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# RESOURCE MANAGEMENT (SIMPLIFYING AND STREAMLINING) AMENDMENT BILL

## SUBMISSION TO THE LOCAL GOVERNMENT AND ENVIRONMENT SELECT COMMITTEE

3 APRIL 2009

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### BACKGROUND TO IPENZ

The Institution of Professional Engineers New Zealand (IPENZ) is the lead national professional body representing the engineering profession in New Zealand. It has approximately 10,000 Members, including a cross-section from engineering students to practising engineers to senior Members in positions of responsibility in business. IPENZ is non-aligned and seeks to contribute to the community in matters of national interest giving a learned view on important issues, independent of any commercial interest.

### CONSULTATION

Prior to preparing this submission IPENZ held workshops in Auckland, Wellington and Christchurch to inform Members of the proposed amendments and to gain feedback from Members on this amendments.

Once prepared, the draft IPENZ submission was sent to workshop attendees and was available to all IPENZ Members via the IPENZ web site. All Members were invited to review and comment on the submission via our weekly email publication *engineering direct*.

## **EXECUTIVE SUMMARY**

IPENZ supports the principles of the Resource Management Act (RMA) and the objectives being sought through this Amendment Bill.

We consider that the majority of the proposed amendments will create positive changes. In particular, IPENZ considers that enabling applicants to request at least one commissioner on a hearings panel and to have direct referral to the Environment Court will provide applicants with more control over the process that their resource consent application goes through.

IPENZ notes the amendment to the criteria for national significance. IPENZ considers that the Environmental Protection Authority may receive many applications seeking hearings by a Board of Inquiry for projects that are not nationally significant. We believe that the criteria for national significance need to be considered carefully and tightened. We consider that the criteria should include some assessment of the project's national economic and social effects and the project cost.

IPENZ received mixed views from its Members on the merits of changes to the decision-making for designations. Whether the proposed amendment progresses or not, IPENZ recommends that requiring authorities have the same processes available to them as resource consent applicants, including the ability to request direct referral to the Environment Court and the opportunity to request that at least one commissioner is on the hearing panel.

IPENZ has reservations about the removal of the non-complying activity category and recommends that the non-complying activity remain in the RMA unchanged.

We consider that the review of how the RMA interacts with other legislation will be an important work stream of Phase 2. We also look forward to Phase 2 considering urban design issues.

Finally, IPENZ supports the establishment of the Environmental Protection Authority and looks forward to learning more of the Authority's function, roles and structure in Part 2 of this review.

## **GENERAL COMMENTS**

### **SUPPORT OF THE FUNDAMENTAL PRINCIPLES OF THE RMA**

IPENZ supports the fundamental principle of sustainable management and the effects-based approach that underpins the Resource Management Act (RMA). The RMA is important not only in protecting our natural and physical resources, but also in enabling activities that contribute to economic development and social connectedness. Improving environmental, economic, cultural and social outcomes is a matter of achieving the right balance and if necessary, making the appropriate trade-offs.

### **SUPPORT FOR THE OBJECTIVES OF THIS AMENDMENT BILL**

IPENZ supports measures that reduce unnecessary costs or delays, without unreasonably compromising the quality of outcomes. It is our view that the Resource Management (Simplifying and Streamlining) Amendment Bill is a significant step to improving processes.

### **SUPPORT FOR NATIONAL POLICY INSTRUMENTS**

IPENZ strongly supports the use of national policy instruments – National Policy Statements (NPS) and National Environmental Standards (NES).

Currently there is only one NPS for infrastructure – the National Policy Statement on Electricity Transmission – and one under consideration – the proposed National Policy Statement for Renewable Electricity Generation. IPENZ believes that an NPS should be developed for each form of major infrastructure, including state highways, rail, ports, airports, all electricity generation, gas transmission and telecommunications trunk lines. It is possible that NPSs may also be useful for other major infrastructure, such as major irrigation proposals, major wastewater infrastructure, flood protection and coastal protection.

Using NPSs for infrastructure will also inform the identification of what constitutes a project of national significance.

IPENZ believes that NESs for major infrastructure are equally important and should be developed in parallel.

This could mean, for example, that common environmental standards are applied throughout New Zealand for the state highway network, relating to issues such as

environmental protection and noise. This would provide consistency and avoid the need for the NZ Transport Agency to make submissions to individual councils on district plans and consent applications.

The use of NESs relating to infrastructure would simplify assessments and allow faster adoption of new industry standards. It would avoid the need for expensive and time-consuming plan changes for matters that are either uncontroversial or for which policy can be developed nationally.

## **REQUIRING AUTHORITIES SHOULD HAVE SAME PROCESSES AS RESOURCE CONSENT APPLICANTS**

We note that the Amendment Bill enables resource consent applicants to:

- apply for direct referral to the Environment Court to have the Environment Court consider the resource consent application
- request that their council hearing include at least one independent commissioner.

IPENZ considers that both of these abilities should also be available to requiring authorities for designations. We don't believe that these issues are sufficiently clear in the Amendment Bill.

## **STRUCTURE OF THE SUBMISSION**

This submission provides feedback on each clause of the Amendment Bill.

### **SUBMISSION**

#### **Clauses 1, 2 and 3**

IPENZ has no comments on these clauses.

#### **Clause 4 (Interpretation)**

In relation to Part 5 of this clause, which enables the Environmental Protection Authority to issue certificates of compliance, IPENZ supports this amendment.

#### **Clause 5 (Enforcement action can be taken against the Crown)**

IPENZ supports the amendment that enforcement action can be taken against the Crown and Crown organisations. This amendment brings the RMA into alignment with other legislation such as the Building Act.

## **Clauses 6 to 18**

IPENZ has no comments on these clauses.

### **Clause 19 (Minister may direct commencement of review of regional and district plans)**

With the removal of the requirement to review district plans every ten years, IPENZ considers it important that there is a mechanism to prompt local authorities to review their plans. IPENZ therefore supports this clause which enables the Minister for the Environment to direct a local authority or regional council to review its plan.

## **Clauses 20 to 24**

IPENZ has no comments on these clauses.

### **Clause 25 (Discount policy)**

IPENZ generally supports the intention of this clause, which requires local authorities to establish a discounting regime for consent applications that are not processed within the statutory timeframe. However, we note some potential issues with this policy.

We note the discount applies where “the responsibility for the failure rests with the local authority”. We question the ease with which it can be proven that the local authority is responsible for missing the statutory timeframe, and the process an applicant will need to go through to prove this and to receive their discount.

IPENZ also questions the rate at which local authorities will set the discount. We recommend that if this amendment is progressed then clear guidance needs to be provided to local authorities to outline how to develop a discount policy and the appropriate level of discount.

Finally, we question whether a discount policy will be an effective method of encouraging compliance with statutory timeframes. The 2005-06 Ministry for the Environment survey of consent application processing times found that 26 per cent of non-notified consents were not processed within 20 working days. The survey also found that the delays occurred for a number of reasons – acceptance of poor quality applications, delays in gaining information from other parties, council systems and shortage of consent officers. It may be that the 20-day processing time is impractical and needs extending. IPENZ Members are split on the merits of extending the statutory timeframes. Some Members believe that if the timeframe is

not practical then a solution is to extend the timeframe to 30 working days. Other Members do not support this suggestion. IPENZ recommends that the statutory timeframe be reviewed and amended in Phase 2 if required.

#### **Clauses 26 to 34**

IPENZ has no comments on these clauses.

#### **Clause 35 (Establishment of the Environmental Protection Authority)**

IPENZ supports the establishment of an Environmental Protection Authority (EPA). We consider it important that the EPA contain officials with a high level of expertise to be able to consider the wide range of issues associated with projects that are called-in, or seek a Board of Inquiry (BOI) hearing.

#### **Clause 36 (Secretary for the Environment to exercise functions of the Environmental Protection Authority)**

We understand and support this clause. We look forward to learning more about the establishment of the EPA and its roles in Phase 2 of this amendment process.

#### **Clauses 37 and 38**

IPENZ has no comments on these clauses.

#### **Clause 39 (Relationship between National Environmental Standards and rules or consents)**

IPENZ supports the clarity provided by this clause.

#### **Clause 40 (National Environmental Standards)**

IPENZ notes the proposed changes to the process for amending a National Environmental Standards (NES), where that amendment has no more than a minor effect, corrects errors or makes similar technical alterations. IPENZ generally supports the ability for the Minister to make minor amendments to the NES without consultation. However we have some concern as to what “minor” would be deemed to include. We seek clarity as to the definition of “minor” and recommend that this is included in the Amendment Bill.

Also in relation to Clause 40, we support the new section 44A, which clarifies the conflicts between an NES and rules in a local authority’s plan or proposed plan. We support the requirement for the local authority to amend its plan to remove

duplication and conflict and consider that the ability to do this without further formality is appropriate given the level of scrutiny (that is, full consultation) that an NES is subject to.

#### **Clauses 41 to 44**

IPENZ has no comments on these clauses.

#### **Clause 45 (Ability for Minister to provide material to the Board of Inquiry)**

IPENZ does not support the amendment in this clause, which requires a BOI to consider material provided to it by the Minister for the Environment. We believe that the BOI consideration of an application should be independent of the Minister and that the Minister providing material to the Board, as a separate process from material included in any submission, is inappropriate.

#### **Clauses 46 and 47**

IPENZ has no comments on these clauses.

#### **Clause 48 (Local authority recognition of National Policy Statements)**

We support the need for a document to be amended to recognise national policy statements (NPS). We consider that the associated amendments will ensure clarity as to the hierarchy of policy documents.

#### **Clause 49 to 51**

IPENZ has no comments on these clauses.

#### **Clause 52 (District rules – tree protection)**

IPENZ notes the amendment to ban blanket tree protection. IPENZ understands that approximately 5,000 resource consents are granted annually to enable the trimming, pruning and removal of trees. We assume that the number of resource consents to be issued will decrease with the amendments and, assuming significant trees are still protected, we support this change.

#### **Clauses 53 to 55**

IPENZ has no comments on these clauses.

#### **Clause 56 (Removal of requirement to review policy statements and plans every ten years)**

We note the amendment in this clause, which removes the requirement for district plans to be reviewed every ten years. IPENZ understands that the preparation of plans takes significant periods of time (eight years on average for preparation of a district plan) and also significant cost (\$2 million on average).

IPENZ supports this amendment and notes that the majority of district plans have been subjected to incremental plan changes that update relevant policies and rules. We recognise that in some cases updates do not occur and assume that where district plans are not updated appropriately, the Minister for the Environment will use his or her power to direct a local authority to review its plan.

We note the inconsistency created by this amendment in that district plans do not need to be reviewed every ten years, while regional plans do. If this amendment is progressed, we recommend that the same requirements in terms of review apply to both regional and district plans.

#### **Clause 57 (Combined planning documents)**

IPENZ supports the amendments outlined in this clause to better facilitate the preparation of regional policy documents. We consider that combined plans would provide consistency and certainty for those residing in a particular region and adjacent districts.

IPENZ notes that the new Section 80 provides for district plans to cover more than one district or government level (that is, district and regional), but not for more than one plan within a single district. IPENZ notes that it is desirable to avoid fragmented jurisdictions, however it is possible that one consent authority (for example, the proposed Auckland Council) may need to administer more than one district plan for a considerable length of time. This needs to be explicitly provided for in Section 80. Section 73(1) may also need amending.

#### **Clause 58**

IPENZ has no comments on this clause.

#### **Clause 59 (Legal effects of rules)**

IPENZ supports this clause, which amends when rules in a proposed plan or plan change have legal effect. We consider that this amendment will reduce the ability for there to be layers of proposed rules and plans in a district or city.

As part of this amendment there will be a need to ensure that situations do not arise where the old rules lapse and there is a long delay before new ones can be enforced. This could occur, for example, if the Environment Court finds a particular rule invalid. A similar situation could apply in a rapidly growing district where the previous regime was inadequate. We note that the local authority can apply to the Environment Court for particular rules to come into force sooner and this may help to address this issue.

### **Clause 60 (Direct referral to Environment Court)**

We note and generally agree with the ability for an applicant to apply to the EPA for consideration of their resource consent application by the Environment Court. We do have concern that the local authority has the ability to decide whether this request is granted. We consider it inappropriate that the local authority has this power. In addition, we note that an applicant, upon receiving a report from the local authority, must lodge a notice of motion with the Environment Court. We question whether this lodgement gives the Environment Court the ability to determine whether to hear the application or to decline and send the application back to the local authority.

As an alternative, we suggest that the decision as to whether the application is heard by the Environment Court should be made solely by the Environment Court. In this scenario the applicant and local authority could then appear before the Environment Court judge, state their views, and the judge then makes the decision.

If the proposed amendments progress, we recommend that the Amendment Act also include clauses that state the grounds on which an application can be denied consideration by the Environment Court. Without this, we consider that local authorities will rely on their own discretion which may lead to a large number of appeals.

IPENZ also recommends that a timeframe be set for decisions on resource consent applications that are referred to the Environment Court. A defined timeframe would provide applicants with certainty and provide more consistency with other processes, such as the local authority processes for resource consent applications and BOI consideration of projects of national significance.

A further concern is that it is not clear that this direct referral to the Environment Court is available for a requiring authority for a notice of requirement for a designation. IPENZ believes this mechanism should be available for a requiring authority.

One question raised by the new procedure is the role of the mediation services currently provided by the Environment Court. At present, mediation plays a valuable function in resolving cases either without a hearing, or at least by refining the issues still to be determined. It is important that these services remain available whichever process is followed. The need for adequate preliminary processing and mediation will be particularly important for direct referral cases as the Environment Court will be presented with untested applications.

### **Clauses 61 to 63**

IPENZ has no comments on these clauses.

### **Clause 64 (Further information requests – limit of one request)**

IPENZ notes the amendments to further information requests in this clause, particularly the proposal to limit local authorities to one request for information. We generally support the move to reduce information requests, however we note that in a number of cases, information requests are necessary as the quality of resource consent applications is poor.

We consider that limiting local authorities to one information request may have unintended consequences such as local authorities waiting until the last possible moment to request information and single information requests taking longer to process due to the need to consolidate all information requests into a single request.

Therefore, rather than limit local authorities to one information request we propose the following alternatives instead.

- Allow a local authority to request as much information as they require within a certain timeframe. For example, if the processing period remains at 20 days then the requests might have to be made within the first 10 days. Beyond this period, further requests can only be made in relation to responses received from the applicant. No new subject material could be introduced.
- Allow one information request which stops the clock and further information requests but these do not stop the processing clock.

In addition to these alternatives, we consider that the pre-application and pre-hearing process could be used better to reduce the information that local authorities need to request.

IPENZ notes that the proposed Section 92(4) requires the applicant to provide the information “no later than 10 working days before the authority makes its decision to grant or refuse the application”. The applicant has no control over when the local authority makes its decision. We therefore recommend that the deadline relate to the statutory deadline.

### **Clauses 65 to 67**

IPENZ has no comments on these clauses.

### **Clause 68 (Notification and adversely affected parties)**

IPENZ notes the change to the definition of “affected person” in that the effects on an affected person must be “more than minor”. We note that this is a shift in the kind and magnitude of effect that a person must be affected by. We support this amendment.

IPENZ also notes the change in presumption in this Amendment Bill, from a presumption that a resource consent application will be notified, to a presumption that it will be non-notified. We understand that the majority of applications are currently non-notified and we support the change in presumption so that the RMA reflects what is happening in practice.

### **Clause 69 (Determining whether adverse effects are more than minor)**

Please refer to our comment below in relation to Clause 139.

### **Clauses 70 to 72**

IPENZ has no comments on these clauses.

### **Clause 73 (Request for at least one commissioner)**

IPENZ supports this clause which amends Section 100 so that a resource consent applicant can request that their application is heard and decided by at least one commissioner.

We have one concern with this amendment. The applicant can request “at least one commissioner”, the costs of which they are responsible for paying. There is a risk that multiple commissioners will be assigned, which could place significant cost onto the applicant. We seek clarification as to the process to determine the number of commissioners who will be assigned.

Finally, while it is clear that this process is available for a resource consent applicant, it is not apparent that this process is available for a requiring authority for a notice of requirement for a designation. IPENZ believes this mechanism should be available for a requiring authority. We consider that a commissioner should be compulsory when the local authority is also the requiring authority.

#### **Clauses 74 and 75**

IPENZ has no comments on these clauses.

#### **Clause 76 (Time limits for adjournments)**

IPENZ supports the amendment provided by this clause that a hearing must be concluded no later than 10 working days after the right of reply. We consider that this change provides more certainty for both the applicant and those associated with the hearing.

#### **Clause 77 (Consideration of resource consent applications)**

IPENZ supports the amendment in this clause that when considering a resource consent application the consenting authority has regard to both NESs and NPSs. IPENZ considers that NESs and NPSs are very important in providing national direction as to what is important for New Zealand.

#### **Clauses 78 and 79**

IPENZ has no comments on these clauses.

#### **Clause 80 (Decision on resource consent applications)**

IPENZ supports the amendment in this clause that a decision on a resource consent application should consider both NESs and NPSs.

#### **Clause 81 to 89**

IPENZ has no comments on these clauses.

#### **Clause 90 (Certificates of compliance)**

Please refer to our comments above in response to Clause 4.

#### **Clauses 91 and 92**

IPENZ has no comments on these clauses.

### **Clauses 93 and 99 to 101 (Boards of Inquiry for matters of national significance)**

These clauses amend parts of Section 141 and 146, and provide for direct referral of matters of national significance to be referred to a BOI. IPENZ Members report that in cases where they have been involved in BOIs and the Environment Court hearings, the processes have been very successful, a high level of expertise has been demonstrated, parties have focused more on real issues and have generally looked proactively towards outcomes.

#### **Clause 94**

IPENZ has no comment on this clause.

#### **Clause 95 (National significance criteria)**

This clause amends Section 141B(2) and extends the current criteria for matters of national significance.

The related existing criteria are (paraphrased for clarity) whether the matter:

- has aroused widespread public concern or interest regarding its likely effect on the environment
- involves or is likely to involve significant use of natural and physical resources
- affects or is likely to affect any structure, feature, place, or area of national significance
- affects or is likely to affect more than one region or district
- results in or contributes to significant changes to the environment.

The change proposed by Clause 95 adds an additional criterion:

- relates to a network utility operation that extends to more than one region.

It is the view of IPENZ that these criteria will result in many applications to the EPA for a hearing by a BOI for projects that are not nationally significant. For example, it is our view that any State Highway project would qualify under these criteria as a matter of national significance as the network utility operation extends to more than one region. Similarly most electricity lines companies operate in more than one region and therefore their projects would qualify under this new criterion.

IPENZ believes that examples of projects that should qualify would be transport corridors of national significance, transport links to Marsden Point, a national sports stadium, the trading ports, prisons, the Manukau wastewater treatment plant, a major defence base and large energy generators.

Examples that should not qualify include site-specific or local wastewater and stormwater treatment systems, local improvements to State Highways, and most of the activities of lines companies.

Implicit in these examples is a question of scale, and the wider impact on the economy or on society beyond the immediate locality of the project. It is understood that it may be difficult to define a particular dollar figure or size (in megawatts for example) as a criteria as this may result in unintended outcomes – the cut-off point will always be contentious.

Therefore further consideration of criteria should be considered relating to:

- the project has significant national economic and social effects, including the benefit of expediting the process
- the project cost is significant on a national scale.

As noted in the general comments section, NPSs for infrastructure would help to inform the identification of national significance.

It is important that the BOI and supporting administration are resourced appropriately to meet the number of projects that are identified as nationally significant.

### **Clauses 96 to 98**

IPENZ has no comments on these clauses.

### **Clause 100 and Clause 102**

IPENZ has no comments on these clauses.

### **Clause 103 (Final report from Board of Inquiry within 9 months)**

This clause amends Section 149 and IPENZ supports that nine months would be a suitable period of time for a BOI to conduct a hearing and produce a final report. The need for flexibility is provided by the provision that the Minister may grant a time extension but for no longer than 18 months.

However as a possible option, we suggest that a two-step process could be helpful. Under Clause 93 an applicant is able to lodge a matter with the EPA if the applicant considers it to be of national significance. If the matter passes that test the applicant will need to prepare a substantial case in preparation for the subsequent BOI process. This may stretch the nine month process. IPENZ suggests that a two-step process be introduced. Firstly, the applicant would make an application to pass the national significance test and determine the material needed to substantiate the case. If the matter passes the test, then the applicant would be allowed the opportunity to prepare their full case in support of the application and subsequently submit this to the Board. IPENZ suggests the nine-month period commences from the date of the full application, rather than from the date of the Minister's notice.

#### **Clause 104 (Appeals on decisions of Boards of Inquiry – points of law)**

The proposal under Section 149 that appeals against decisions of BOI can only be made on points of law is generally supported by IPENZ. To some extent this is an extension of the current provision where appeals against Environment Court decisions can also only be made on points of law. Also a similar level of expertise has been exhibited at BOI and the Environment Court, providing further confidence that decisions will be robust.

#### **Clauses 105 to 107**

IPENZ has no comments on these clauses.

#### **Clause 110 and 120 (Designations – decision maker)**

These clauses amend Section 171 so that decisions on notices of requirement are made by the relevant local authority rather than the requiring authority.

The IPENZ Membership is split on the merits of this amendment. On one hand, some Members consider this a positive change, as it will bring the process for designations into line with the process for resource consent. On the other hand, some Members consider that local authorities are not best placed to make detailed conditions on designations and that this amendment will weaken designations and result in many appeals to the Environment Court.

#### **Clauses 108 to 117 (Designations – expiry of period)**

These clauses amend Sections in Part 8 of the RMA.

IPENZ has concern regarding the term of designation – particularly in Section 184. The original purpose of designations was to indicate long-term public work requirements to property owners and the community. Under Section 184, a designation lapses after five years if it is not given effect or the designation specifies a different period in the district plan (Section 184). Also, an affected land owner may apply to the Environment Court for the requiring authority to acquire or lease the affected land.

Thus a corridor for national infrastructure, for example, for transport or electricity transmission, can be lost for all time, either because the designation lapses or the requiring authority has insufficient funds immediately available to lease or purchase the land. For such linear infrastructure, negotiations for acquisition are likely to be protracted beyond the five years, as the designation is likely to affect many parcels of land and many landowners.

With the introduction of a 20-year national infrastructure plan, the current designation provisions need to be reviewed and allow designation periods of 20 years and, in some cases, 35 years. There are good reasons to recommend that there is no need to state the term of a designation in the RMA – the need of any particular designation will be reviewed when a District Plan is reviewed. Most requiring authorities with infrastructure responsibilities are now undertaking long-term planning and have a good understanding of their future needs. The designation provisions in the RMA need to protect their long-term interests.

However, it is also recognised that the impact on property owners needs to be taken into account, such as having a designation on their land for an extended period, and there needs to be adequate compensation.

IPENZ believes that the current designation provisions in the RMA do not adequately balance the need for long-term planning of infrastructure with the property owner's interests. It is noted that the issue of compensation of property owners will be considered in Phase 2 and we look forward to this issue being addressed.

### **Clauses 108 to 117 (Designations – use of outline plans)**

Section 176A of the RMA allows for an outline plan before construction commences. IPENZ believes that many Notices of Requirements for designations are required to be very detailed – the same information is required as if it was a resource consent, and insufficient use is made of the outline plan mechanism. The focus of

designations should be about protecting the land for future works, and there should only be a requirement to undertake a preliminary design to support the Notice of Requirement. The detailed information and design can be provided at the outline plan stage. It is the experience of a number of IPENZ Members that councils are unnecessarily requesting very detailed information at this Notice of Requirement stage.

This may require that the provisions relating to Notice of Requirements be amended, by relaxing the extent of the information required. In its place, the outline plan provisions should be strengthened to allow a local authority to set detailed conditions closer to the detailed design stage.

In addition, resource consents for various effects (for example, water discharges) should not be required at the Notice of Requirement stage, but at the detailed design and outline plan stage.

#### **Clauses 118 to 121 (Notification for notices of requirement)**

As noted above in relation to Clause 68, we support the change in presumption from that where a resource consent application will be notified, to a presumption where it will be non-notified. This clause provides a similar change in presumption for Notices of Requirement. We also support this change in presumption.

#### **Clauses 122 to 131**

IPENZ has no comments on these clauses.

#### **Clause 132 (Applying to extend the scope of appeal)**

As noted previously, IPENZ generally supports the concept that appeals can only be made on points of law. We support this clause, which enables the scope of appeal to be extended where the local authority's decision was unclear or has significant impacts on existing property rights.

#### **Clauses 133 to 135**

IPENZ has no comments on these clauses.

#### **Clause 136 (Appeals only on questions of law)**

As noted previously, IPENZ generally supports the concept that appeals can only be made on points of law.

### **Clauses 137 and 138**

IPENZ has no comments on these clauses.

### **Clause 139 (Trade competition)**

We note and support the proposed changes which removal the ability for trade competition to be a basis for submitting on and or appealing against a resource consent application.

### **Clause 140**

IPENZ has no comments on this clause.

### **Clause 141 (Penalties)**

IPENZ notes the amendments to the maximum penalties for both corporates and individuals. We support the amendments and consider that the increases in penalties are appropriate.

We note that there are only two classes of person – an individual and a body corporate. IPENZ questions which class a government agency or local authority would fit under and recommends that “body corporate” be amended to include government agencies and local authorities.

### **Clauses 142 to 146**

IPENZ has no comments on these clauses.

### **Clause 147 (Non-complying activities category removed from Act)**

IPENZ has reservations about the removal of the non-complying activity category. The non-complying activity category is useful as it signals to applicants that resource consents for activities in this category will need careful consideration and applications may be declined. This is an important signal for activities that local authorities do not want to encourage.

Additionally, the non-complying activity category is used for activities that have not been contemplated. By making these activities non-complying the “gateway test” provides a check that any new activities will have no more than minor effects and are consistent with the district plan.

IPENZ is concerned that as regional councils and local authorities are risk-averse, a number of the activities that are currently non-complying will be re-categorised as prohibited activities.

IPENZ recommends that the non-complying activity category remain in the RMA unchanged.

#### **Clause 148 (Amendments to Schedule 1 of Principal Act)**

IPENZ notes the amendment in this clause that enables local authorities to seek the view of persons affected by matters raised in submissions. We consider that this clause places significant responsibility on local authorities to identify affected persons and to contact them. We also consider that the requirement for the local authority to prepare a report on the matters raised by affected parties places some responsibility for the local authority to represent those affected parties. We consider this is inappropriate given the local authority's role as regulator.

We note the intention to repeal Sections 8 and 8A and remove the further submission stage for plan consultation. IPENZ opposes the removal of the further submission stage.

IPENZ considers that the further submission stage is important. The plan preparation process is political and it is essential that the community has ample opportunity to provide their comments. We consider that the further submission stage ensures full participation in consultation and enables the argument and counter-argument of plans, meaning the final version of the plan is robust. We consider that if the further submission stage is removed, local authorities may receive vague submissions as people will want to ensure that their views will be included and that they can appear in person at the plan hearings.

#### **Clause 149**

IPENZ has no comments on this clause.

#### **Clause 150 (Legal effect of rules)**

Please refer to our response to Clause 59.

#### **Clause 151 (Tree protection)**

Please refer to our response to Clause 52.

**Clause 152 (Removal of non-complying activity category)**

Please refer to our response to Clause 147.

**Clauses 153 to 167**

IPENZ has no comments on this clause.

## COMMENTS IN RELATION TO PHASE 2

It is noted that the second phase of the RMA review will comprise a minimum of three work streams.

- Infrastructure – improving infrastructure provision by providing more generous compensation to landowners in the Public Works Act, and a streamlined and better-integrated process.
- Water – considering alternative approaches to water allocation for a fairer and more efficient system of fresh water management.
- Urban design – exploring new approaches to city development and encourage more collaboration between planners and developers.

Regarding **infrastructure**, currently some projects trigger consents and approvals under a range of legislation. Approvals are sometimes required under the following:

- the Historic Places Act 1993 – the Historic Places Trust can set conditions for archaeological sites and these may be appealed to the Environment Court.
- the Reserves Act 1977 – the Minister of Conservation has wide-ranging powers in the control and management of reserves.
- the Local Government Act 1974 – road stopping (Schedule 10) – if the council decides against objections, they are required to be considered by the Environment Court.
- the Public Works Act 1981 – a person with interest in the land intended to be taken may object to the Environment Court.

Larger roading projects can also require building consents for each separate structure, such as bridges, culverts and retaining walls. It would be a considerable improvement to consolidate the building consent requirements for a package of “buildings” on such a project. This would require amendments to the Building Act.

Submitters can use this range of legislation to appeal against a project a number of times. This causes lengthy delays and increases costs. Therefore, it is believed that there is considerable scope for rationalisation and consolidation of legislation for all projects.

IPENZ believes that the range of legislation that impacts on infrastructure – particularly infrastructure of national significance, should be consolidated so that

projects are subjected to one approval process and one appeal process. This would provide more streamlined and better integrated processes.

When infrastructure and **urban design** issues are considered, the inter-relationship between infrastructure and land-use needs to be considered in the context of the RMA. For example, there have been many instances in New Zealand where new roading has been the catalyst for urban development (infrastructure leads development) and similarly the lack of wastewater facilities has prevented development (infrastructure constrains development).

Also, in relation to urban design, we recommend that Phase 2 consider how regional plans can translate and give effect to urban development strategies that are prepared jointly by adjacent local authorities.

In relation to **water**, we recommend that the provisions for a Water Conservation Order under Part 9 be reviewed. It is important that the relationship between Water Conservation Orders and the current policy programme, including the NPS on freshwater management, are clear.

As the Technical Advisory Group recommended on page 62 of their report, IPENZ considers that Phase 2 should look at resource consents for **minor matters**. Applications for minor works require a similar level of analysis for environmental effects and the cost of consenting minor works can exceed the cost of the work. For example, consider the construction of a deck for which the value is under \$5,000 and the consent of any affected parties has been obtained. This is a minor matter but is still required to go through the same resource consent process as that for more significant works.

Finally, we look forward to Phase 2 clarifying the structure and role of the EPA and the alignment of the RMA with other legislation.

## **CONCLUSION**

We wish to appear in person before the Select Committee to speak to our submission and the contact details of our representatives are:

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IPENZ appreciates the opportunity to make this submission and is able to provide further clarification if required.

Tim Davin

Director – Policy