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**REPORT 3**  
*(1215/11/IM)*

## **SUBMISSION ON THE RESOURCE MANAGEMENT (SIMPLIFYING AND STREAMLINING) AMENDMENT BILL 2009**

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### **1. Purpose of Report**

This report presents a submission on the Resource Management (Simplifying and Streamlining) Amendment Bill 2009 for approval.

### **2. Executive Summary**

The Resource Management (Simplifying and Streamlining) Amendment Bill (the Bill) was introduced to Parliament on 19 February 2009. The Bill proposes significant changes to the Resource Management Act 1991 (RMA) to simplify the plan development and the resource consent processes, among other changes.

While Officers support much of the Bill for its sensible approach to streamlining both the plan development and resource consent processes, there are a number of issues that have to be addressed. To this effect, the submission highlights key concerns and suggests where changes could be made to improve the overall content of the Bill.

### **3. Recommendations**

Officers recommend that Council:

1. *Receive the information.*
2. *Agree that the submission on the Resource Management (Simplifying and Streamlining) Amendment Bill 2009, attached as Appendix 1, be forwarded to the Local Government and Environment Select Committee for their consideration.*
3. *Agree that the Mayor (or her nominated representative) together with relevant officers will make an oral submission to the Local Government & Environment Select Committee, should the opportunity arise.*
4. *Authorise the Chief Executive to make any changes to the submission required as a result of the Council discussion, and to make editorial changes as required.*

## **4. Background**

The Resource Management (Simplifying and Streamlining) Amendment Bill (the Bill) was introduced to Parliament on 19 February 2009. The Bill proposes significant changes to the Resource Management Act 1991 (RMA) to simplify the plan development and the resource consent processes, among other changes.

The Local Government and Environment Select Committee have called for submissions on the Bill. The submission period is very short, closing on Friday 3 April 2009.

## **5. Discussion**

A copy of the Council's proposed submission is provided in Appendix 1. This has been prepared with input from relevant Council teams. Officers have liaised with Local Government New Zealand and DLA Phillips Fox during the preparation of this submission.

The submission provides an introductory comment generally supporting the overall intent of the Bill. This is followed by specific comments on aspects of the Bill that, in the opinion of officers, do not achieve their intended outcome (i.e. a streamlined process) or where further clarification is required in the legislation. The last section of the submission highlights a number of issues that were not included in the Bill, but which we believe the Select Committee should consider.

The Council has indicated in the submission that it would like to present to the select committee if there is an opportunity to do so.

### **5.1 Summary of key points**

#### *Provisions that relate to public participation*

The Bill contains a number of changes to provisions that relate to public participation. These include:

- Narrowing third party appeal rights to those who had already made a submission or are directly affected
- Presumption for public notification of all resource consents reversed and affected party tests revised
- Security for costs re-introduced
- Appeal filing fee increased to \$500.

The appropriate level of public participation in the process has long been a vexed issue, with successive amendments to standing rights in the Town and Country Planning Act and the RMA as evidence of this. Careful balance is needed between allowing sufficient public participation to add value to the outcomes and ensuring efficient processes to minimise delays to applicants, developers and investors.

On balance the above proposals are supported, except for the presumption toward notification being reversed. Whilst this does actually reflect common practice across Councils, it is noted that reversing the presumption of

notification will likely result in significant workload for councils in amending their plans and developing a new understanding of the revised notification tests.

*Deletion of the non-complying consent category*

This proposal is of significant concern. Removing non-complying activities will trigger a review of all objectives and policies in the District Plan, resulting in further uncertainty and drawn out processes. It will undermine any gains to be made by not requiring the ten year plan review.

*Proposed Plans no longer have effect until decisions on submissions notified*

This proposal has advantages and disadvantages. It may be acceptable if tied to the provision that limits appeal rights. On balance it is preferred that no change is made to the current process.

*Refined further submission process*

Officers agree that this is one aspect of the plan making process that could be streamlined. There is however concern that the proposed amendments will increase workload and the risk of judicial reviews as the process requires council officers to decide whether anybody is adversely affected by a matter raised in original submissions, and if so, to collect their views. Instead two minor changes to the existing further submissions process are recommended.

*Prohibition of rules for general tree protection in the urban environment*

Officers generally support this provision as it is in line with previous experiences with managing trees in the District Plan. The Council originally included a general tree protection rule in its proposed District Plan, but found it to be unworkable and the rule was replaced in favour of a schedule of listed trees in the Heritage Chapter of the Plan. Clarification is required, however, on the meaning of 'urban environment' to ensure the prohibition does not constrain the Council's ability to protect important indigenous vegetation on rural land intended for future Greenfield subdivision.

*Links between national instruments and local planning processes*

The Council generally supports the proposals to ensure better linkages between national instruments (such as National Policy Statements and National Environmental Standards) and local authority planning processes. Support is subject, however, to such national instruments being written in a clear manner, reflecting the style used in plans already. This will ensure that Councils can more readily adopt them into their plans without further formality, as desired by these amendments.

*Resource Consent processing timeframes and discounting policy*

One of the key concerns raised in the submission relates to the changes to resource consent processing timeframes. The proposed provisions to not allow the 'processing clock to be stopped' for secondary information requests will lead to a lower standard of decision-making and will likely result in an increase of declined applications due to a lack of sufficient information. Conditional support however is offered for the requirement to produce a policy on discounting administrative charges for failure to meet consent processing deadlines. The Council has informal guidelines for assisting with decisions on objections to consent fees.

*Consent applicants or submitters able to elect to have independent commissioners hear applications*

Officers support this proposal. In making this recommendation, however, officers have noted that a decision on this issue should not be based on the perceived competency or otherwise of elected officials to make decisions on resource consents. Rather, the council supports the approach because it will provide choice for applicants and submitters, will assist with scheduling hearings and will increase flexibility in managing the hearings process.

It should be noted that the legislation provides for the independent commissioner (if requested) to either sit alone, or to sit on a hearing committee alongside elected councillors and that the decision on which approach is used lies with the Council.

*Bill limits appeals on plans to questions of law and prevents 'whole of plan change' appeals*

This is a significant amendment to the current approach. On the one hand, the amendment will have significant benefits for the plan making process by reducing the burden of defending wide ranging appeals on policy matters. Enabling plan appeals to be only on points of law should reduce the delays in having plans take full effect and ultimately improve environmental outcomes sooner. The amended approach also importantly reinforces a key principle of the RMA that local councils are the primary policy makers for matters affecting their local environment and community, not the Environment Court.

However, officers are concerned that the current 'user-friendly, less formal' approach to council hearings will change as submitters feel compelled to use lawyers and expert witnesses to present the most robust case possible. This could lead to a very legalistic, adversarial process that diverts attention away from the core environmental issues. It could also lead to much more cross examination in order to fully test the evidence put forward by particular submitters, and the Council will probably need to amend their own committee structures to reflect the increased need for robust decisions.

On balance, officers consider the proposed amendments are appropriate but only if significant further direction is given to Councils on:

- whether Councils are expected to adopt more formal procedures for Council hearings (including whether cross-examination of submitters is anticipated), and
- how to ensure that individuals or community groups with little or no funding will receive a fair and equitable hearing, and
- whether councils should amend their committee structures to manage the robust hearings responsibilities.

*Provisions relating to trade competition*

While any attempt to deal with trade competition is supported, the proposal to prohibit consideration of the 'effects of trade competition' raises a number of concerns. Firstly, specifying that only the direct effects of trade competition should not be considered as officers believe that the indirect effects of trade competition need to be considered to assist in managing town centres

effectively. Secondly, how officers should best manage the requirement to dismiss submissions by trade competitors.

*Costs relating to local authority involvement in Ministerial call-in or agreed direct referrals to the Environment Court*

The revised call-in provisions are generally supported however it is unclear from the legislation whether councils will be able to recover their costs of being involved in both processes.

*Further Matters to be included in this Bill and/or Phase 2 of the proposed amendments*

There are a number of other matters which should also be considered during the review:

- References required in RMA to s15 of the Prostitution Reform Act
- Need for policy direction on the quality of urban environments
- Use of non-statutory policy and other levers
- Compliance costs of the RMA, s328 Excessive noise directions
- Streamlining work under the Enforcement Notice provisions
- Section 32 (analysis) and section 35 (monitoring) reports.

## **5.2 LTCCP Implications**

If the Bill progresses in its current form, it will require a complete review of the District Plan objectives and policies. However as the proposed amendments also suggest the removal of the ten yearly requirement to review the District Plan it is proposed that the budget that has been set aside for this be used for any changes that may be required by the Bill.

## **6. Conclusion**

This submission on the Resource Management (Simplifying and Streamlining) Amendment Bill 2009 (Appendix 1) has been developed with officer input from the relevant Council teams.

While there is general support for the directions and content of the Bill, there are a number of issues that have to be addressed. To this effect, the submission highlights key concerns and suggests where changes could be made to improve the overall content of the Bill.

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## **Supporting Information**

**1) Strategic Fit / Strategic Outcome**

*This submission is consistent with the Council's strategic outcomes for the city, particularly the Urban Development Strategy.*

**2) LTCCP/Annual Plan reference and long term financial impact**

*No implications.*

**3) Treaty of Waitangi considerations**

*No implications.*

**4) Decision-Making**

*This is not a significant decision.*

**5) Consultation**

*Consultation is not required for the submission. However any changes to the District Plan as a result of this Bill will require public consultation.*

**6) Legal Implications**

*There are no legal implications.*

**7) Consistency with existing policy**

*There are no implications for Council policy – the submission is consistent with Council policy.*