 WCC requests that the time frame of 100 working days to complete a limited notified hearing is extended to 130 working days where notice is served on 10 parties or more.

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District Plan key issue - section 32 reports

Summary of Section 32 key submission points

23 The new requirement under section 32(2)(i) and (ii) to specifically consider economic growth and employment opportunities would increase cost, time and complexity of evaluations and **is not supported** as this is already covered by 'economic effects' under section 32(2)(a) and Part 2.

24 The new requirement in section 32(2) to evaluate all proposed provisions rather than just objectives, as is currently required.

Discussion on specific substantive changes

Clause 69 – Specific reference to economic growth and employment

25 Section 32(2)(i) and (ii) impose new requirements to not only assess the costs and benefits anticipated from the implementation of provisions, but specifically, opportunities for economic growth that will cease to be available and opportunities for employment that are to be provided or reduced.

26 It is noted that the proposed amendment only requires consideration of opportunities for economic growth that may cease to be available, and ignores that plans may provide opportunity for new or enhanced economic growth. In any case, WCC is not supportive of the inclusion of economic and employment considerations under section 32(2)(i)-(ii).

27 Economic growth and employment effects are already captured in terms of the requirement to identify and assess economic effects under section 32(2)(a) and under Part 2 of the RMA. The additional wording creates unnecessary clutter with no real advantage in giving weighting to economic growth and employment effects. It also generates confusion about whether positive economic effects are relevant or not. In some cases those positive effects may be a critical consideration.

28 This requirement will increase cost, time and complexity of evaluations under section 32 as it is likely to require advice from an economist, which is not expertise WCC has available internally.

Submission:

28.1 WCC requests that the words ', including the opportunities for –' are deleted from section 32(2)(a).

28.2 WCC requests that subsections 32(2)(a)(i) and (ii)are deleted.

Clause 69 - The additional requirement of quantifying the environmental, economic, social and cultural benefits and costs of provisions

29 The proposed section 32(2)(a) and (b) impose a new requirement to identify and assess the benefits and costs of the environmental, economic, social and cultural effects and if practicable, quantify those benefits and costs.

30 This requirement will increase cost, time and complexity of evaluations under section 32 and actually quantifying some of these effects will be practically difficult.

31 For some issues it is reasonably straightforward to gather quantifiable data (e.g. a zone change to residential will allow for x number of houses to be built).

However, gathering information on and quantifying other issues (such as environmental values or cultural benefits) is much more difficult and subjective. WCC considers that it is doubtful whether many environmental effects can be meaningfully quantified, especially over the long term.

Submission:

31.1 WCC requests that section 32(2)(b) is deleted.

Clause 69 - New requirement to evaluate all provisions i.e. policies, rules or other methods

32 Currently section 32 only requires the evaluation of objectives. As part of the exercise of evaluating the appropriateness of new objectives, sometimes it is also necessary to discuss and justify subsequent provisions (i.e. policies, rules etc) at a broad level**, beyond current section 32 requirements**. This is currently assessed on a case by case basis.

Submission:

32.1 WCC seeks to retain the current requirement to evaluate objectives only, noting that subsequent provisions will be evaluated where appropriate.

Clause 69 - Amendment that now only requires evaluation of provisions that have been changed after the section 32 report was completed

33 Section 32AA now only requires a further evaluation under section 32 if changes have been made since the evaluation was undertaken. This removes the need for unnecessarily repeating the evaluation.

Submission:

33.1 WCC supports this amendment.

Other issues

Clause 12 - amendments to section 76 regarding tree protection

34 These changes involve amending section 76(4A)(a) to require that trees and groups of trees be specifically identified in a Plan by street address or legal description and a new definition of ‘group of trees’ to mean a ‘cluster, grove, or line of trees that are located on the same or adjacent allotments.

35 The amendment means that each tree on a particular allotment will need to be separately identified in the plan unless it is part of a cluster, grove, or line of trees. This will create problems where an allotment has a number of trees which warrant protection, but they are not planted in close proximity to each other.

36 This requirement will potentially increase cost, time and complexity of tree identification and assessment.

Submission:

36.1 WCC does not support the proposed amendment in its current drafting.

36.2 WCC suggests that the issue be given further consideration and WCC seeks an amendment to the definition(s) to allow for the

provision to treat trees as a group where they are situated apart from each other on a single allotment and are of the same species or share a particular characteristic (such as height).

Clause 13 - Direct Referral

37 The changes in respect of direct referral include a new constraint in section 87E(6A) on the consent authority's ability to decline a request for direct referral. This is in cases where the applicant's investment exceeds a threshold to be specified in forthcoming Regulations.

38 WCC question this approach as it is not clear why costs should be the overriding factor instead of, for example, the level of effects, number of affected parties, or consistency with the district plan. WCC opposes the constraint on its ability to decline a request for direct referral.

39 A Council hearing enables issues to be well defined by the time the application proceeds to the Environment Court which can be beneficial to the applicant and streamline the often expensive Court process. The Council hearing process also enables engagement by all parties in a relatively informal and cost-effective manner - parties who may otherwise not participate if the application goes straight to a judicial process. The potential to compromise engagement in this way seems contrary to the general participatory and local decision making objectives that underpin the RMA and may lead to less robust first instance decisions being made.

Submission:

39.1 WCC opposes the imposition of any constraints on its ability to decline a request for direct referral.

Clause 55 - Emergency works and power to take preventative or remedial action

40 It is proposed to extend the emergency powers under section 330 of the RMA to 'lifeline utilities'. These are set out in Schedule 1 to the Civil Defence Emergency Management Act, and include the port company, electricity generators, providers of a range of networks (electricity, gas ,water, waste water and sewerage, telecommunications, roads and rail) and entities that produce, process of distribute petroleum products.

41 The emergency powers themselves remain unchanged, and enable action to be taken without obtaining any resource consents which would otherwise be required under the district plan (although there is a requirement to obtain retrospective consents for any activities with continuing effects). Notably, the powers apply even where the adverse effects and / or the event involved were foreseeable.

Submission:

41.1 WCC agrees with the general intent. However, in its current form this amendment has the potential to disincentivise good emergency planning. WCC suggests that lifeline utilities should only be able to exercise emergency powers in situations where an effect or event was not foreseeable. Alternatively, access to the powers for lifeline utilities could be contingent on making reasonable efforts to plan for

emergencies. For example, lifeline utility operators could be required to submit emergency management plans to Council for its approval (such as many consent holders are required to do in relation to certain activities) in order to qualify.

Clause 69 - Removal of the reference that proposed standards, statements, regulations or plans require an evaluation under section 32

42 Currently, section 32 clearly indicates that these documents will need an evaluation. The absence of reference to this effect in section 32 itself means that it is not immediately clear what documents will need an assessment, and readers less familiar with the Act will need to search through other parts of the Act to clarify the position. We agree that the current reference indicating who carries out the assessment (e.g. Minister of Conservation, local authority etc) could be removed; however it is recommended that the section remain explicit in what documents will need a section 32 evaluation.

Submission:

42.1 WCC does not support the removal of the reference that proposed standards, statements, regulations or plans require an evaluation. WCC therefore seeks an amendment to see it retained in section 32.

42.2 WCC is supportive of the additional wording now contained in the relevant empowering section i.e. District Plans - section 74 (matters to be considered by territorial authority) and consider this reference, together with similar wording in section 32 itself would be helpful.

Clause 87 - Adopting information

43 Currently a section 42A report can adopt information from the AEE only. The effect of this change to section 42A is that Council will also be able to adopt the other information now required to be provided by applications under Schedule 4, including the assessment under Part 2.

44 However, it does not appear that information supplied in response to further information requests or in commissioned reports may also be adopted.

Submission

44.1 WCC is supportive of the ability to adopt all information now required under Schedule 4.

44.2 In addition WCC seeks an amendment in order to enable the adoption of other information and reports that are provided at a later stage, including in response to section 92 requests.

Clause 90 - section 88 - rejecting applications

45 The proposed changes to Schedule 4 will make assessing completeness under section 88 more time-consuming than it is at present. This is reflected in the increase from 5 to 10 working days for carrying out completeness checks.

Submission:

45.1 WCC supports the proposal in the Bill to determine the completeness of an application within 10 working days rather than 5 working days.

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Clause 92 - Request for further information post closing of submissions

46 The proposed changes remove the current ability to 'stop the clock' for any further information request made after the closing date for submissions.

47 Whilst the use of section 92 post submissions is infrequent, it has proved useful where submitters, who are familiar with local conditions, have alerted the Council planner to issues not previously considered or not obvious from the application details or site visit. From Council's experience this has included highlighting that a property was a former p-lab and therefore possible contamination issues, and traffic related matters including how various intersections perform in practice. Exploration of such issues can lead to more robust decisions.

48 Not to allow an extension of time if information is requested following closure of submissions undermines the value of the submission process. It also imposes more of an onus for matters to be resolved at the hearing, possibly leading to lengthier hearings with associated increased costs to applicants and submitters. This seems contrary to attempts to streamline the process.

Submission:

48.1 WCC does not support clause 92 and seeks that the ability to stop the clock for a request for further information after the closing of submissions be retained.

Clause 96 - Suspending Consents

49 This amendment confirms the ability of the consent authority to suspend the processing of a notified application, when a request is received from the applicant (new section 91A).

50 It is currently common practice for non-notified resource consents to also be put on suspend at the request of the applicant. However no maximum period for suspension has been suggested in the Bill. Often the additional time, when applications are on suspend, enables applicants to work through issues or gain written approvals. It is likely that more applications will be declined if there is no ability to place applications on suspend at the request of the applicant. Accordingly, WCC suggests that the ability for an applicant to request a suspension also applies to a non-notified application.

Submission:

50.1 WCC is supportive of the ability to suspend the processing of notified applications at the applicants request.

50.2 WCC also seeks clarification that non-notified applications can also be put on suspend at the request of the applicant.

Clause 96 - Status of returned applications

51 The new section 91C lets the consent authority return the application to the applicant if, on a total of 130 or more workings days, the clock has been stopped in relation to the applicant's deadlines.

52 Clarification is sought on the status of returned applications. The Bill does not provide that the application formally 'lapses' and its status after it is returned is therefore left unclear. Difficulties could arise, particularly for Councils required

to process competing applications for consents that effectively allocate resources, or the right to pollute, on a ‘first come, first served’ basis if returned applications do not lapse.

Submission:

52.1 WCC is supportive of returning applications but seeks an amendment to confirm that returned applications are cancelled.

52.2 WCC also seek clarifications that this approach also applies to non-notified applications.

Clause 97 - Notification timeframe

53 The time limit for deciding whether to notify an application is extended from 10 to 20 working days (partly to reflect the 'rejection' period being moved to 10 working days).

Submission:

53.1 WCC is supportive of the increase in the number of days proposed for notification decisions.

Clause 100 - Pre circulation of information under new section 103B

54 The Bill proposes a new mandatory requirement to provide the section 42A report and briefs of evidence to be called by the consent authority and applicant before the hearing (15 working days and 10 working days respectively). It also requires submitters to provide any expert briefs prior to the hearing (5 working days).

55 This will result in an increased cost to submitters and applicants as any expert witness appearing on behalf of them will need to prepare evidence for pre-circulation. Presently experts can appear on behalf of submitters at a hearing in a relatively informal manner, whereas the new provisions will require a formal approach be taken in all instances as they will need to prepare comprehensive written evidence where otherwise they have not done so.

56 Clarification is also sought regarding the consequences for the applicant and submitters for non-compliance with pre-circulation requirement? Does it mean they are prevented from giving that evidence at the hearing or can they proceed anyway without pre-circulating the evidence? Unlike the Environment Court, the Council has no power to award costs in this type of situation and the timeframes make it difficult to adjourn hearing to allow this 'new' evidence to be considered. If non pre-circulated expert evidence is allowed at the hearing then the proposed clause is undermined. If the evidence is not allowed, however, then potential relevant information is denied to the decision making process and participants are disenfranchised. In the absence of legislative direction the decision will be made by Commissioners, potentially introducing further inconsistency and lack of certainty to the process.

57 The Bill is also silent on who is responsible for the distribution of information and clarification is sought in this area as this does involve a cost and time. Currently it is also not clear how Council can ensure that evidence has been pre-circulated to all parties. Should the responsibility fall to Council to circulate applicant / submitter evidence? This will add to the logistical burden of administering hearings. WCC also requests that the electronic circulation of

evidence by the applicant, submitters and Council is specifically approved. The cost of hearings will rise if Council's are required to chase information and complete the additional administration.

Submission:

57.1 WCC is supportive of the mandatory requirement to pre circulate the section 42 report and evidence under section 103B.

57.2 WCC seeks clarification with regard to who serves the material and approval to circulate information electronically.

57.3 WCC seeks clarification as to what would happen if required information is not pre-circulated or not supplied within the prescribed timeframes. WCC suggests that evidence (not pre-circulated) be allowed at the discretion of Commissioners.

Clause 100 - Time limit for completion of hearings under section 103A

58 There is no longer an ability to stop the clock where a hearing is adjourned where the applicant has not yet exercised its right of reply, although applicants can now request that an application be 'suspended' up until the hearing is completed.

59 This will make it difficult for allowances to be made for the unavailability of witnesses or submitters. Whilst the need to do so only arises on rare occasions, it is important to provide for flexibility and ensure that written evidence can be clarified or tested where necessary.

60 Adjournments are also a valuable tool for applicants. It is relatively common for the applicant to request that the hearing be adjourned whilst they respond to aspects raised by submitters or the planning officer. This is because it is in the applicant's interest to satisfy the consent authority that its proposal will meet the requirements of the Act. Where questions remain, consent may have to be refused or more onerous conditions imposed than if time to develop other options is allowed. It is therefore anticipated that applicants, rather than requesting a hearing be adjourned, will request the processing of the application be suspended under the proposed Bill.

Submission:

60.1 WCC is supportive of setting an overall timeframe subject to the addition of an excluded time period for adjournments.

Clause 121 - Schedule 4 - information requirements with consent applications

61 The proposed changes to Schedule 4 require the applicant:

61.1 To 'demonstrate' that any part of the proposal it considers to be permitted meets all the relevant standards and requirements of the district plan, 'so that resource consent is not required for that activity' (refer schedule 1, clause 2(a) of the Bill).

61.2 To undertake Part 2 and section 104(1)(b) evaluations for all applications (refer schedule 1, clause 1(2) of the Bill).

62 The result of the bar being raised, in terms of information requirements, is that the application process will be 'front end loaded', potentially leading to a

corresponding increase in the number of rejected applications. Although it will take longer for planners to determine whether the information requirements have been met, once met, the processing of accepted applications should be more straight forward than it is at present.

63 The information requirements will increase the costs to many applicants as the preparation of application documentation will be more onerous and complex and is likely to require planning expertise. Rather than simply providing factual information on environmental effects, applicants will need to research the planning framework and weigh competing matters. Based on the form and content of applications received by WCC, there is no question that applicants will struggle to provide adequate Part 2 and section 104(1)(b) assessments without professional assistance.

64 WCC considers that the costs of providing the new information may outweigh the benefits where simple applications are involved. The proposed information requirements are only appropriate for more complex applications, which are commonly prepared by planning professionals.

65 To ensure national consistency on the preparation and acceptance of applications, detailed guidance is sought from MFE. 'Tip sheets' and example application documentation, developed by MFE should be made publicly available before the amendments come into force, to assist applicants. It is also suggested that MFE work closely with relevant professions such as architects and surveyors and offer them training sessions.

Submission:

65.1 WCC tentatively supports the information required to be included in an application for resource consent in the new Schedule 4 of the Resource Management Act 1991 but recognises the likely increased cost to applicants.