

Submission to the Local Government and Environment Select Committee

CANTERBURY Mayoral Forum

A strong regional economy with resilient, connected communities and a better quality of life, for all.

Resource Legislation Amendment Bill

24 March 2016

1. The Canterbury Mayoral Forum (the Forum) is pleased to have this opportunity to offer comment on the Resource Legislation Amendment Bill (the Bill) and the proposed changes to the Resource Management Act 1991 (the RMA).
2. The Forum acknowledges the generosity of the Committee in allowing an extension of time for us to confer amongst our member councils to make the following submission. This submission provides more substantive comment further to our earlier submission (Number WOMV7T7).
3. The Forum wishes to be heard in support of our submissions.

Context

4. The Canterbury Mayoral Forum comprises the Mayors of the ten territorial local authorities in Canterbury and the Chair of Environment Canterbury, supported by our Chief Executives. The purpose of the Forum is to promote collaboration across the region and to increase the effectiveness of local government in meeting the needs of Canterbury's communities.
5. All Canterbury councils actively participate in the Forum: Kaikōura District Council, Hurunui District Council, Waimakariri District Council, Christchurch City Council, Selwyn District Council, Ashburton District Council, Mackenzie District Council, Timaru District Council, Waimate District Council, Waitaki District Council and Environment Canterbury.
6. The Forum work programme is implemented by the Canterbury Chief Executives Forum and the Canterbury Policy Forum. For matters that impinge on planning, the Policy Forum is supported by the Canterbury Planning Managers Group.
7. The following submission has been developed by members of the Canterbury Planning Managers Group, and approved by the Forum. This submission records matters on which there is a consensus view amongst the region's councils, with additional comment on some matters where our member councils have a range of views and concerns.
8. Individual Canterbury councils have separately provided their own submissions on the Bill. This submission is not intended to replace or detract from any of those

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9. independent council submissions.

General Comments

10. The Bill introduces some worthwhile and welcome reforms which all Canterbury councils support. These proposed changes include:
- the addition of the management of natural hazard risks as a matter of national importance in s6 RMA, and the associated amendment to s106 RMA (clause 133 of the Bill)
 - regulation power to remove stock from water bodies
 - on-line servicing of documents.
11. Some other provisions of the Bill are supported in principle, such as the scaling of process costs, the collaborative and streamlined planning processes, and the introduction of Iwi Participation Agreements. However Canterbury councils' support for these proposals will depend on how the proposed new processes would work in practice. There is still considerable detail to come in relation to such matters as the proposed National Planning Template, regulations relating to fast track applications, and the proposed regulatory powers to prohibit and remove council planning provisions. The details of what these proposals could mean for local government and for our communities and stakeholder groups, and the costs these new processes may impose in implementation, are of concern to Canterbury councils.
12. The Forum notes that a theme of the Bill is the proposed new regulatory powers, and that in a number of instances the Bill in its current form would provide for regulation to be made by Order-in-Council. We acknowledge that the Bill includes requirements for public notification and consultation processes, and for evaluations under s32 RMA, for the introduction of some of the proposed measures (for example the provisions for the preparation of the National Planning Template (clause 37 of the Bill) and for regulations to permit or prohibit certain rules (clause 105 of the Bill)). However some of our member councils are concerned that there is not necessarily a public participation process for an Order-in-Council, and that local government and communities may have limited opportunity to provide input to those decisions.
13. The Bill proposes a number of changes to the RMA that Canterbury councils consider will complicate planning processes and increase process costs for local government. Some of these are outlined in the following specific points of submission.

Specific Points of Submission

National Planning Template

14. The Forum members are not able to support the National Planning Template (NPT) proposals in their current form in the Bill.
15. Some Forum members support the underlying principle and intent behind the NPT, to achieve greater consistency in plan making. Some Forum members agree with measures to establish common definitions, but many of the member councils are opposed to an NPT which would go beyond that to prescribe rules, objectives and policies in councils' plans. The view of many of the member councils is that an overly

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prescriptive NPT would override local community planning, would reduce flexibility and adaptability in plans, and would not allow for plan provisions specific to local areas and local conditions. Although some standardisation is supported in principle, some member councils consider that it is important that any common definitions and rules are not made mandatory, to ensure the ability for local authorities to provide appropriately for local conditions, requirements and aspirations in plans.

16. Some Forum members consider that the NPT as currently proposed would duplicate the provisions of existing national instruments under the RMA (National Policy Statements (NPSs) and National Environmental Standards (NESs)).
17. Some Forum members are concerned about the timeframes for introduction of the proposed NPT and the implications for councils' resourcing and planning schedules. The proposed new s58I(1) RMA would require the Minister to have the first National Planning Template (NPT) within two years of Assent of the Bill. Some Canterbury local authorities have recently completed district plan processes. The current proposals in the Bill would require councils to amend their plans to be consistent with the NPT within two years of Royal Assent rather than following the current 10 year review period under s79 RMA. This would be unreasonably costly, inefficient and inequitable.
18. Two Forum members, Christchurch City and Waimakariri District Councils, are opposed to the NPT and consider that it should not proceed.
19. Much of the implementation detail around the proposed NPT is yet to be determined. The Forum considers that, should the NPT proceed through your Committee's consideration of the Bill and the subsequent Parliamentary process, the most efficient and effective way to work through the issues with the scope and implementation of an NPT would be to involve local government in a collaborative process with the Ministry for the Environment, via a sector working group.
20. The Forum recommends that, if the proposal for a National Planning Template proceeds, a sector working group is established, comprising representatives of local government, to work in collaboration with the Ministry for the Environment to inform the development of the Template, including standard definitions and rules.

Hearings Commissioners

21. Clause 16 of the Bill would amend s34A RMA, to require councils to consult tangata whenua through iwi authorities on whether it would be appropriate to appoint a commissioner with an understanding of tikanga Māori and the perspectives of local iwi or hapū for a Schedule 1 hearing process. Some Canterbury councils have concerns over the implications of this proposal, because of their uncertainty about the availability of suitably qualified commissioners, and possible cost burdens for councils and applicants outside the main urban areas.
22. Clause 17 of the Bill proposes the insertion of a new s34B RMA, that councils may fix a fee for hearings commissioners, but must fix a fee if required by regulation. Some Canterbury Councils have concerns about the implications of potential fixed fees for the availability of suitably qualified commissioners.

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23. Some Canterbury councils also point out that there are implications of fixed fees on the consent process. Some of our member councils are concerned about the risk that with fixed fees set by regulation, any additional or unanticipated costs of the hearings process would need to be met by ratepayers. The Forum notes that this risk would have particularly severe impact on councils with smaller ratepayer bases, of which there are a number in our region.

Collaborative and Streamlined Planning Processes

24. Clause 52 of the Bill and the proposed new Parts 4 and 5 of Schedule 1 RMA would establish two new planning process options. Canterbury councils support the development of collaborative and streamlined planning processes in principle, but many of our members are not able to support the proposals as currently framed in the Bill. Our member councils have a range of concerns about the implementation, efficiency and effectiveness of the proposed new planning options. One of the Forum members, Christchurch City Council, recommends that the proposals as currently drafted should be rejected to allow for the development of more practical options.
25. Should these proposals proceed through your Committee's consideration of the Bill and the subsequent Parliamentary process, the Forum considers that a collaborative sector working group would be the most appropriate way to ensure that local government practitioners' experience and expertise are maximised to develop the detail of how such planning options would work in practice.
26. ***The Forum recommends*** that, if the proposals for collaborative and streamlined planning processes proceed, a sector working group is established, comprising representatives of local government, to work in collaboration with the Ministry for the Environment to review the proposals and to develop appropriate processes and guidance.

Iwi Participation Arrangements

27. Canterbury councils support the proposal at clause 38 of the Bill to provide for Iwi Participation Arrangements – provided that these are not mandatory, and provided that the Bill is clarified to recognise existing arrangements between councils and iwi and hapū. The Forum considers that it is crucial that the Bill recognises existing mutually acceptable formal relationships between iwi and councils. Such well-established partnerships and arrangements have been developed over time and are firmly based in goodwill, understanding and ongoing practical working interactions between the parties.
28. ***The Forum recommends*** that the Bill's provisions for establishing Iwi Participation Arrangements are amended to clarify that the establishment of these arrangements would not be mandatory, and would not be necessary if a local authority and an iwi or hapū already have a satisfactory relationship agreement to provide for participation of the iwi or hapū in council processes.

On-line servicing of documents

29. The Forum supports the proposals in clauses 68-70 and clause 142 for electronic servicing of documents. We note that some minor administrative processes would need to be established to cater for situations where email addresses are changed,

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such as a practice note to ensure that electronic addresses for serving of notices are automatically sent with a request for a delivery and read receipt.

Regulations to exclude stock from water bodies

30. The Forum supports the proposals for regulatory powers to exclude stock from water bodies. However one of our member councils notes their concerns in relation to the prohibition of grazing where animals are being used to control weeds in riverbeds and where the impacts on water quality are minimal.

Sufficient Development Capacity

31. There are a range of views amongst Canterbury councils on the Bill's proposed changes to the roles of regional councils and territorial local authorities (clauses 11 and 12). Some of our member councils have noted their concerns about the proposal to set a definition of "development capacity" within the RMA, considering that this may have unintended consequences. Some councils consider there could be a risk that costly infrastructure could be required to be provided too far ahead of actual need.
32. The Forum notes the requirement under the Local Government Act 2002 for all councils to establish 30-year Infrastructure Strategies in association with Long-Term Plans. We also note the concurrent process and consultation for the development of a NPS for Urban Development which will address related issues around development capacity. Some of our member councils consider it would be more appropriate for a definition of "development capacity" to be incorporated within the proposed NPS rather than being inserted into ss 30 and 31 RMA.

Regulatory Power to Prohibit and Remove Planning Provisions

33. The proposed new regulation powers in clause 105 of the Bill are particularly of concern for Canterbury councils, giving central government regulatory power to prohibit a local authority from making specified rules, and power to override rules in a council plan that then must be withdrawn. District plan and regional plan rules have gone through a rigorous public process and reflect the values and aspirations of the community. Many of the Forum member councils consider that this proposed regulatory power would undermine the purpose and intent of RMA plans, and would diminish and devalue the comprehensive public process to develop the rules in the first place.
34. **The Forum recommends** that the regulation making powers proposed at clause 105 are deleted from the Bill.

Regulations Relating to Fast-track Applications

35. Clause 151 of the Bill would establish new provisions for fast tracked consent applications, including the addition of particular activities or classes of activities by Order-in-Council. Some Canterbury councils consider that nominating particular activities could create conflict with existing provisions in district plans, and in the case of effects-based plans, may lead to changes being required to the plan, with the attendant costs to councils and communities of that process.

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36. Views on this proposal amongst Forum members are divided. The regional council Environment Canterbury supports it in principle, while noting concerns with applications requiring substantive assessments and recommending an amendment to clause 121 of the Bill to allow for exclusion where technical review, scientific assessment or assessment of cultural effects is required. However the territorial local authorities are opposed to the proposal, for similar reasons in relation to the challenges of meeting a ten-day timeline when there is a need for expert reports and assessments to determine the effects and appropriate consent conditions. Christchurch City Council rejects this proposal, noting that there are insufficient safeguards around the type of activity that regulations could prescribe to be fast tracked.
37. Several Canterbury councils already have provision for fast track processes for genuinely straightforward applications, and practice fast tracking of such applications at present. However Forum member councils note the importance of local authorities retaining the flexibility to manage consenting processes appropriately given the complexity of some applications and the resourcing available.
38. The Forum considers that this is another matter where, if the proposal for a fast-track consent process proceeds through your Committee's consideration of the Bill and the subsequent Parliamentary process, the issues would best be resolved via a sector working group to go through the implications of these sections of the Bill to avoid any perverse or unintended consequences.
39. ***The Forum recommends*** that, if the proposal for a fast-track consent process proceeds, a sector working group is established, comprising representatives of local government, to work in collaboration with the Ministry for the Environment to inform the development of the process, including guidance and criteria for local authorities.

Boundary activities

40. Clause 122 of the Bill would create a new s87BA RMA providing that boundary activities approved by neighbours on affected boundaries are permitted activities. This is not supported in its current form by the majority of territorial local authorities in the Forum. While it would seem to be intended to reduce unnecessary resource consent costs, it would not allow for cumulative effects to be considered, and could give rise to undesirable outcomes.
41. Clause 128 of the Bill would specify persons eligible to be considered affected persons for the purpose of limited notification. The Forum's territorial local authority members have concerns about the interaction of these proposals with the proposals in clause 122, including questions relating to subdivisions and affected persons, the eligibility of iwi or hapū in relation to activities impacting upon sites within a silent file area or identified as wāhi taonga, and sites with heritage or archaeological values.
42. Canterbury territorial local authorities consider that the limitations as currently proposed could potentially lead to more public notifications, although this could only be done under special circumstances. Some district plans are not set up to automatically preclude notification for all discretionary (restricted) and discretionary subdivisions. The proposals could require councils to review their subdivision objectives, policies and methods in their district plan, imposing more costs on local government. Again the

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Forum considers that the potential complications and perverse outcomes of these proposals will best be resolved by engaging with local government practitioners.

43. ***The Forum recommends*** that a sector working group is established to work in collaboration with the Ministry for the Environment to review the implications of the proposed new provisions for boundary activities and avoid any perverse or unintended consequences from these sections of the bill.

Public Notification of Consent Applications

44. Clause 125 of the Bill would establish prescriptive criteria for determining whether or not applications should be notified or limited notified. The proposed process is mandatory and complicated, with cross-referencing to other sections of the RMA. It is unclear whether existing notification clauses in plans would still stand if they are not covered by the new provisions. There is the potential for challenge if all the adverse effects are not identified upfront, or the applicant considers some effects have been identified that should not have been. There is the potential for the erosion of participatory rights.
45. Some Canterbury councils consider it probable that consent processes would become more adversarial, and more complex and time consuming, as participants attempt to cover all potential effects. This likely outcome would be inconsistent with the aims and objects of the Bill, and would create additional costs for councils, applicants and communities. There could be further need for costly plan change processes to establish more appropriate activity status for certain activities to ensure that local requirements and standards are given effect under the proposed new notification criteria.
46. ***The Forum recommends*** that clause 125 is deleted from the Bill.

Striking Out Submissions

47. Clause 120 of the Bill would introduce new additional requirements that a submission or part of a resource consent submission must be struck out if it does not meet certain criteria specified in the proposed new s41D(2). Canterbury Councils are concerned about the workability and likely outcomes of these requirements. The Bill does not define “sufficient factual basis” nor specify where the responsibility would lie to determine this in relation to particular consent submissions. Furthermore the Forum is concerned by the strong likelihood that this proposal would adversely affect participation of lay people, who may be the parties most affected by the process, particularly in smaller rural communities where amenity values may be deemed to have “insufficient factual basis”.
48. ***The Forum recommends*** that clause 120 is deleted from the Bill.

Conclusion

49. The Forum considers that some of the proposed reforms in the Bill are worthwhile and welcome, as noted above. However there are a number of proposals which raise significant concerns for our member councils. The Forum acknowledges that with some matters in the Bill there is a range of views and concerns amongst its member councils. With regard to some other matters there is consensus amongst all

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Canterbury councils. The submission above has outlined as clearly as possible those areas of shared opinion, and areas where the concerns expressed are the views of a number of our member councils.

50. For further enquiries, please contact the Secretariat for the Canterbury Policy Forum:

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