Analysis of submissions on RMA Phase I Review

1. 145 people or organisations submitted on Phase 1 of the review. This paper comments briefly on some of the highlights.

Perspectives of councils and industry

2. The majority of submitters to Phase 1 were local government authorities (43%) or businesses / business representatives (13%). There was a lot of common ground within each group on proposed amendments.

3. Council submissions tended to focus on process issues that create inefficiency or problems for their exercise of statutory functions (e.g. the drawn-out plan change process). Industry submissions tended to focus on specific concerns they have struck in practice (e.g. vexatious appellants, inconsistent rules between councils for identical activities).

4. It is likely that a wider consultation process (e.g. with community, NGO or Iwi groups) would gain quite different views on some issues. For example, councils and industry generally supported security for costs on appeals to the Environment Court, which might be perceived by other parties as detrimental to their "access to justice". These views are now coming out in reaction to the Bill before Select Committee.

5. A common theme of submissions is that the RMA is generally a good piece of law, which needs tightening up and better implementation, rather than a fundamental rewrite.

Outcomes vs process

6. A common theme is that the RMA planning and consent provisions are prescriptive with a strong focus on process. This focus on process makes the RMA a very litigious statute. This focus on process (rather than outcomes) can promote risk-averse behaviour (e.g. long decision times, repeated requests for further information) by council officers due to the wide range of opportunities for appeal or judicial review.

7. Not surprisingly, many submissions focused on the detail and the process of the RMA, and suggested very specific amendments to small parts of the Act. Some submitters even supplied "tracked changes" amendments to certain sections.

8. While a large number of submissions identified problems with RMA <u>implementation</u>, many suggested <u>statutory</u> fixes to overcome these problems, rather than changes to implementation / behaviour. This focus on process matters (rather than outcomes) can lead to perverse outcomes. For example, many submitters identified problems with the proposal to "make a late consent a free consent". A 'free' consent still carries a cost – to ratepayers rather than the applicant. Removing the cost recovery income to the council also means fewer

planning resources, therefore increasing the likelihood of other consents being late or poor quality. Such a provision also may not recognise (or may encourage) bad behaviour by applicant – e.g. poor quality consent application and lack of dialogue with the council.

9. A focus on process also may not deal with the root causes of problems. If, for example, a council follows good processes, and has a good relationship with the community, their statutory processes are less likely to be challenged. Building this trust and "social capital" between participants and decision makers may be more productive than focusing on the legal procedures for resolving disputes. It also is important to consider implementation support for participants in the process. If, for example, participants understand RMA processes and lodge high quality consent applications, a lot of time is saved later in the process.

10. It also is important to note that problems with RMA processes are not just about councils, they also are about the behaviour of applicants, submitters and appellants. For example, delays in processing resource consents may relate to poor applications, or tardy / obstructive behaviour. It is therefore not productive to make councils solely 'to blame' for delays.

Streamlining the plan making process

11. Councils were strongly in support of proposals to streamline the plan making process. Some recurring themes were:

    - removal of the "further submissions" phase – noting it adds little value, has a high administrative burden, and predominantly features a repetition of points made in earlier submissions.

    - private plan changes can "scramble" the strategic planning process by proposing exceptions to the general direction of a plan change – there were suggestions for moratoriums on PPC when a plan is under review, or more flexible powers to amend and fold PPC into a wider plan change process. – rather than patchwork changes.

12. There also was a strong desire to keep final decisions on plans with the community and the council – i.e. restricting Environment Court appeal rights on plans (e.g. no appeals on whole plans, or sections of plans).

13. Many of these suggestions are included in the Bill before Select Committee.

Central government guidance through national instruments

14. New Zealand has a large number of authorities and plans for our population:

    "Plans are regulations prepared under the Act. To have about 100 different interpretations of the Act floating around is inefficient to put it mildly"

15. There was some support for pro forma standards around common everyday activities, standards and definitions. These could be adopted in all plans unless

individual councils had a reason to deviate from the national standard. Industry submitters were particularly keen to see more consistent rules across New Zealand for their common activities.

16. Views were divided on the need for, and content of, national guidance. There is a strong tension between local decision making and national instruments. A general view is that national instruments need to be more direct in their effect rather than giving another layer of policy to confuse the system. For example, there were requests for national listing of matters considered of national importance, rather than leaving discretion under Part 2 of the RMA to argue about whether natural character values (for example), or a proposed development, are of national significance. Energy and transmission interests were keen to see a more strategic national approach to infrastructure to give some forward certainty for investment.

Streamlining resource consents

17. The majority of submissions were on the consent process. As noted above, it will be important to focus on the outcomes required from a good consent process, rather than picking out dozens of process bugbears.

Priority consents and appeals

18. Many submitters support a more streamlined process for large applications, though some felt the current call-in model was working well, and could not see the need for an EPA. A common theme from councils was that local interests need strong representation on any hearing panels.

19. Another theme was to focus on making the first consent decision well, rather than having de novo appeal rights to the Environment Court, which encourages less effort at the initial hearing, and forces the final decision into a more legalistic process. There was some calls for a scaled-down appeals process for minor matters – e.g. a small Tribunal of Commissioners rather than a full-blown appeal.

Definition of environment

20. There is strong opposition from both industry and local government to removing changing the definition of "environment". This was probably the proposed amendments attracting the most criticism, and it was noted that many projects with large environmental impacts would not get consent without the counterbalancing economic benefits.

Role of the Minister of Conservation

21. There was strong opposition to the current functions of the Minister of Conservation, and strong support for removing both the veto right on coastal permits, and the Minister's approval of regional coastal plans. Submitters noted that the Minister (and DoC) have many opportunities to submit throughout the planning process, and it was unclear why further veto / plan approval powers are necessary.

Landowner property rights

22. Submissions from farmers, or from groups representing farming interests, made strong points about the effect of plans on their livelihood. There is a strong sense from this group that their property and economic rights should be afforded a higher degree of protection from regulation that affects their operations.