

Mayor and Councillors
COUNCIL

16 DECEMBER 2010

Meeting Status : Public

Purpose of Report: For Decision

SUBMISSION ON MINISTRY FOR THE ENVIRONMENT'S DISCUSSION DOCUMENT 'BUILDING COMPETITIVE CITIES'

PURPOSE OF REPORT

- 1 This report seeks the Council's approval of the attached submission on the Ministry for the Environment's discussion document "Building Competitive Cities: Reform of the Urban and Infrastructure Planning System."

SIGNIFICANCE OF DECISION

- 2 The Council's Significance Policy is not triggered by this report.

BACKGROUND

- 3 The current government has made reform of the planning system one of its legislative priorities. In October 2009, Parliament enacted the Resource Management (Simplifying and Streamlining) Amendment Act (RMAA 2009). The Council made a submission on the proposed bill via its Corporate Business Committee in April 2009 (SP-09-519 refers). The resulting Act included a number of provisions designed to achieve the following aims:

- improving mechanisms to manage frivolous and vexatious objections and appeals, and trade competition
- improving the processing of applications for proposals of national significance
- establishing an Environmental Protection Authority (EPA)
- improving plan development and change processes
- improving resource consent processes
- improving the efficiency and effectiveness of national instruments
- improving the effectiveness of enforcement and compliance mechanisms
- streamlining decision making.

- 4 Some of the more significant specific provisions include:

- Creation of Environmental Protection Authority (EPA) with power to refer nationally significant projects to the Environment Court or a Board of Inquiry
- Refunds for late resource consents
- Removal of 'blanket' tree protection rules (e.g. the Council's District Plan rules that protect native vegetation of a certain width and height)

- Delay of a plan change’s legal effect until a Council decision is made following hearing of submissions (previously some legal effect occurred at the time of notification of a proposed plan change)
 - Requirement for a full District Plan review every 10 years replaced with requirement for review of each part of the District Plan within 10 years of that part becoming operative.
- 5 More information on the RMAA 2009 is available at: <http://www.mfe.govt.nz/rma/central/amendments/resource-management-simplify-and-streamline-amendment-bill-2009/overview-rma-2009.html>
- 6 The government is now embarking on what it calls “Phase Two” (RMII) of its RMA reforms. The current discussion document: “Building Competitive Cities: Reform of the Urban and Infrastructure Planning System” is a precursor to a second round of legislative changes – this time not only to the RMA but to the Public Works Act and other infrastructure-related legislation.
- 7 It should be noted that in November 2008 the Council made a submission on an earlier discussion document entitled “Building Sustainable Urban Communities – A discussion document exploring place-based approaches to sustainable urban development in New Zealand” (SP-08-430 refers). That discussion document covered some similar issues and canvassed some of the same potential solutions, but the current discussion document has been shaped by the current government and is more focussed on infrastructure planning as well as spatial planning (such as is currently required of the new Auckland Council) than the 2008 discussion document. The 2008 discussion document also covered some proposals that have now been dealt with by the RMAA 2009.
- 8 The current discussion document is based on the recommendations of two technical advisory groups (TAGs) that were appointed in January 2010 to review policy around urban design (the UTAG) and infrastructure (the ITAG). The TAGs concluded that there is a need to:
- strengthen the recognition of urban issues under the RMA
 - consolidate the number of plans that are required
 - better coordinate central and local government decision making around infrastructure.
- 9 They also made 85 recommendations on specific improvements to deliver better urban environments and the infrastructure New Zealand needs. These have been refined by officials at the Ministry for the Environment (MfE) and presented in the current discussion document.
- 10 Submissions on the current discussion document close on 17 December 2010.

CONSIDERATIONS

Problem definition

- 11 The Government’s view of the planning and urban design problems that need to be addressed are as follows:

- Inadequate recognition of urban environment in RMA
 - The RMA does not effectively facilitate the achievement of long-term, efficient and integrated planning and urban design outcomes.
 - Complex planning system
 - The lack of alignment between the RMA, Local Government Act (LGA) and Land Transport Management Act (LTMA) does not promote or encourage integrated decision-making. It therefore makes it difficult to achieve quality urban development.
 - Lack of consistency in decisions
 - This results from multiple statutes as above, and a lack of clear direction from central government on cross-sectoral issues.
 - There are multiple participants and decision makers.
 - Voluntary methods such as the Wellington Regional Strategy (WRS) are not mandatory (statutory) and therefore have limited weight in decision making.
 - Barriers to effective implementation, including:
 - Inconsistent implementation of national objectives and standards in plans
 - Significant cost and time associated with preparing and changing plans
 - Potential problems with tools in practice
- 12 The Government's view of the infrastructure approval problems that need to be addressed are as follows:
- Lack of clarity and consistency of national objectives and standards
 - Infrastructure projects often cross regional and local boundaries and operate in more than one region.
 - There is inconsistent implementation of national objectives and standards.
 - Mixed access to designations
 - The definition of 'requiring authority' is inconsistent (e.g. it includes airports but not sea ports)
 - The definition of 'requiring authority' may not reflect future infrastructure needs to allow for public-private partnerships (PPPs), design and build methods, etc.
 - Complex and inflexible approval processes
 - The level of detail required for new designations (notices of requirement) creates a barrier for longer-term infrastructure planning due to uncertainty around details of the future project.

- The timeframe for validity of approval for ongoing operation of infrastructure (i.e. a five-year lapse period) creates a barrier to long term planning. Also, the 35-year maximum duration for some consents is not aligned with the expected life of big infrastructure projects (e.g. a hydropower station).
 - There is duplication and inconsistency of processes; e.g. a Notice of Requirement requires approval followed by a detailed design assessment ('outline plan'). This may be adding unnecessary compliance costs to maintenance and upgrade activities. Also, in some cases (significant development under an 'outline plan') there are inconsistencies regarding public input relative to other RMA processes.
 - There are multiple approval processes and appeal routes – via the Public Works Act, Historic Places Act, Conservation Act etc.
 - Lack of robust and integrated decision-making
 - Designations and resource consent processes differ; for example, decisions on most designations are made by the requiring authority, which is often the infrastructure provider (not independent, except when a Board of Enquiry is used).
 - There are questions about how the designation process can align with spatial planning.
 - Inefficient and inadequate land acquisition process
 - The Public Works Act (PWA) provides a process for land to be acquired for public works. Potential problems have been identified with the adequacy of compensation and the efficiency of processes.
- 13 Part of what the discussion document asks is whether submitters agree with the problem definition outlined above. The attached draft Council submission addresses this, generally agreeing with the broad problem statements in the discussion document.

Possible Options

- 14 Having set out the government's definition of the problems with the urban and infrastructure planning system, the discussion document presents dozens of options for addressing these problems, including the TAGs' recommendations plus others identified by MfE officials. No preferred package of options has yet been identified by the government.

Planning and urban design

- 15 The 20 options for change relating to planning and design are grouped into four main categories:
- Recognise urban environment in the RMA framework
 - Greater national direction and clarity
 - Spatial planning – enhancing it for Auckland and implementing it for other regions

- Improve tools

16 Some of the options presented are:

- recognising the urban and/or built environment in the RMA by including it in Section 6 (matters of national importance) or Section 7 (other matters to have regard to)
- developing a National Policy Statement (NPS) addressing land supply and housing affordability
- making it mandatory to develop spatial plans, incorporating Regional Land Transport Strategies (RLTS's) and Regional Policy Statements (RPS's) in spatial plans, and/or making it mandatory for District Plans to give effect to them, as well as either limiting or allowing appeals (*see box below on spatial plans, taken from the discussion document*)
- introducing a national template for local and regional plans
- introducing a national Urban Design Panel and/or a Government Architect
- extending current local government powers to allow compulsory acquisition of property for urban regeneration purposes

Box 5: Spatial planning – a generic definition

A **spatial plan** is a high-level strategy for developing a region that relates to its geography, and seeks to achieve desired broad outcomes. Developed and implemented via collaboration between multiple parties, it provides a mechanism for agreeing joint priorities, actions and investment.

Spatial planning is:

- multi-party – a tool for collaboration between the key decision-makers.
- focused on the long-term development of cities and regions and improving investment certainty
- a guide to the location and timing of future infrastructure, services and investment that can be used to provide for the co-location of infrastructure where this is appropriate
- evidence based
- integrated across sectors – eg, transport, land use, housing, education, funding policy and regulatory policy – to achieve broad outcomes (economic, social, environmental, cultural)
- strategic – provides direction to regional funding policy, regulation and other implementation plans (eg, transport, economic development).

Spatial planning is not:

- prescriptive regulation
- only about land use.

Infrastructure development

17 The 31 options for change relating to infrastructure are grouped into six main categories:

- Greater national direction and consistency
- Improved access to the designation system
- Improved approval processes: increased streamlining and flexibility
- Enhanced decision-making framework
- An efficient compensation process under the Public Works Act 1981 (PWA)
- Transition issues

18 Some of the options presented are:

- using National Policy Statements and National Environment Standards instead of designations so that projects can go through normal resource consent processes
- recognising ‘infrastructure’ in Sections 6 or 7 of the RMA
- extending ‘requiring authority’ status to include sea ports, etc
- reviewing ‘requiring authority’ status based on the nature of development (e.g. national networks vs. stand-alone projects), and introducing a ‘limited requiring authority’ status with more limited powers
- providing for ‘concept’ designations with less detail than currently required, perhaps limited to ‘nationally significant projects’ (e.g. Roads of National Significance)
- enabling designations to be rolled over in District Plans
- improving certainty for resource consents relating to infrastructure projects, by reducing consultation requirements or limiting ‘affected’ party status
- providing independence in designation decision making process (currently the requiring authority is often the decision maker)
- integrating the designation process with spatial planning
- reviewing the Public Works Act compensation provisions and acquisition process

Local Government New Zealand (LGNZ) Views

19 Local Government New Zealand held a workshop with local government representatives (including the author of this report) to work towards a submission on behalf of the local government sector.

20 At the time of the writing of this report, LGNZ had not yet released its submission, but preliminary views that seemed to have general support at the local government workshop can be summarised as follows:

Planning and urban design

- A balance is required between the need for clearer government direction on urban issues and the need for local decision-making that is responsive to local communities.
- Support: National Policy Statements on the “built environment” or “urban environment”, voluntary spatial planning
- Unsure: Government Architect (depends on role); expanded compulsory acquisition powers for urban regeneration
- Oppose: mandatory spatial plans, national template for District Plans
- In general, there is a need to see how the ‘Auckland experiment’ works before that model is fully rolled out to the rest of New Zealand.

Infrastructure development

- There is a need to balance efficient provision of important infrastructure with property rights and local issues
- Support: better coordination of infrastructure development with RMA planning
- Unsure: how wide ‘requiring authority’ status should go (private companies, etc) and what existing powers should be extended (e.g. decision on own designations)
- Oppose: ability of simplified ‘concept designations’ to prevent local authorities’ ability to decline a subsequent resource consent
- In general, more evidence is needed to justify several of the options presented and to show the clear linkage between them and the problems that have been identified.

Proposed Kāpiti Coast District Council submission

- 21 The issues raised in the discussion document are of critical importance to Kāpiti Coast District, given the Council’s and community’s strong identified interest in urban development and infrastructure issues.
- 22 At the same time, however, it would probably be difficult for Council to identify an agreed position on all of the options presented. There are 51 main options (20 for planning and urban design, and 31 for infrastructure), but many of these options contain sub-options so that there is a total of 115 options / sub-options on which the Ministry for the Environment is seeking feedback.
- 23 Council staff have drafted a submission that is broadly consistent with agreed Council policy such as the Development Management Strategy and community views as expressed through Community Outcomes and Local Outcome Statements. Some of the detail has required drawing on the professional views of Council staff. The proposed submission can be amended by Council, if necessary, to better fit its comfort level with the various options and responses.

- 24 Because of the challenges in formulating a clear Council view on all 115 options and sub-options, the attached proposed Council submission does not follow the format of the discussion document's feedback form, which asks respondents to tick the boxes "agree" or "disagree" next to each option or sub-option. Rather, the submission suggests that some of the answers are not so clear-cut and may depend on a number of factors. In addition, the attached submission deals with some options in groups, as the responses may be the same or similar across options.
- 25 The proposed Council submission is generally consistent with the preliminary LGNZ views identified above, but adds Kāpiti-specific detail where appropriate.

Financial Considerations

- 26 There are no financial considerations.

Legal Considerations

- 27 There are no legal considerations. Any legislative change resulting from this discussion document will need to come through the formal process of the government introducing legislation in Parliament.

Delegation

- 28 Council and any of its standing committees have the authority to make a submission on a central government policy document.

Consultation

- 29 Owing to time constraints and the technical nature of the document, no consultation has been undertaken with the community on the proposed Council submission. It is expected that some community stakeholders (e.g. developers or infrastructure providers) will make their own submissions on the 'Building Competitive Cities' discussion document, which deals with central government policy rather than Council policy.

Policy Implications

- 30 There are no policy implications as the submission relates to central government policy rather than Council policy.

Publicity Considerations

- 31 There are no publicity considerations.

Other Considerations

- 32 There are no other considerations.

RECOMMENDATIONS

- 33 That the Committee approves a Council submission on the 'Building Competitive Cities' discussion document, based on Attachment 3 to report SP-10-050, subject to any modifications or amendments arising from discussion.

Report prepared by:

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ATTACHMENTS:

Attachment 1: Executive Summary from 'Building Competitive Cities: Reform of the Urban and Infrastructure Planning System'

Attachment 2: Excerpt of options from the 'Building Competitive Cities' discussion document

The full document is available at:

<http://www.mfe.govt.nz/publications/rma/building-competitive-cities-discussion-document/index.html>

Attachment 3: draft Council submission

06 December 2010 01:33 P.M.