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**ORDINARY MEETING**

**OF**

**TRANSPORT AND URBAN DEVELOPMENT COMMITTEE**

**MINUTE ITEM ATTACHMENTS**

**Time:** 9:15 am  
**Date:** Wednesday, 16 March 2016  
**Venue:** Committee Room 1  
Ground Floor, Council Offices  
101 Wakefield Street  
Wellington

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<b>Business</b>	<b>Page No.</b>
<b>1.4.1 Wendy Armitage, Rebecca Holmes, Yon Yi Sohn, John Trail, Florent Mara, Sue Dinsdale, Kay Mahoney, Pauline Swann of Save the Jack Ilott Green</b>	
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## Presentation to the Wellington City Council

*Save Jack Ilott Green Group*

*March 16, 2016*

The objective of this submission is to retain and enhance Jack Ilott Green as a permanent inner city park



## Wellington City District Plan 2012 Civic Center Heritage Area

Civic Centre 12 September 2012 Central Area Urban Design Guide, Appendix 3 – Heritage Areas Operative 27/07/00

### 5 Civic Centre Heritage Area (CC)



#### Introduction

The Civic Centre heritage area has quickly become one of the most important public spaces in Wellington. Formed in 1990 – 92, it filled an obvious need in a city with many public spaces but no civic centre. Although it is relatively newly established and contains a number of buildings and features of recent vintage, the area contains and is defined by a collection of important civic buildings, two of which have very high heritage values.

Civic Centre also represents the long and important association by the Wellington City Council with this area of the city. The land was reclaimed by the Council in the mid-1880s, then, over time, it built a series of important council buildings – Town Hall (1901-04), Wellington Public Library (1938-40) and Administration Building (1946-51) – on three blocks of land that were bounded or intersected by Mercer, Wakefield, Harris and Cuba Streets and Jervois Quay. It is therefore entirely appropriate that this area was eventually transformed into a meaningful enclosed public space.

As one of the largest public spaces in central Wellington, it is a very popular place for gatherings and events and is widely used by Wellingtonians and visitors alike. The important heritage values of Civic Centre lie not only in the historic buildings but also in their (mostly) sensitive reuse and their seamless integration into a carefully designed and interesting space. Another important part of Civic Square's character, which emphasises its public role, is the complete exclusion of traffic from the area. There is little doubt that this area will become even more significant as the decades pass.



Civic Centre Heritage Area

A selection of the guidelines from this document:

(CC) G1.3  
***Maintain and enhance the relatively low scale and relationship of existing buildings to the square***

(CC) G1.7  
***Maintain views into, around, and from the square***

(CC) G1.8  
***Maintain the openness and access to sunlight in the square***

**The plan to develop Jack Ilott Green is contrary to these WCC guidelines**

## Negative Impact on Public Vistas

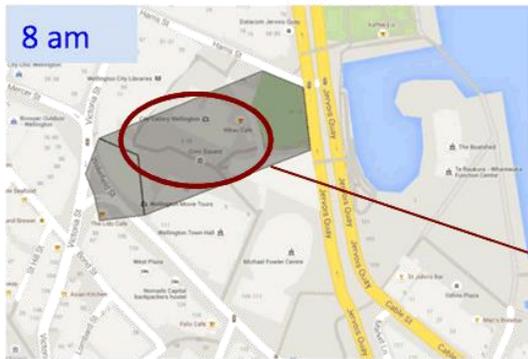
This civic square bridge area is heavily used by city workers, residents, local visitors and tourists.



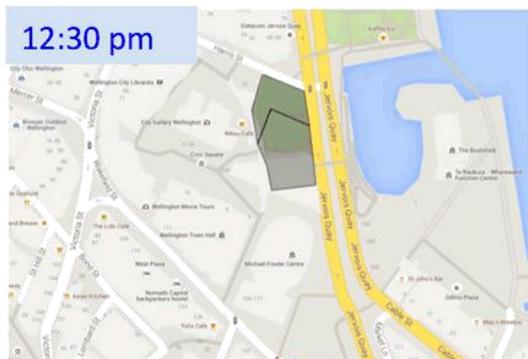
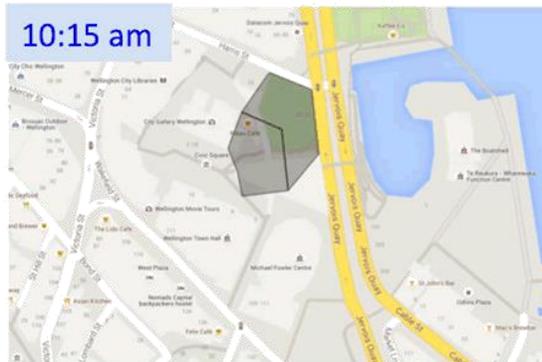
Any building on Jack Ilott Green would destroy the view in this area

## Shading Example: Sept 1

1 hour after sunrise to  
1 hour before sunset



**8am**  
*Shades the Civic Center  
just as people are  
walking to work*



**5 pm**  
*Shades the  
Wharewaka  
and Boat House  
Just at wine /  
beer time!*

## Features of Jack Ilott Green

### Location

- Easily accessible to elderly, young children...
- Readily accessible from the Civic Square and Library

### Size

- Large enough to play sports

### General

- Sheltered from the wind
- Wonderful vistas to the waterfront

Jack Ilott Green is a premium "back yard" for many inner city residents

## Use of the Green

- We have rigorously documented the use of the Green over several weeks (see our February 4, 2016 submission)



Contrary to previously stated council opinion we have proved that the Green is regularly used for a wide range of activities

## Documented Range of Activities

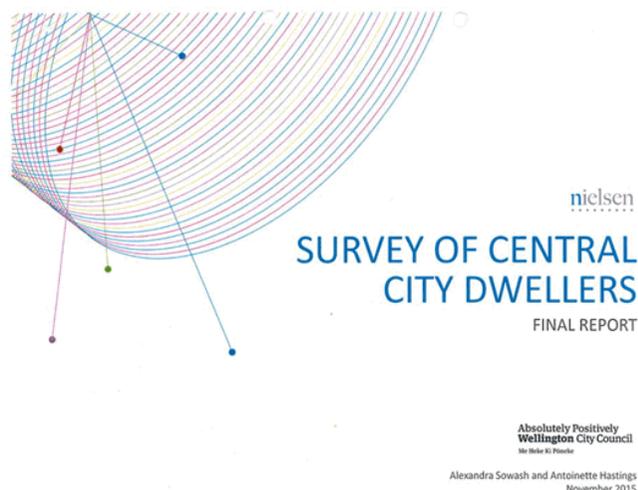
*From 14<sup>th</sup> Dec 2015 to 1<sup>st</sup> of February 2016*

- Gym Sessions
- Groups playing volleyball and football
- Tai Chi
- Children running around enjoying the open space
- Petanque
- Picnicking
- Sunbathing
- A place to eat lunch
- A place to relax and read
- A place to take photos of the waterfront and environs
- A green space to walk through instead of the busy Quay
- A place just to relax and enjoy the sunshine

**Jack Illott Green is a unique space in the inner city  
for enabling this wide a range of activities**



Sufficient space for a variety of community building group activities



## City Council Nielsen Survey of Central City Dwellers 2015

- “64% visit public parks or open spaces in the central city at least once a week or more often”
- However, they are **less satisfied** with:
  - The amount of communal open space (28% positive ratings)
  - The quality of communal open space (32% positive rating)

How does losing 7% of our inner city green space align with this council survey result?

## Council publicly advocate inner city green space

Council members are clearly stating to the public that they fully support accessible green space in and around the central business district.

### **Dominion Post January 7, 2014**

Council gears up for an extra 15,000 residents, and green spaces were particularly important for a growing number of inner city apartment dwellers. Andy Foster *"We need to make sure the central area is a very attractive place to be"*

### **Stuff March 9, 2016**

#### Nicola Young

There had been enormous population growth in Te Aro and there needed to be more focus on the quality of life for residents and enhance the walkability of the city.

*"Council needs to show more leadership and put in more parks"* she said.

#### Mayor Celia Wade-Brown

A greener CBD was also on the agenda for Mayor Celia Wade-Brown, who wanted to see parks near Kent and Cambridge Terrace.

#### Deputy Mayor Justin Lester

*"My priority as mayor will be creating more space for socializing and leisure"*

These public statements by the councilors conflict with the proposed plan to build on Jack Ilott Green

## Requirement for Public Consultation

- Per Local Government Act 2002 subpart 3. Restrictions on disposal of parks, reserves, and endowment properties section 138.1  
*A local authority proposing to sell or otherwise dispose of a park or a part of a park must consult on the proposal before it sells or disposes of, or agrees to sell or dispose of, the park or part of the park.*
- In telephone conversation with Ian Pike, Monday Dec 14<sup>th</sup>, Mr Pike stated  
*“Late 2014 early 2015 there was public consultation on the potential development of the Jack Ilott Green and subsequently council has given approval to investigate such development.”*

We dispute that public consultation ever took place specifically regarding the lease /sale of Jack Ilott Green

## Over 8000 Signatures

- 6911 signatures on paper over 7 weekends
- Very high signature rate
  - Over 100 per hour at the single table
  - Over 90% of passers-by, once informed, sign the petition
- 1092 signatures online
- **8003 total to date**

Overwhelming  
signature support!





## Summary of the Written Submission

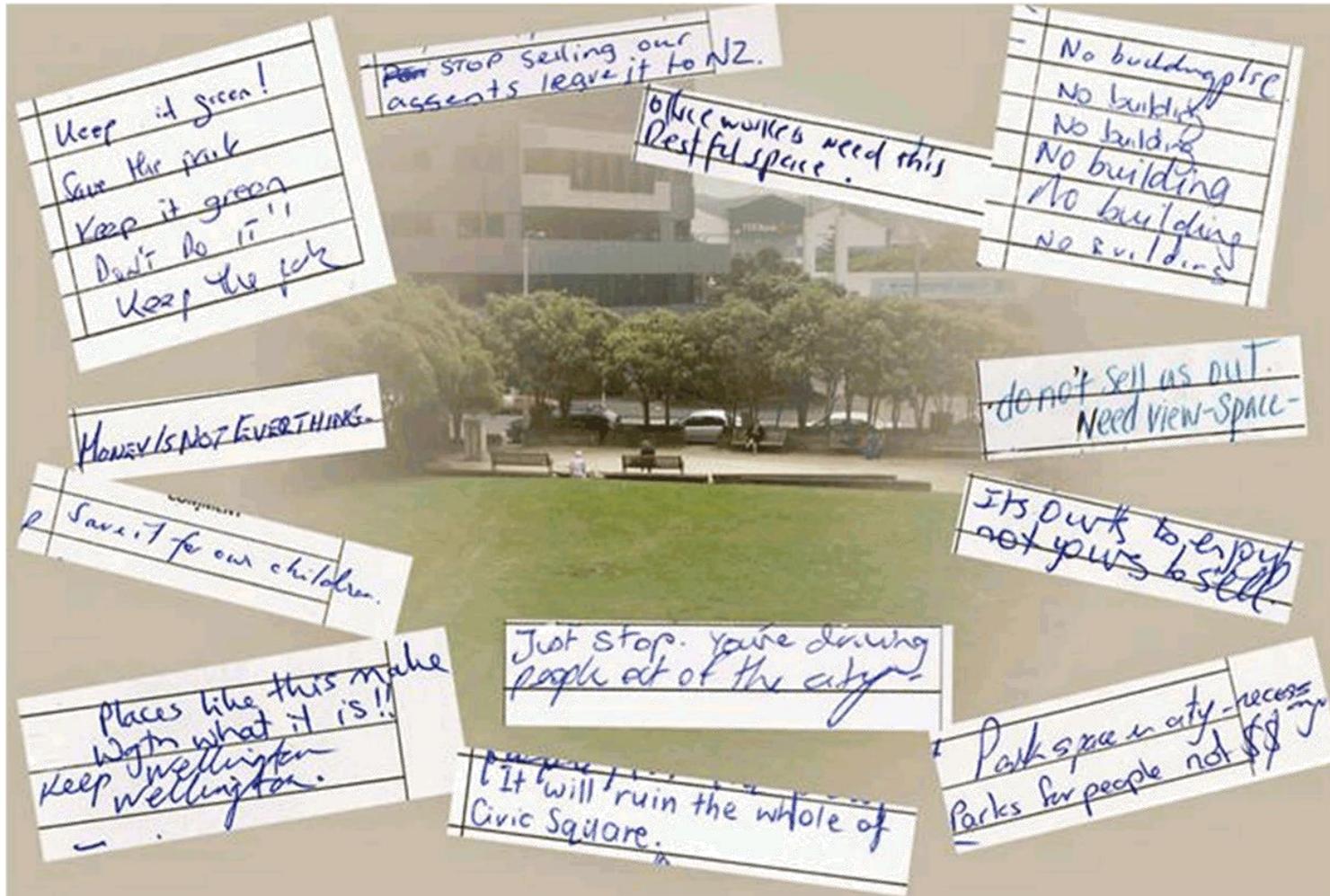
- Jack Ilott Green is 7% of our inner city green space
- 96% of inner city dwellers want more green space
- Jack Ilott Green enhances the civic square by providing the views and openness to the waterfront
- We have proved that Jack Ilott Green is used daily
- In the 2015 Council 10 year plan, 87% of those who commented on the sale of Jack Ilott Green were against it

We have demonstrated a strong public wish that Jack Ilott Green be retained as a park

## In Conclusion

- For at least two decades there has been constant public opposition to the loss of Jack Ilott Green
- Any economically feasible building
  - would be contrary to council heritage guidelines
  - would have major negative impact on vistas, sunshine and public enjoyment of this critical civic area
- Our recent efforts demonstrate overwhelming public support for retaining the park

We strongly urge that the council retain, and enhance, Jack Ilott Green as a permanent inner city park



**Khandallah Residents Group (KRG)**

**Feedback on Housing Choice and Supply Project paper (Item 2.6) re TUD meeting 16 March 2016**

**Note**

1. Recent engagement by our group with Council Officers on medium density housing (MDH) has been genuine and productive on this significant project
2. We obtained a copy of the 'Update on Housing Choice project' on Friday 11<sup>th</sup> March from the Council's website and we were not "consulted" with on its content. Our **initial** comments are included below.

**Housing Choice and Supply Paper – Overview of Initial Findings**

**Comment about specific clauses of paper 2.6 are on the following pages 2 - 3**

1. There still seems a view to progress (albeit more slowly for some suburbs) on the current MDH project plan without reviewing that it will still deliver the intended outcomes/benefits (*What's the problem here and is it being solved?*)
2. Given the impacts on the relevant communities/suburbs we think it would be prudent and democratic to have full and proper "consultation" with the respective communities on the content of the paper and include their views. This would enable Councillors to hear a wide range of views (as well as Council officers) so they can make fully informed decisions.
3. There is no clear integrated view of how the MDH project is progressing against established outcomes as well as an integrated view of tasks, milestones, dependencies, priority scheduling, benefits and key performance indicators for this project. This information would enable Communities and Councillors to better understand the strategic and cross-cutting policy implications and outcomes of decisions.
4. Standard disciplines of project management are lacking, impacting on transparency, governance and accountability that would ensure defined benefits are being effectively achieved for the city.

**What Next**

1. We want our elected officials to have sufficient time to consider Council Officers' recommendations and to canvas stakeholder views, were they are of a significant nature, before determining those recommendations
2. Our initial findings for paper 2.6 should highlight the value to you of seeking key stakeholder feedback and how Council Officers discussion points and recommendations are not always optimal.
3. We believe the only recommendation of paper 2.6 that can you can determine is Recommendation 1. *Receive the information*
4. Councillors need to determine do they really want to allocate continuing resource to a part of the urban growth plan that has significant weaknesses, was poorly consulted on and is clearly not going to deliver the intended benefits given the experience of Johnsonville and Kilbirnie

Specific clauses within the paper	KRG initial feedback
<p><b>Clause 8. (pg 38)</b> <i>"At the September 2015 TUD meeting, it was resolved that officers would initiate consultation (phase 1 with Khandallah, Island Bay and Newlands on options for greater housing choice in these suburbs"</i></p>	<p>What was actually agreed- <i>"...agree that officers commence further medium density residential area investigations for Khandallah, Island Bay and Newlands, including initial (informal) consultation with the communities and key stakeholders in these suburbs."</i></p> <p>There was no mention of 'phases' in the actual recommendation and note the change from "MDH" to "housing choice" <i>(Have the Comms people had some input here?)</i></p>
<p><b>Clause 9. (pg 38)</b> <i>".. has identified some concerns within the various communities ..."</i></p>	<p>We would say there are 'significant and genuine concerns' given the feedback.</p>
<p><b>Clause 13. (pg 38)</b> Submitters were <i>"concerned with the prospect...."</i>.</p>	<ul style="list-style-type: none"> <li>• We believe Councillors should consider the Council's summary of feedback with caution given that feedback initially sought was based on inadequate and misleading information provided by Council. The two questions asked about MDH were not well-designed to elicit information that could be reliably interpreted.</li> <li>• We don't believe the summary of feedback gives a balanced view. Council's analysis in the <i>Summary of Consultation</i> states that an overwhelming <b>72%</b> of the 483 submitters were opposed to MDH in Khandallah.</li> <li>• Various comments are made that feedback acknowledged that additional housing choice and supply is a matter that needs addressing. Our search through the individual submission provided to us by Council found few such comments. Current planning rules allow for intensification, yet there is no consideration being given to those rules (e.g. District Plan) and getting them working better for both residents and developers.</li> </ul>
<p><b>Clause 16. (supported by table 1) (pg 40)</b> <i>"... require further investigation and proposed engagement with the local communities before progressing on to the Draft plan change stage"</i></p>	<p>With all the rhetoric and promises to engage with the communities, the intention still seems to implement MDH regardless of the findings through further engagement and investigations? We need a clear undertaking that this is not a "done deal", and that the community's feedback will influence the recommendations and decisions.</p>
<p><b>Clause 20.9 (pg 40)</b> <i>"It is proposed to temporarily suspend the town centre planning work in Khandallah. As resources become available, a dedicated workstream will be reinstated."</i></p>	<ul style="list-style-type: none"> <li>• What is the proposed timing for this? Should this not be done in conjunction with any other planning consideration within the suburb and other suburbs?</li> <li>• What is the impact of this decision on the current engagement on housing supply and choice?</li> </ul>

Specific clauses within the paper	KRG initial feedback
<p><b>Supporting Information (pg 43)</b></p> <ul style="list-style-type: none"> <li>• <b>Consultation and engagement</b> – “... further community consultation and engagement will be undertaken.”</li> <li>• <b>Policy and legislation implications</b></li> <li>• “Plan policy development supports the outcomes”</li> </ul>	<ul style="list-style-type: none"> <li>• Consultation and engagement - usually you would expect to include key stakeholder views on the content and recommendations of the paper?</li> <li>• Policy implications –what is the supporting information?</li> <li>• There is no ‘Resource/capacity’ commentary for Council resources to carry out the recommendations. Surely this is a common consideration across any recommendations?</li> <li>• There is no clear timeline presented other than Priority classification. <i>How long is a piece of string?</i></li> </ul>
<p><b>Recommendation 4. (pg 37)</b> “Agree that officers continue with additional targeted engagement with the Khandallah, Island Bay and Karori communities on options for medium density housing and town centre planning.”</p>	<p><b>Suggested recommendations</b></p> <ol style="list-style-type: none"> <li>1. <b>Agree</b> that this paper should be considered at a later date to enable Council Officers to first seek feedback from the relevant communities and include that feedback in this paper before further consideration by Councillors.</li> <li>2. <b>Agree</b> to instruct Council Officers to review their work programme around housing choice and supply for the impacted communities.</li> <li>3. <b>Agree</b> that the work programme be reported back (alongside the paper in recommendation 1) to the next available TUD meeting) showing a three year forward programme proposal of work (including engagement, design and consultation phases) with an integrated view of milestones, dependencies, priority scheduling, benefits, alignment to strategy/policy and key performance indicators.</li> <li>4. <b>Agree</b> that any future engagement, by officers on significant community matters, be targeted and carried out to enable investigations of options and solutions <b>prior</b> to any informal/formal consultation. Decisions around how to target should be made in consultation with the relevant community / residents body.</li> </ol>



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## 2.9 General Business

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# WELLINGTON CITY COUNCILS SUBMISSION | THE RESOURCE LEGISLATION AMENDMENT BILL 2015

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### Recommendations

That the Transport and Urban Development Committee:

1. Receive the paper.
2. Note the contents of the Bill submission lodged on behalf of Wellington City Council.
3. Agree that any further Councillor feedback received at be incorporated into the Council's oral submission to Select Committee.

### Communication and Engagement

1. In finalising its submission officers consulted with other councils within the Wellington metropolitan area and Local Government New Zealand.

### Next Actions

2. The select committee dates for the Bill are yet to be finalised however are likely to be in April prior to the next TUD committee date.

### Attachments

Attachment 1. WCC Submission | The Resource Legislation Amendment Bill 2015 Page 2

Author	Warren Ulusele, Manager City Planning and Design
Authoriser	Anthony Wilson, Chief Asset Officer

**Submission on the Resource Legislation Amendment Bill 2015  
To the Local Government and Environment Committee**

**INTRODUCTION**

1. The following is Wellington City Council's submission in respect to the Resource Legislation Amendment Bill 2015 (the Bill).
2. The Resource Management Act 1991 (RMA) is one of the primary tools driving local government decision-making and planning. In terms of shaping the future of our built environment it is one of the most pivotal tools available to local government.
3. Wellington City Council (the Council) recognises that amendments proposed by the Bill are being introduced to "create a resource management system that achieves the sustainable management of natural and physical resources in an efficient and equitable way."
4. The Council is supportive of the intent to streamline the RMA and other key resource management legislation in order to create a simpler and more efficient resource management system.
5. Whilst the council believes there are some positive changes within the Bill, some changes are likely to introduce further complexity into the RMA which is contrary to the rationale which underpins the reform process. It is a matter of great concern to Council that the RMA is constantly tinkered with in this way, which causes considerable uncertainty for Councils, applicants and other interested parties.
6. The Council is concerned that many of the proposals within the Bill lack a robust evidence base and that this has resulted in problems being loosely defined. We note that the first iteration of the National Monitoring System data is yet to be released and proposals within the Bill have been developed without the benefit of this information providing for a better understanding of the resource management system.
7. Council is also concerned that the most significant proposals within the Bill have not been consulted on before now, in particular the loss of appeal rights, the substantial powers afforded to Ministers through regulations and the changes to the way in which a resource consent is notified.
8. The Council questions the timing of this Bill which adds to an already congested programme of legislative reform including the more fundamental work being undertaken by the Productivity Commission and the development of a National Policy Statement on urban development. In particular, we consider that the National Planning Template (NPT) proposal would have benefited from the conclusions of the Better Urban Planning inquiry being conducted by the Productivity Commission. This is given that the NPT is likely to have wide ranging implications for its users and the need to bring an evidence based approach to system reform.
9. The council notes that due to the timing of the consultation period this submission has not had the benefit of being debated by the councils Transport and Urban Development Committee. The Council wishes to be heard in support of this submission and reserves the right to expand on or alter its position when presenting oral submissions to the select committee.

## SUBMISSIONS

### PART 2 OF THE RMA

#### Changes to natural hazard provisions

##### Proposal:

10. The Bill involves the insertion of a new matter - 'significant risks from natural hazards' into existing Section 6 (Matters of National Importance). The Bill also amends Section 106 to allow landuse and subdivision resource consent applications to be declined on a greater number of natural hazards related matters.

##### Comment:

11. Overall we believe these changes reflect the elevated public awareness and importance of planning for natural hazards following the Canterbury earthquakes. Whilst the new matter will not dictate the outcome of plan making or consent decisions it is a further important factor to be considered and weighed up by decision makers.
12. The Council continues to actively address earthquake prone building issues and the challenges associated with managing risk, landowner costs associated with complying with seismic building standards, economic resilience issues, and the protection of heritage buildings and important character areas. Ensuring there is a consistent approach to these issues with reforms to the RMA and Building Acts will be very important. Amending section 6 and section 106 only goes partway to addressing a lack of consistency in this area.
13. The Council supports the commitment by the Ministry for the Environment to deliver national direction on natural hazards by 2018. We suggest that this guidance needs to address sea level rise and flooding matters to ensure that councils are able to make the hard decisions to make their communities more resilient to natural hazards. Wellington City Council is at the forefront of dealing with natural hazard issues of this nature and welcomes the opportunity to work with central government partners to develop national direction.
14. Guidance on how risk is to be approached may also be of benefit. For example, how are low-frequency high-consequence events to be treated compared to high-frequency low-impact events?
15. While most councils already acknowledge the risk of natural hazards through their planning frameworks, all decision makers will now be required to specifically recognise and provide for the management of significant risks from natural hazards in all decisions. This will increase the focus and importance of this issue.

##### Conclusion:

16. The Council **supports** these proposals.

**NATIONAL DIRECTION AND COUNCIL FUNCTIONS**

**The National Planning Template**

**Proposal:**

17. The Bill enables the establishment of the National Planning Template (NPT) and proposes that the plans first content will be approved by the Minister within 2 years of the Bill being enacted.
18. The NPT will impact on all regional policy statements, regional plans or district plans and may require councils to change the form and content of these documents. This may include the introduction of objectives, policies and methods (including rules for plans) as directed by the Minister.
19. Before approving the NPT the Minister must first prepare a draft NPT including an evaluation report in accordance with section 32 of the RMA. The NPT must then be publically notified to the public, local authorities, and iwi authorities and ensure adequate time and opportunity to comment on the draft.

**Comment:**

20. The Bill only enables the process to allow for the NPT meaning that real implications of the proposal will not be known until the draft NPT content is released. Although our submission focuses on the NPT enabling process at this stage we advocate for the preservation of local plan content and for the strongest possible consultation processes in respect of NPT content.
21. Whilst the Council supports national consistency across the resource management system, we note that there has been no clear benefit cost analysis to justify the development of a NPT and there is a general uncertainty about how it would interact with settled and tested local planning provisions. The development of the NPT could jeopardise the significant investment in plans nationwide without any material benefit.
22. We are generally concerned about the broad override powers the Minister has in respect of the NPT with no clear indication as to why they are required (given the evidence provided and existing powers to direct plan changes) or direction on how they will be used.
23. From a wider system perspective the 'one size fits all' approach promoted by the NPT may not be suited to all local authorities nationwide. The NPT may add additional complexity and costs for some smaller Council's without resulting in much benefit. In particular there is a risk of councils being burdened with costs associated with ensuring its current systems are compatible with the NPT.
24. The council questions how the NPT is to be governed and maintained at an operational level and how responsive the statute will be to changes in resource management practice and case law. If the governance arrangement of the NPT is inefficient then there is a strong likelihood for lag time to develop between a resource management problem becoming apparent and how quickly this problem is addressed by the NPT. This has the potential to create a significant amount of uncertainty for users of the NPT.
25. The recent Roseneath fence issue highlights how responsive the governance of planning statutes needs to be to provide confidence to applicants. As a result of a

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pivotal Environment Court declaration the Council was able to quickly alter its interpretation of district plan rules and communicate this to operational staff and the development community so as to ensure that future consent applications would be processed consistently.

**Conclusion:**

26. The Council notes that there are a number of implementation risks which mean we are unable to support the proposal at this time.

**Councils to ensure sufficient development capacity of land**

**Proposal:**

27. The Bill proposes that the functions of territorial authorities be amended so they must explicitly provide for sufficient "development capacity" of residential and business land.

**Comment:**

28. We consider that amending the functions of territorial authorities in isolation will have little impact as the changes themselves do not address the more fundamental issues of funding growth enabling infrastructure and the alignment of national and local infrastructure spending. The measures also do little to acknowledge the tension between urban growth and the retention of productive rural land.
29. The Council is already committed to taking an evidence-based approach to its spatial planning. We are aiming to accommodate expected growth in a way which is coordinated and aligns with other infrastructure such as transport and social and community improvements. Even where growth projections are exceeded we are confident that this growth can be comfortably accommodated.
30. The recently adopted Wellington Urban Growth Plan ["WUGP"] outlines how the Council will plan for population growth of some 50,000 people over the next 30 years. The city's population will grow to 250,000 over this time, will be older, have fewer families and have a greater proportion of people renting housing than today. We estimate that the District Plan has enough land currently zoned to enable the following types of residential development:
  - 20+ years supply of greenfield land;
  - 40 years supply for residential infill;
  - 40 plus years for high density residential development in the central area.

**Conclusion:**

31. The Council **supports** the proposal.

**The ability for plan changes to be limited notified**

**Proposal:**

32. The Bill proposes a number of changes to the existing Schedule 1 process, the most significant of which is the ability for councils to undertake limited notified plan changes.

**Comment:**

33. A limited notification pathway for plan changes is welcomed on the basis that it may reduce the time and cost associated with responding to localised planning issues. The current Schedule 1 process can, at times, act as a disincentive to addressing these localised issues.
34. The proposal is not without its risks as the Council will face a potentially difficult task of determining who is directly affected by a change. Council will continue to default to full public notifications where the scope of plan changes affects the entire city.

**Conclusion:**

35. The council **supports** the proposal.

**Establishment of a collaborative planning process**

**Proposal:**

36. The Bill introduces a new collaborative planning process for the development of a plan or plan change. This process involves a Collaborative Group being appointed and tasked with finding consensus views on issues it is given to consider, in consultation with the community and iwi. This binding collaboration occurs before any policy statement/plan or change is notified by the local authority. The steps of the process then follow are similar to the existing process, but with some additional steps and considerations along the way.

**Comment:**

37. The Council welcomes this proposal on the basis it provides further flexibility in the plan making process. We do however note that when compared with the existing Schedule 1 process, the value of the collaborative process could be questioned.
38. We note there are two main drawbacks to the process which are likely to reduce its flexibility and subsequent use by councils. These are:
- The inability to withdraw a plan change or plan from using this process once it has commenced;
  - The mandatory requirement to give effect to matters of consensus with no recourse to change the process should further information come to light;
39. Entering into the collaborative planning process is likely to create new administration costs for local authorities, iwi and other stakeholders at the front end of the process. We note that the limited appeal rights of this route may provide some balance to this cost in the long term.

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40. A further general concern with the proposal is how the process could be influenced or coerced by strong group members with a greater access to resources. The time and cost of the process may also discourage group members from signing up as would the potential to enter into a process that may result in no consensus being reached.

**Conclusion:**

41. The Council **supports** the proposal.

**Establishment of a streamlined planning process**

**Proposal:**

42. The Bill introduces a further new plan making pathway in the form of the streamlined planning process. Under this bespoke planning process existing timeframes under Schedule 1 maybe truncated in a fashion similar to the processes setup for the Auckland Unitary Plan and the review of the Christchurch City Plan.
43. To be able to use this process a local authority must first apply to the Minister responsible. A local authority can only apply if certain criteria are met (the proposed plan will implement a national direction; the public policy matter is urgent etc.). Once formally established by the Minister, this process is effectively driven by direction from the Minister who can set out process steps and timeframes the local authority is to follow, and any other procedural matters the Minister sees fit.

**Comment:**

44. We support the introduction of this new planning pathway on the basis that it provides additional flexibility in the ways council can undertake plan making. Councils who maybe under resourced and unable, for a variety of reasons, to make traction towards addressing a critical resource management issue or problem may find this process appealing. There are no appeal rights against any decision of the Minister or council under the streamlined process. Whilst this would potentially reduce the time and costs of the overall process it has implications in terms of public participation. This trade-off would need to be carefully considered before requesting to enter the process.
45. We note that in applying and entering into this process, any council would be bound to any stated terms and expectations the Minister dictates. Ultimately this may to reduce the use of this route as councils influence on the processed would be significantly reduced.

**Conclusion:**

46. The Council **supports** the proposal.

**CHANGES TO THE RESOURCE CONSENT REGIEME**

47. The Bill seeks to achieve a greater level of proportionality into the resource consent regime by making several key process changes, including:
- the introduction of a “fast-track” consent process;
  - new resource consent exemptions powers;
  - establishment of “boundary activities”;
  - changes to the provisions which govern public and limited notification;
  - changes to appeal rights;
  - the requirement to strikeout submissions in certain circumstances;
  - changes to fees.
48. Whilst the rationale of the government is clear that the consenting system should be more proportional, it is not clear which method the officials believe will meet this rationale. This is especially when considering the fast-track consenting pathway and the impact it may have in relation to the new “boundary activity” and “approved exemptions” pathways.

**Introduction of “fast-track” consenting**

**Proposal:**

49. The fast-track pathway effectively halves the processing time in which more simple consents must be processed. Initially, only controlled activities are captured by this pathway meaning the full implications of the change may only be felt once the scope of regulations are known. Whilst there is no apparent timeframe commitment for the development of regulations, the Bill does provide a wide scope as to the type of applications that could be included as fast-track applications.

**Comment:**

50. The Council agrees that more straight forward consents should be processed more quickly but is concerned that the current drafting of the fast tracked pathway is problematic. The proposal's key shortcoming is that the information and assessment requirements of the pathway are not reduced to match the time frame in which council must make a decision. In order to meet the timeframes under resourced councils may have to procure private sector resourcing. Ultimately the new proposal does not guarantee a reduction in costs to match any reduction in time as any additional outsourcing costs would likely be absorbed by applicants.
51. The proposal can be seen to be inconsistent with the policy rationale of the 2013 Resource Management Amendment Act (RMAA 2013) which increased the time limits for deciding on notification from 10 to 20 working days. See below an extract from the MfE publication: “A guide to the six-month process for notified resource consent applications.”
- The main policy intent of this amendment is to make sure there is enough time for consent authorities to make notification decisions and serve notice to the public and affected parties. With the previous 10 working day deadline there was not always enough time for local authorities to do this.*
52. We believe that, based on historical practice, it is highly unlikely that an authority would be able to physically notify an application within 10 working days.

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53. The proposed pathway can also be seen to be inconsistent the timeframes for accepting and rejecting applications under s88(3) which were increased from 5-10 working days by the RMAA 2013. See below an extract from an MfE publication entitled: "A guide to section 88 and Schedule 4."

*Before the amendments, section 88 allowed consent authorities up to five working days to decide whether to accept or return applications. This time limit has been increased to 10 working days. The main policy intent of this amendment is to provide consent authorities with enough time to undertake a robust completeness check before accepting an application for processing. This is needed because of the more comprehensive completeness requirements set out in the new Schedule 4. The amendment reflects a greater emphasis on ensuring applications are complete at lodgement, to avoid the delays and costs of requesting significant additional information later in the process.*

An alternative – 20% of annual consents to be processed within 10 working days.

54. The Council considers that if a fast-track process is to be introduced that councils themselves are in the best position to decide whether an application can be fast-tracked.
55. A possible alternative model would require Councils to publish a list of application types that would be eligible to be fast-tracked and councils would be required to process 20% of their annual resource consents within 10 working days. This would ultimately be achieved by Councils carefully vetting applications at the front end of the resource consent process to see if they can be processed more quickly. Whilst the 20% target would be mandatory, no process would be specified within the RMA or in regulations. Instead the process would entirely be at the discretion of each individual local authority. This would avoid the need for further insertions into the Act itself which can reduce its legibility for councils and applicants alike.
56. The major benefit of this alternative model is that it would be able to be quickly tailored to a council's particular district or regional plan and avoid the need for regulations to be developed. As the MfE Regulatory Impact Statement (RIS) document identifies "although simple proposals can be easily identified in practice, it is very challenging to set specific legislative criteria for what constitutes a simple application" (pg42 RIS).
57. This alternative model would have the effect of immediately capturing a larger portion of applications instead of just controlled activities which only make up a tiny margin of annual consents.
58. A target of 20% of annual consents is considered appropriate given the MfE RIS document suggests that between 8-26% of all consents annually can be classed as simple. In this light the 35% target MfE have referred to in its alternative to the fast tracked pathway is not appropriate.
59. Compliance with the 20% target would be measured annually through the National Monitoring System allowing the performance of councils to be benchmarked. It is acknowledged that this alternative model would still be challenging for councils that are under resourced.
60. Whilst this model would result in some level of variation from council to council it is likely that it would still deliver a considerable system benefit and result in simpler consents being processed in half the current time.

61. Should the above alternative model be considered appropriate it is suggested that the level of assessment required under the RMA be reduced to better enable councils to meet the 10-day timeframe.

**Conclusion:**

62. The Council **opposes** the fast-track pathway in its current form.

**Introduction of "approved exemptions"**

**Proposal:**

63. The Bill proposes that councils be given discretion to classify activities as 'permitted' where only very minor or technical rule breaches have triggered the need for resource consent. Factors relevant to the exercise of this discretion include:
- The breach being very minor, technical or similar (i.e. very nearly permitted);
  - Neighbours are unaffected or are only affected to a minor degree;
  - The environment is affected to a very minor degree.

**Comment:**

64. The approved exemption powers are welcomed. We believe the new discretionary powers could be used in the following situations;
- For temporary activities;
  - Where a minor breach is identified through the building consent process; and
  - Where a minor breach is identified via a complaint or monitoring and the council is unlikely to pursue enforcement action.
65. The use of the exemption powers are not without risk and in practice councils may not use these powers for the following reasons:
- i. In meeting the tests for an approved exemption, the Council would be required to undertake a similar assessment to that of a basic resource consent including the need to undertake a site visit and an effects assessment. Applicants and Councils alike may consider that the effects of a marginal breach would be more fully legitimised and less likely to be challenged by a resource consent process given the established tests and reporting of this process.
  - ii. Issuing an exemption may lead to "effects creep" which would undermine the long established permitted baseline concept in planning law by creating a new baseline on a case by case basis.
  - iii. The exemption involves a council having to interpret a number of undefined terms including "temporary", "marginal" and "no different".
  - iv. Issuing exemptions may have the effect of undermining the integrity of district plan rule thresholds set under Schedule 1 processes.
  - v. There is a general lack of guidance about what is required to be included within the written notice.

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**Conclusion:**

66. The council notes there are a number of technical uncertainties in the drafting which mean we cannot support the proposal at this time.

**Introduction of "boundary activities"**

67. The Bill proposes that the RMA will deem an activity to be "permitted" if it meets the definition of a "boundary activity" and the written approval of any eligible affected neighbours is provided.

**Comment:**

68. This proposal would remove the need for a resource consent where the only party or parties eligible to be affected (see changes to the notification regime) provide their written approval to the application. Whilst the proposal would reduce the regulatory time and costs of modest residential extensions we are concerned that the current drafting creates uncertainty and does not reflect the complex nature of boundary rules and the existing use rights regime.
69. The definition of 'boundary rule' is unclear and should be improved to provide certainty as to what is and what is not a boundary rule. For example, it is unclear if the process applies to only yard rules or to other bulk and location requirements such as site coverage, sunlight access planes and height. To address this uncertainty a non-exhaustive list could be included within RMA (e.g. as a definition) to provide clarity over which common bulk and location rules are captured by the boundary activity pathway.
70. The definition of 'affected boundary' is also unclear. We seek clarification as to whether this only relates to the rule breach directly adjacent to the nearest boundary or does it extend to other boundaries that also receive effects protection from the rule? For example, the purpose of a building recession plane rule is to ensure sufficient sunlight and amenity, and as such compliance with that rule also benefits other boundaries. The council believes that those boundaries which benefit from compliance with the rule should also be considered to be affected boundaries. These issues need to be clarified or the usefulness of this provision will be limited when compared to a non-notified consent which benefits from a non-notification clause.
71. It is noted that there are no provisions relating to required timing of any council decision, or the form or content of the notice required to be provided confirming an activity as permitted. We suggest a prescribed notice be drafted to assist councils in the administration of this process.
72. Further, we note that new section 87BA requires only basic information (height, shape and location of the activity on the site) to be submitted to the council for the purposes of a boundary activity. The Council suggests that regulations be developed that list a more robust set of information required to ensure councils are able to identify all possible regulatory breaches and avoid the need for further delays for applicants.
73. There is also a concern that some rules included as 'boundary rules', such as building recession planes, can and do also achieve other purposes such as ensuring new development is compatible with the townscape environment.

**Conclusion:**

74. The council notes there are a number of technical uncertainties in the drafting which mean we cannot support the proposal at this time.

**Changes to the public and limited notification regime**

**Proposal:**

75. The Bill introduces a new stepped public and limited notification process. The changes are summarised below:

<b>Public Notification:</b>		
Step 1	Mandatory public notification	<ul style="list-style-type: none"> <li>Where this is requested by an applicant</li> <li>An applicant fails to provide additional information</li> <li>The involves an exchange of recreation reserve land</li> </ul>
Step 2	Public notification precluded	<ul style="list-style-type: none"> <li>Notification is precluded by a rule within a plan</li> <li>The activity is controlled</li> <li>The activity is a boundary activity</li> <li>The activity is a subdivision or residential activity that is restricted discretionary or discretionary; or specified in regulations (yet to be developed).</li> </ul>
Step 3	Public notification where not precluded by step 2	<ul style="list-style-type: none"> <li>A rule requires public notification</li> <li>The effects are more than minor</li> </ul>
Step 4	Public notification required in special circumstances	<ul style="list-style-type: none"> <li>Can be publically notified if special circumstances exist</li> </ul>
<b>Limited Notification:</b>		
Step 1	Mandatory limited notification as an affected party	<ul style="list-style-type: none"> <li>Protected customary rights groups,</li> <li>Affected customary marine title groups</li> <li>Affected persons to whom a relevant statutory acknowledgment is made</li> </ul>
Step 2	Limited notification is precluded	<ul style="list-style-type: none"> <li>A rule precludes limited notification</li> <li>The application is for a controlled activity (other than a subdivision of land) or a prescribed activity)</li> </ul>
Step 3	Limited notification where not precluded by step 2	<ul style="list-style-type: none"> <li>Affected persons must be notified (those identified as affected persons in respect of a nohoanga, overlay classification or vest and vesting back, wahi tapu recognised in plan or heritage list on adjacent or affected land,</li> <li>those identified as affected persons under section 95DA and 95E)</li> </ul>
Step 4	limited notification may be required in special circumstances	<ul style="list-style-type: none"> <li>Can be limited notified to persons if special circumstances exist</li> </ul>

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**Comment:**

76. The implication of the changes is that activities in residential areas are now unlikely to be publicly notified unless special circumstances exist or the application is for a non-complying activity. Where applications are limited notified the broad discretion to identify parties has been removed and replaced with a defined scope of who can be considered eligible to be affected. We note that this stepped process will create new transitional costs which will ultimately be passed on to applicants.
77. The council considers that current notification tests, especially those for limited notification work well in practice primarily due to their flexibility and the ability to apply the provisions to a wide variety of limited notification scenarios. The Ministry for the Environment provides no compelling evidence to suggest that the current provisions are not working as intended. From the evidence presented there is no clear indication that introducing a stepped process for determining public and limited notification would improve certainty of the notification regime in the long term.
78. Public or limited notification is already the absolute exception in the processing of a resource consent application. The council believes that it is important that parties that are genuinely affected by a proposal have a chance to participate in the process.
79. The proposal fails to recognise that applications that sit within the discretionary activity classification can have significant effects which do not warrant public notification but are felt wider than just immediate neighbours. Under this proposal Council will have to construct an argument based on special argument that these parties are affected.
80. Linking notification eligibility to an activity classification may mean that complex applications involving significant environment effects cannot be notified. Such activities have been shifted into the controlled or discretionary restricted classification bracket to promote certainty for applicants.
81. If the proposal is taken forward then we endorse the inclusion of special circumstances as a consideration for limited notification. This provision would give the Council an option to notify a select set of parties where they were previously unable to (i.e., because special circumstances currently only applies in respect of public notification).

**Conclusion:**

82. The Council **opposes** the proposal.

**Changes to consent conditions**

**Proposal:**

83. The Bill determines that a consenting authority must not impose conditions on a resource consent unless;
  - The applicant agrees to the condition(s); or
  - The condition is directly connected to 1 of both of the following:
    - an adverse effect on the environment; or
    - an applicable district plan or regional rule.

**Comment:**

84. Whilst there is little evidence to suggest that Councils are imposing conditions which are *ultra vires*, we support this proposal as the new tests largely align with current practice. It is inherently within the Councils best interest as the consent authority to only impose conditions which meet existing legal tests. This proposal should assist in making the conditions regime across the system more consistent.

**Conclusion:**

85. Council **supports** this proposal.

**Loss of appeal rights to the Environment Court**

**Proposal:**

86. 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 a subdivision, unless the subdivision is a non-complying activity;
  - A residential activity (an activity associated with the construction, alteration, or use of a dwelling house on land that is intended to be used for residential purposes); and
    - is to occur on a single allotment; and
    - is a controlled, restricted discretionary, or discretionary activity.
87. The Bill also proposes that a submitter can only appeal in respect of a provision or matter raised in the person's submission.

**Comment:**

88. The limitations on appeal rights reflect an assumption by government officials that the activity classification of a consent reflects its relative complexity and that the overarching planning decision to allow those activities in that area has already been considered and made at the plan making stage. This however does not reflect practice where the plan making stage is more concerned with establishing appropriate thresholds rather forecasting effects of detailed and localised planning applications. In particular, residential and subdivision activities within the full discretionary bracket can be complex and can have significant environmental effects.
89. 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 especially as most second generation plans have moved away from the non-complying status to the discretionary status to better clarify those matters that should be considered at the consenting stage and provide more certainty for applicants.
90. It is suggested that if this proposal is accepted that the wide ranging full discretionary activity class be removed from the appeal limitations. Applications of this type can

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have significant adverse effects and the permutations of this activity class can seldom be captured at the plan making stage.

91. On the positive side the proposal may reduce expenses faced by councils defending decisions before the Environment Court. However this is not sufficient reason to support this proposal.

**Conclusion:**

92. The Council **opposes** the proposal.

**Require submissions to be struck-out in certain circumstances**

**Proposal:**

93. The Bill proposes that councils must strike out submissions on notified consent applications where the authority is satisfied that at least 1 of the following applies to the submission:
- it does not have a sufficient factual basis;
  - it is not supported by any evidence;
  - it is supported only by evidence that claims to be independent expert evidence but is prepared by a person who is not independent or does not have sufficient specialised knowledge or skill; and
  - is unrelated to an activity's actual or likely adverse effects, if those effects were the reason for notification.
94. There is a right of objection for someone when their submission is struck-out under this section but no right of appeal from that objection.

**Comment:**

95. The council agrees that decision makers need to be able to quickly get to the nub of a proposals issues however we question whether this proposal will have any material impact in practice given similar, but non-binding strikeout powers already exist to manage hearings effectively and to vet frivolous, trade related or vexatious submissions.
96. Whilst the proposal acts as an incentive for submitters to focus their submissions which may assist in reducing hearing time and cost, the new provisions will provide a platform for applicants to challenge Councils on the application of the strikeout powers as the provisions are now binding rather than discretionary.
97. The proposal may create new process costs as officers would need to assess submissions against the new statutory test. The cost of this assessment is likely to be passed on to applicants.
98. In practice, submissions which are poorly articulated or represented are discounted in terms of their weight at the decision stage. Decision makers are able to manage hearings processes so they do not cause undue delay to hearings proceedings.
99. The Council notes that the RMAA 2013 introduced compulsory pre-circulation of evidence for all limited and notified resource consents. The intent of this change was to

provide decision makers with the most up to date information from all parties prior to the hearing starting allowing them to quickly determine the real issues and concentrate proceedings accordingly. To date there has been no formal assessment by MfE as to the effectiveness of these provisions yet this Bill proposes further measures in this area to suggest a problem still exists. A prudent approach would be to measure the effectiveness of the previous changes before deciding whether or not further legislative intervention is required.

100. If the proposal is adopted the Council suggests that Section 96 of the RMA also be amended to reflect the requirement for submitters to focused the nature of submissions. This will ensure there is an onus on submitters and not just a requirement on councils to strikeout defective submissions. A change should also be made to the prescribed form for a submission.

**Conclusion:**

101. The Council **opposes** this proposal.

**Fixing of fees through regulations**

**Proposal:**

102. The Bill provides for regulations which would require a consent authority to fix fees payable to a hearing commissioner. Regulations will not prescribe the amount that a consent authority charges but only require that the amount must be fixed. The purpose of fixing fees on a mandatory basis is to provide more certainty of costs for applicants.

**Comment:**

103. In theory fixing commissioner hearings fees may provide a way of incentivising commissioners and councils to run hearing processes as cost-effectively as possible. The council does however have concerns over any measure which affects its ability to recover the actual and reasonable costs incurred from processing applications. In a worst case scenario any fixed or capped charges that do not recover costs will require a subsidy from the ratepayer.

**Recommendation:**

104. The council **opposes** this proposal.

