Date: 11 March 2016

To: **The Local Government and Environment Select Committee**
Parliament Buildings
Wellington

From: Christchurch City Council

Resource Legislation Amendment Bill

1.0 Introduction

1.1 The Christchurch City Council thanks the Select Committee for the opportunity to make a submission on the Resource Legislation Amendment Bill. This submission was adopted by the Council at its meeting on 10 March 2016.

1.2 The Council wishes to appear in support of its submission.

2.0 Core Points

National Direction

2.1 The Council opposes the new provisions for national directions to amend Plans and Regional Policy Statements There is no need for increased provision in the Resource Management Act 1991 (RMA) for more centralised direction. Sufficient powers are already there, in National Environmental Standard (NES) and National Policy Statement (NPS) powers. Central government has not adequately used the powers that are already available.

2.2 The Regulatory Impact Statement does not contain assessment that justifies increased central government direction through a national planning template and regulations to remove inconsistencies and variations between plans. There is inadequate evidence of a problem that warrants this solution.

2.3 These provisions create a risk, even with the consultation processes, that Plans will be amended in a way that does not reflect differences in local circumstances or differences in outcomes sought by different communities. This undermines local level decision making for local resource management issues. The amendments will allow centralised direction on issues that should reflect local circumstances.

2.4 There is a risk of territorial authority "ownership" of district plans and local resource management outcomes being undermined by centralised, streamlined plan change processes. The proposed provisions take a short term approach to the commendable aims of efficiency and equity. The result may be a decrease in participation and an increase in disillusionment and disenfranchisement with the resource management process.

2.5 This centralisation of decision making and increased central government direction undermines local democracy. Councillors are elected in part as a result of the planned direction that they propose for the district. District plans are one of the tools for implementing policy changes and Council decisions on the development of the district. The Bill shifts control over the use of that tool. Elected representatives may not be able to engage with the community on their preferred policy directions as centralised direction in a regulation or National Planning Template may dictate policy.

2.6 There is great uncertainty about how central government will use the proposed new regulatory powers. That uncertainty makes the provision for the power inappropriate. Decision making regarding affected parties, notification for resource consent applications, and about the content of district plans are core Council activities of considerable public interest. One cannot constructively comment on the provision of the power when there is no clarity in the Bill over the possible substantive result of the exercise of the power.

2.7 The benefits of community participation in Council level hearings of resource consent applications and plan changes is underappreciated by the changes proposed in the Bill. Enabling affected people to submit on matters affecting them, or anyone to submit on matters with significantly adverse effects, improves both results in resource management decision making and community buy-in to those results. There is great value in people being heard even if the result is not the one they preferred. They have had the chance to have their say.

2.8 There will be cost implications for councils in amending Plans.

2.9 The truncated Replacement District Plan process currently underway in Christchurch is not the streamlined process initially envisaged by the Council as providing for both a speedy result and community participation. The gazettal of the Order in Council and the notification of the Ministers' Statement of Expectations after the drafting of the proposed Plan has created significant pressures for all participants in the process, including the Council. The tight timeframes have not allowed for the community consultation that the Council would have preferred. There are anecdotal reports of submitters and potential submitters - both lay submitters and highly resourced corporate submitters - simply disengaging from that process. The result of the intended streamlined process may be more private plan change requests, more lobbying of Council for plan changes, and more resource consent applications than would otherwise have been the case had the streamlined process been one that facilitated engagement.

2.10 Streamlined processes and increased central government direction of local authorities may result in a less efficient and less equitable result in the medium and long term and achieve less appropriate outcomes taking into account local circumstances. The Council does not agree with some of the proposed provisions intended to achieve efficiency and equity.

Striking out submissions

2.11 The proposed provision for submissions to be struck out either before, during or after hearings is contrary to the stated purpose of the Bill. It will create inefficiencies and it is inequitable. The Bill inadequately addresses the implications of retaining objection rights for submitters whose submission is struck out and who then successfully exercises the right of objection to the Council under section 357 of the RMA. The result of the exercise of the strike out mandatory power may be a slower consenting process with more appeals.

Streamlined plan change process

2.12 The Council supports there being an opportunity for a streamlined plan change process only when requested by the Council and agrees that it is appropriate for there to be no right for submitters to appeal to the Environment Court following a decision on a streamlined plan change (new clause 93 Schedule 1) only if the streamlined process provides good opportunity for people to lodge submissions and be heard. The Council is not satisfied that the streamlined process adequately balances the loss of appeal rights with protection for public engagement in the process.

2.13 The veto power for the Minister to decline to approve the proposed planning instrument in the streamlined process is another gross erosion of local democracy. The Council may be proposing the changes to urgently address a significant local community issue. The people of Christchurch should have the opportunity to submit on it and be heard rather than a Minister just rejecting it.

Collaborative plan change process

2.14 The Council supports the opportunity to use a collaborative process to develop a plan change; however, the restriction on appeal rights for participants is of concern. There ought to be an unconstrained right for appeals by submitters within the scope of their submissions and iwi authorities within the scope of matters raised by their comments on the provisions.

Scope of resource consent conditions

2.15 The proposed change to the scope of resource consent conditions will adversely affect the Council's ability to provide for strategic infrastructure when approving developments.

Notification of resource consent applications and new permitted activities

2.16 The Council opposes the bulk of the changes to the notification provisions for resource consents. The Council acknowledges that notification of applications can in practice be a deterrent for development as it increases delays and costs. However, there are also significant benefits for the community in the notification of resource consent applications remaining unchanged. Submissions following notification can highlight effects and issues that would otherwise have been missed. Sustainable management of natural and physical resources can be enhanced as a result. The proposed changes to the notification provisions are over-complicated. When the complicated nature of the provisions is unravelled, it appears that the provisions may have broadly the same result as the status quo, except for some changes that result in ambiguity, inefficiency and inequity.

Fast tracked resource consent applications

2.17 The ten working day limit for notification and substantive decisions on controlled activities (other than for subdivisions) and activities prescribed by regulations is opposed. The Council supports simple applications being dealt with quickly. That is what the Council already does as a matter of good practice. But there is no assurance that controlled activities, or activities prescribed in regulations, are simple applications. Expert reports and assessments can be needed to assess the effects and appropriate consent conditions for even controlled activities. There are insufficient safeguards around the type of activity that regulations could prescribe to be fast tracked.

Appeal rights for resource consents

2.19 The Council opposes the removal of rights of appeal in relation to boundary activity consents, subdivision consents that are not non-complying activities, or residential activity on single allotments that are not non-complying activities. Appeal rights are an important part of the participatory rights. There is little evidence that appeals on those activities are a significant barrier to development.

Public Works Act compensation

2.20 The Council supports provision for increased compensation related to dwellings but the provisions as drafted will result in too great a cost, lack sufficient certainty and will create disputes.

3. Key changes supported

3.1 The Council supports or is not opposed to the following key components of the Bill:

- Inserting the management of natural hazard risks as a matter of national importance in s6 of the RMA;
- The change to s106 of the RMA to simplify the provision for declining a subdivision consent for land that is at "significant risk from natural hazards";
- On-line serving of documents;
- Limited notification of some plan changes;
- A collaborative planning process, depending on how it works in practice;
- Scaling of process costs;
- The requirement for compensation for purchase of land with dwellings under the Public Works Act (PWA), but there are significant concerns with the drafting of the proposed provisions;
- The attempt to remove duplication between the Reserves Act and the RMA resource consent process;
- The power for the Environment Court to require the Council to buy land if a planning provision renders the land incapable of reasonable use;
- Deleting section 31(1)(b)(ii) of the RMA, which provides that a function of territorial authorities is " control of any actual or potential effects of the use, development, or protection of land, including for the purpose of …the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances". The reason for deleting that function is that the same matter is adequately managed by the Hazardous Substances and New Organisms legislation so does not need to be duplicated by RMA control. The Council supports this. The Independent Hearings Panel for the Replacement District Plan has recently decided that control of hazardous substances in the District Plan is not warranted as it is controlled by other means. However, the Council supports this only if the management of natural hazards remains capable of taking in to account the appropriate locations and uses of hazardous substances so as to avoid the natural hazard risks.

4. Key Changes Opposed

4.1 Key changes that the Council opposes, or is concerned about:

- The addition of "*the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of residential and business land to meet the expected long-term demands of the district*" to the functions of both regional and district councils - not because the Council opposes this as a function, but because the definition of "development capacity" will act as a trigger for increased pressure on councils to provide infrastructure faster than necessary;
- National Planning Templates dictating the rules, objectives or policies in district plans;
- Regulatory power to dictate provisions in district plans;
- Reducing the scope of resource consent conditions;
- The unnecessary duplication arising from a mandatory requirement for iwi participation agreements when there are existing participation arrangements in place;
- Changes to notification;
- Detail of the streamlined and collaborative plan change processes;
- Mandatory strikeout of submissions;
- Removal of rights of appeal.

Submissions on key proposals in the Bill

5. New Procedural Principle

Clause 8 new section 18A

5.1 The principle seems self-evidently of benefit. Timely, efficient, consistent and cost-effective processes proportionate to the functions or powers being performed is appropriate. Clear, relevant plans are also of benefit. The principle may work as a useful guide for the Council when deciding which process to use for a plan change. However, the standing of the section in the Act is unclear. It is not in the purpose and principles of the Act, it is not a function of councils and there is no enforcement mechanism. It will be used as a basis for attack on Council process but appears to have little benefit for planning results.

5.2 **Possible remedy**: Include it in the part of the Act on the content of district plans, and in Schedule 1 of the RMA on plan change process.

6. Development capacity function

Clause 11 new section 30(1)(ba) and section 12 new section 31(1)(a) and 30(5) definition of "development capacity".

6.1 The proposed definition of "development capacity" may have unintended consequences. The definition includes that the land is zoned and also has, or is likely to have, adequate infrastructure to support the development of the land. By definition the land does not have "development capacity", and the Council is not performing its function, until there is or is likely to be infrastructure. That could create unwarranted pressure for the Council to speed up provision of infrastructure in an unplanned way in the Local Government Act annual or long term plan process.

6.2 **Possible remedy**: Change of the definition of development capacity to address that issue.

7. Subdivision consent presumption

Clause 115 change to section 11(1)(a)

7.1 This changes the presumption in the RMA for subdivisions, from "no person can subdivide unless a rule states that they can", to "subdivision is a permitted activity if there is not a rule that prevents it, and a survey plan has been deposited". The rationale for that change in presumption is unclear. It could create unnecessary costs as councils review their district plans to address whether rules need to be changed due to that changed presumption.

7.2 The Council does not oppose the proposed amendments. The Council is satisfied that it has sufficient rules in its district plan to adequately deal with categories for resource consents, and for when a resource consent is required. However, the Council submits that some consequential amendments are needed at sections 223 (approval of survey plan by territorial authority) and 224 (restrictions upon deposit of survey plan) to support this amendment.

7.3 Where a subdivision is not expressly permitted by a resource consent but satisfies the requirements of 1A(a)(ii) and 1A(b), the subdivision will be a permitted activity and no resource consent is required. However, all subdivisions must comply with section 223 (survey plan to be approved by the territorial authority) and section 224, which requires (at section 224(c)) the territorial authority to issue a certificate approving the survey plan under section 223, and that all conditions of the subdivision consent have been complied with. No such certification can be made for a permitted activity. The section 224 certificate is required for Land Information New Zealand to issue Certificates of Title for each subdivision lot.

7.4 **Relief sought**: The Council recommends amendments to sections 223 and 224 to reflect that some subdivisions will only need the territorial authority to certify that the activity does not contravene the rules of the district plan and is a permitted activity.

8. Increased central government direction

8.1 This part of the Council's submission relates to:

- National Policy Statements and National Environmental Standards applying in specific places and specifying objectives and policies to be included in policy statements or plans (clause 29 new section 45A);
- National Planning Template prescribing objectives, policies and rules in plans (clause 37 new sections 58B to 58J);
- Regulations permitting or prohibiting certain rules until 1 year after the first national Planning template is gazetted: clause 105 new sections 360D and 360E;
- Regulations prescribing particular activities or classes of activities that must be processed as fast-tracked applications: clause 151 new section 360F;
- Regulations relating to notification of consent applications that preclude either public notification or limited notification: clause 151 new section 360G.

8.2 The Council does not oppose the changes to provisions for National Environmental Standards (NES) and National Policy Statements (NPS) that expressly provide for environmental standards or policies for specific geographic areas.

8.3 The Council opposes the ability for regulations to require local authorities to fix charges for resource consents, review of consents or an application to change or cancel a condition of a resource consent (clause 150 new section 360E(2)(a)). This is further described later in this submission.

8.4 The increased centralised direction provided for in the above changes undermines the basic principle of the Act that matters that are not of national importance in resource management of natural and physical resources are best assessed and determined at the local level. The functions in sections 30 and 31 of regional councils and territorial authorities and the duty to make regional policy statements, regional plans and district plans are functions and duties that rest with councils. The tools in the RMA for central government directions - NES and NPS - already provide an appropriate tool for central government direction of local resource management decision making in relation to matters of national importance. The amendments will allow centralised direction on issues that should reflect local circumstances.

8.5 Inefficiencies arising from differences in provisions between districts are not an issue for the huge majority of participants in the resource management system as their activity is in just one district. Those who operate in more than one district ought to be sufficiently sophisticated to professionally manage differences between councils.

8.6 There is great uncertainty about how central government will use those regulatory powers. That uncertainty makes the provision for the power inappropriate. Decision making regarding affected parties and notification for resource consent applications and about the content of its district plan are core activities for the Council of considerable public interest. One cannot constructively comment on the provision of the power when there is no clarity in the Bill over the possible substantive result of the exercise of the power.

8.7 The new sections 360D and 360E (clause 105) providing for regulations to permit or prohibit certain rules are not necessary given the other reforms in the Bill. There are few safeguards around the process that underpins the development of the regulations.

8.8 This centralisation of decision making and increased central government direction undermines local democracy. Councillors are elected in part as a result of the planned direction that they propose for the district. District plans are one of the tools for implementing policy changes and Council decisions on the development of the district. The Bill shifts control over the use of that tool. Elected representatives may not be able to engage with the community on their preferred policy directions as centralised direction in a regulation or National Planning Template may dictate policy.

9 Iwi Participation

9.1 The Council supports increased iwi participation in plan changes and resource consents. It notes however that principal barriers to that participation seem to be capacity and resources in iwi authorities rather than the provisions of the Resource Management Act. Moreover, provision for increased consultation and engagement needs to be coupled with timeframes within which responses must be given.

Notification decisions clause 125 new sections 95 to 95B

9.2 The Council supports the increased focus on Maori interests for the purposes notification decisions. This submission further comments on the notification provisions more generally below.

Iwi participation agreements clause 38 new sections 58K-58P

9.3 The Council supports participation by iwi authorities in preparation, change or review of a policy statement or plan. In Christchurch the Council has an existing participation arrangement with Ngāi Tahu and rūnanga.

9.4 This submission point seeks to ensure that there is not a need to replicate that with a new iwi participation arrangement.

9.5 New section 58L requires that the Council invite iwi authorities to enter into an iwi participation arrangement not later than 30 working days after each election. There is an exception if the Council "…has already agreed to an iwi participation arrangement with that iwi authority" (new section 58L(3)).

9.6 This seems to require that Council to enter into a new arrangement as the current one was not made under the iwi participation agreement provisions of the Bill. This is an unnecessary duplication of existing agreements where they are in place.

9.7 **Relief sought**: Provide the exception in new section 58L(3) if there is an existing agreement with iwi, regardless of whether it is an "iwi participation agreement" as defined in the Bill.

10. Striking out submissions

Clause 120 new section 41D

10.1 The proposed provision for submissions to be struck out either before, during or after submissions is contrary to the stated purpose of the Bill. It will create inefficiencies and it is inequitable.

10.2 Decision makers at hearings give whatever weight to submissions that they consider appropriate. That is their role. Placing little or no weight on a submission due to the type of factors set out in new section 41D - frivolous or vexatious, disclosing no reasonable case, insufficient factual basis, not supported by relevant evidence - happens on an everyday basis at hearings. That assessment of weight is an appropriate role for a decision maker at a hearing.

10.3 Currently, a submitter whose submission is unsuccessful due to it being given little or no weight has a right of appeal (under the RMA, for resource consents, albeit not under the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014). That could include frivolous or vexatious submitters and those who have not adduced evidence. The Environment Court manages those issues well. Mediation can produce prompt resolution of appeals. The Presiding Judge can and does send clear messages regarding merits and risks to appellants when warranted. Costs awards are a significant deterrent.

10.4 Management of submissions that are of little merit currently works well. The submitters get their "day in court" (or at a hearing), hearing panels are well equipped to recognise

submissions and evidence of little merit, and appeal costs, risks and processes seldom result in the types of submission that new section 41D seeks to manage result in a hearing.

10.5 The intended purpose of introducing the strike out power must be to remove appeal rights of submitters in that class of submission addressed by new section 41D. Given the management tools described above, the strike out power seems to have no other purpose. The struck out submitter will have a right of objection to the Council but the presumed intent is that there be no appeal rights. New section 41D(4) provides for the right of objection. The Bill proposes to make no change to s120 of the RMA for appeal rights, by which "a person who made a submission on the application or review" has a right of appeal. If the intent is that struck out submitters have no right of appeal to the Environment Court, it would put that beyond doubt if s120(1)(b) was changed to read "any person who made a submission on the application or review of consent conditions whose submission has not been struck out".

10.6 However, the Council opposes this power of striking out at the Council hearing stage for the equity reasons given above.

10.7 Moreover, the provisions will create inefficiencies which may be significantly greater than ill-defined harm that the new provision is presumably intended to address. New section 41D(2) provides that the submission "*must*" be struck out in the specified circumstances either before, at, or after the hearing.

10.8 There may be demands by applicants that the consent authority must strike out submissions that the applicant says are in the categories in new section 41D(2)(b). That will divert attention and resources onto the strike out matter, rather than the merits of the application. It will be an unnecessary diversion.

10.9 Consent authority decisions on striking out submissions are likely, in the early days of the Bill, to give rise to judicial review applications to test the operation of the section. This will again be an unnecessary diversion of resources from the substance of the application.

10.10 The Bill inadequately addresses the implications of retaining objection rights for submitters whose submission is struck out and who then successfully exercises the right of objection to the Council under section 357 of the RMA. There is no provision for the hearing or decision on the substantive matter to be put on hold, or for appeal periods to be extended, until the objection is resolved. The situation will arise of a submission being struck out, a hearing continuing without the submitter being heard or a decision issued without regard to the submission, and then a decision under section 357 of the RMA that reinstates the submission. The submitter will have a right of appeal (as they are again a party) and will be more inclined to pursue the appeal as they did not get a fair hearing or fair consideration in the decision on the application.

10.11 The result of the exercise of the strike out mandatory power may be a slower consenting process with more appeals.

10.12 If a strike out power is necessary, the Council considers that this should be exercised at the discretion of the Environment Court after appeals are lodged, rather than at the Council hearing stage.

10.13 **Relief sought**: delete new section 41D.

11. Making district plans: the changed and new processes

11.1 This part of the submission relates to:
(i) limited notification now being possible for a plan change being processed under the existing Schedule 1 process (Schedule 1 new clause 5A);
(ii) the collaborative plan change process (Clause 52 new section 80A and Schedule 1 new clauses 36-73)
(iii) the streamlined plan change process (Clause 52 new section 80B and Schedule 1 new clauses 74-93).

Limited notification

11.2 The Council supports the proposed option to give limited notification of a proposed change. It is a discretionary option and is only available if the Council "…*is able to identify all of the persons directly affected by the proposed change*" (Schedule 1 new clause 5A(2)). The nature of plan changes is such that this discretion will seldom be used; however, it is good that the power is available for suitable cases.

Streamlined process

11.3 The Council supports there being an opportunity for a streamlined plan change process only when requested by the Council and agrees that it is appropriate for there to be no right for submitters to appeal to the Environment Court following a decision on a streamlined plan change (new clause 93 Schedule 1) *only if* the streamlined process provides good opportunity for people to lodge submissions and be heard. The Council is not satisfied that the streamlined process adequately balances the loss of appeal rights with protection for public engagement in the process; accordingly, the Council does not support the removal of appeal rights.

11.4 The Council will be able to request the Minister to implement a streamlined process only in limited circumstances (clause 52 new section 80B): to implement a national direction, urgency of the public policy response to an issue; to meet a significant community need; to address unintended consequences of an operative planning instrument; to develop a combined planning document. The Council supports those constraints on the circumstances in which the Council can ask the Minister to direct the use of the streamlined process.

11.5 However, the Council does not support the provisions whereby the Council loses control of the process once the request is made of the Minister to direct a streamlined process. While the Council's application for that direction from the Minister must contain a description of the process and timetable that the Council wishes to use (Schedule 1 new clause 74(b)(iii)), the Minister must only "have regard to" the Council's written request (Schedule 1 new clause 75(2)), consult with the local authority on the process that the Minister intends to implement (Schedule 1 clause 75(4)(a)) and "have regard to" the views of the Council expressed in that consultation (Schedule 1 new clause 77(2)). The Minister is not required to obtain the local authority's prior agreement to the streamlining process before making her/his decision on the request (Schedule 1 new clause 75(6)).

11.6 The minimum requirements for the streamlined process to be set in the Minister's direction (Schedule 1 clause 77(4)) and the ability of the Minister to issue a Statement of Expectations which must then be met by the local authority drafting of the proposed planning instrument (Schedule 1 clauses 78 and 83(1)(e)) give the Council no comfort that the streamlined process - or the substantive content of the resultant proposed planning instrument - will accord with the Council's intent in seeking the streamlined process.

11.7 The veto power for the Minister to decline to approve the proposed planning instrument is another gross erosion of local democracy (Schedule 1 clause 84(1)(b)). The Council may be proposing the changes to urgently address a significant local community issue. The people of Christchurch should have the opportunity to submit on it and be heard rather than a Minister just rejecting it.

11.8 The local authority has power to withdraw the proposed planning instrument that has been subject to a Minister's streamlining direction only up to the point at which a Minister has received the draft provisions from the Council and has issued a decision that approves, declines, or refers it back to the Council for changes (Schedule 1 clause 89 and clause 84). But if the Minister's decision under clause 84 is to refer the planning instrument back to the Council for changes, the Minister may also "recommend" specific changes and the local authority "must" adopt the Minister's specified changes and resubmit the amended planning instrument for approval (Schedule 1 clause 84(1)(a)(iii) and 87(4)). This creates a real possibility of the local authority losing the ability withdraw the proposed planning instrument and being dictated to by the Minister on the process for community engagement, ease of submissions for the community, and content of the proposed provisions before they are notified.

11.9 The Council considers that framework to be an erosion of local decision making to address local issues.

11.10 **Relief sought**: remove the ability for the Minister to determine the process or content. Leave this to the Council to decide in consultation with its community.

11.11 Moreover, the procedural steps involved in the streamlined process, requiring Ministerial approval, add to the cost, time and complexity of the streamlined process. A simpler process, with decisions being made by the local authority rather than by the Minister, is warranted.

Collaboration process

11.12 The Council supports the opportunity to use a collaborative process to develop a plan change; however, the restriction on appeal rights for participants is of concern.

11.13 The Council submissions on the steps in the collaborative process are here separately described. There are numerous steps in the process and the provisions for these are not straightforward.

11.14 First step: The local authority has discretion to decide to use the process (Schedule 1 new clause 37(1)). The Council supports this being discretionary. The Council also supports the specified matters to be considered when the Council decides whether to use the collaborative planning process, (Schedule 1 new clause 37 and 38(1)):

- being satisfied that the process is not inconsistent with a iwi participation arrangement;
- whether having regard to the scale and significance of the issues, the issues would benefit from the use of this process;
- the views and preferences of those likely to be affected (although the Council notes that if this requires consultation before deciding whether to use this process, it is introducing another layer of consultation into a plan change process that already involves significant consultation);
- whether the local authority has capacity to support this process, having regard to the financial and other costs of the process. This is an important consideration. There will be additional costs and resource needs for the Council to manage that process;
- whether there are people in the community able and willing to be members of the collaborative group. This is again a crucial consideration. The collaborative group work will require a lot of time. There is provision for the Council to decide whether members will be paid (Schedule1 new clause 41(3)(b)). The Council will want to know that members of the collaborative group are committed prior to deciding to use this process;
- whether there are matters of national significance that are likely to arise and whether these can be dealt with in the in the collaborative planning process. The Council supports this being a consideration;
- whether the relevant provisions of any iwi participation legislation can be accommodated in the collaborative process.

11.15 Second step: The second step is the Council giving public notice of the decision to use the collaborative planning process (Schedule 1 clause 38). From that point in time, the Council "…*is not permitted to withdraw from that process at any stage and progress the preparation of a policy statement or plan under any of the other processes in this schedule*" (Schedule 1 clause 38(2)) unless the Council has been unable to appoint a collaborative group or the collaborative group has breached its terms of reference and the breaches have not been resolved through the dispute resolution process. The Council has concerns that the limited ability to withdraw from the process creates a risk of the process becoming bogged down, and delayed. Those risks are not adequately mitigated by the proposed dispute resolution process (further discussed below).

11.16 Third step: appointment of the collaborative group. The Council supports the group comprising (for district plans) at least one person chosen by iwi authorities to represent the views of tangata whenua and other members that results in "…*a collaborative group whose membership, collectively, reflects a balanced range of the community's interests, values, and investments in the relevant area as they relate to the resource management issues to be considered by the group*" (schedule 1 new clause 40). There is some ambiguity arising from the use of the term "in the relevant area". This is suggesting that the collaborative group process is intended to be used only when the plan change affects a particular part of the district. The Council notes that if the plan change matters affect all or most of the district, there would be big challenges in appointing a collaborative group whose membership "*reflects a balanced range of the community's interests, values and investments*…".

11.17 Fourth step: the Council setting the terms of reference for the collaborative group (Schedule 1 new clause 41). The Council supports most of the matters that the terms of reference must contain. It is noted that the required directions from the Council in the terms of reference are that the *collaborative group* establish and use a process for seeking the views of the community. The Council considers that this should not be a role for the collaborative group. The Council's functions under the Local Government Act 2002 and experience with processing and consulting on plan changes makes the Council better equipped than the collaborative group to decide what is the appropriate process for seeking the views of the community. The provision for the terms of reference should be amended so that the Council in the terms of reference sets the process to seek the views of the community.

11.18 The Council supports the requirement that it is the Council that, in the terms of reference, determines the dispute resolution process that will be used if necessary "in relation to a collaborative group", including the process for removing or replacing any group members (Schedule 1 new clause 41(3)(d)).

11.19 Fifth step: A report from the collaborative group to the Council that the Council publicly notifies, in which the collaborative group records the recommendations on which it has agreed. The Council supports this step.

11.20 Sixth step: Before notifying a plan change based on the consensus position (see step seven below) the Council must provide a copy to tangata whenua through the relevant iwi authorities and have particular regard to their advice on the draft "…*if, and to the extent that, the advice is not inconsistent with the consensus position*" (Schedule 1 new clause 46). This requirement is superfluous and creates unnecessary delay. There is an iwi authority representative on the collaboration group. That member has by definition agreed with the consensus position of the collaboration group. It is up to that member to consult with the iwi authority that she/he represents during the collaborative group's timeframe. It is unnecessary to again seek comment from the iwi authority before notifying the resultant plan change.

11.21 Seventh step: The Council prepares the proposed plan to give effect to the consensus position *unless* the proposed plan does not comply with Parts 4 and 5 of the Resource Management Act (concerning the content of plans) or with "*any other provisions of this Act*" (Schedule 1 new clause 45(3)). If the Council considers that the consensus position does not meet that standard, presumably the Council would use the dispute resolution process set out in the terms of reference as this is a matter "in

relation to a collaborative group". The Council supports there being that ability to not implement the consensus position.

11.22 The plan or change can also include provisions on matters on which the collaborative group did not reach consensus, provided that these are within the terms of reference for the collaborative group (Schedule 1 clause 45(2)((b)(ii)). The Council supports this.

11.23 Eighth step: before notifying a plan change based on the consensus position, the Council prepares an evaluation report under section 32 of the RMA and the Council must have "particular regard" to the content of that report before deciding whether to notify the proposed plan (Schedule 1 clause 47). The provisions are unclear as to the result if the Council considers that the plan change should not proceed, or be amended, in a manner that departs from the consensus position due to the conclusions of the section 32 evaluation. This should be clarified.

11.24 Ninth step: The Council ***must*** publicly notify a proposed plan that gives effect to the consensus position (Schedule 1 new clause 48). This requirement needs clarification, as there are exceptions as described above.

11.25 Tenth step: Submissions and further submissions (Schedule 1 clause 49). The Council supports the plan change being open for submissions and further submissions.

11.26 11th step: The Council produces a report on the submissions and the Council position on the decisions requested in the submissions and invite comments from the collaborative group and the iwi authority on that report (Schedule 1 clause 50). The Council supports this, except for the duplication between seeking comments from the collaborative group, which includes an iwi representative, and the iwi authority.

11.27 When the collaborative group gives comments to the Council on the report on submissions, the collaborative group has the power to give notice to the Council that one of the members of the collaborative group has been appointed to attend the hearing and assist the hearing panel (Schedule 1 clause 52). Collaborative group members can also make submissions (clause 52(2)). This seems to blur the role of the collaborative group and its members. Separation between that group, submitters and the hearing panel seems more appropriate.

11.28 12th step: the Council appoints a "review panel" to hear submissions and make recommendations. The review panel must comprise 3-8 members, all of whom are accredited commissioners under the RMA., the majority of whom are not elected members, at least one being someone with an understanding of tikanga Maori who is appointed after consultation with tangata whenua, and who collectively have the appropriate knowledge, skills and experience in relation to the RMA, the topic of the hearing, and the "local community". The panel has the power to strike out submissions, conduct the hearing as it thinks fit and commission reports in a similar manner to the standard RMA provisions (Schedule 1 clauses 63-73). The Council supports these provisions in general but does not support the strike out power for the reasons given elsewhere in this submission.

11.29 13th step: recommendation of the review panel to the Council following the hearing (Schedule 1 clause 53). The Council generally supports the scope of the recommendation report but does not support the framing of the scope of the review panel's discretion to recommend changes to the notified proposal. Subsection (4) is ineffective in limiting the discretion of the review panel to depart from the consensus position. But nor should it be - the decision maker under the RMA should not be constrained to the consensus position. It should be for that decision maker to determine whether the proposed provisions meet the purpose of the RMA. Clause 53 is also unclear in relation to the scope of decision making on the provisions for which there was no consensus position in the collaborative group.

11.30 14th step: the Council decides whether to accept or reject the review panel recommendations (Schedule 1 clause 54(1)). If it rejects the review panel

recommendations, the Council "*must develop*" an alternative provision and give reasons for the alternative. The alternative *must be within* the scope of submissions, or reports and comments received in the collaborative group process. The Council must complete a section 32 evaluation of the alternative, assess whether it is inconsistent with the consensus position, and specify the reasons why it prefers the alternative position. The provisions are unclear about what then happens, and when it happens. Clause 54 as currently drafted enables the Council to simply determine the alternative without any further submissions or hearing. Whilst efficient, that is unjust and inequitable.

11.31 15th step: Notification of the local authority's decision must be not less than two years after notifying the proposed plan or change and the operative plan is changed from that date (Schedule 1 clause 56). The Council supports this.

11.32 16th step: rights of appeal by way of a rehearing in the Environment Court. The Council opposes the drafting of the provision for a right of rehearing in the Environment Court (Schedule 1 clause 59) for several reasons. Firstly as it gives standing to the collaborative group to be an appellant. The collaborative group should be a report writer or "expert" giving evidence to the Court rather than a party in its own right. Secondly as the right of appeal is drafted as being limited to changes made by the Council decision that are *inconsistent with the recommendation of the review panel.* Submitters ought to have the right to appeal on matters in the Council decision that are consistent with the recommendations of the review panel as the review panel may have got it wrong. Thirdly, there is no right of appeal under clause 59 if the Council's decision records that the change from the review panel's recommendation was to ensure that the provision complies with parts 4 or 5 of the RMA. If the local authority frames the decision in that manner the right of appeal is illusory.

11.33 There ought to be an *unconstrained* right for appeals by submitters within the scope of their submissions and iwi authorities within the scope of matters raised by their comments on the provisions.

11.34 17th step: Appeals are to the Environment Court on questions of law (Schedule 1 clause 60). The Council supports this.

11.35 Changes are needed to clarify and standardise Schedule 1 sub-clauses 45(3), 53(4)(b), 54(4)(c) and 59(3). These require similar consideration of consistency with Parts 4 & 5 of the RMA, but slightly different consideration of other parts of the RMA and other Acts, for no obvious reason. 45(3)(b) includes "other provisions of this Act and any other enactment", 53(4)(b)(ii) is only "any other enactment", 54(4)(ii) is "any relevant enactment" (so potentially both other parts of the RMA as well as other Acts), and 59(3)(b) is "any enactment" (so potentially also both other parts of the RMA as well as other Acts).

12 Changes to section 104 (decisions on resource consent applications)

Clause 62

12.1 The addition of the requirement to have regard to any measures proposed by the applicant to achieve positive effects, to offset adverse effects, is not opposed by the Council. However, it is superfluous. This "environmental compensation" can already be given regard in assessment under s104 of the Act.

13 Limit on resource consent conditions

Clause 64 new section 108AA

13.1 Section 108 of the RMA provides that except as otherwise provided by that section and subject to regulations, a resource consent may be granted on any conditions that a consent authority thinks appropriate. The Supreme Court in *Waitakere CC v Estate Homes Ltd* [2007] 2 NZLR 149 held that that section, and common law principles, do

not require a greater connection between the proposed development and conditions of consent beyond that they must be logically connected to the development, not unrelated to it and not relating to external or ulterior concerns. That limit does not require the condition to be restricted to the exclusive purpose of the development, but there is no requirement under s 108(2) for a causal connection. The facts on that case concerned the Council requiring a wider road than was needed for the effects of the subdivision so as to meet the Council's objectives for arterial traffic routes - on the Supreme Court approach it was appropriate to have a condition requiring the wider road, but the Council would need to fund the cost difference between the road needed to address the effects of the subdivision, and the wider one sought by the Council.

13.2 Proposed new section 108AA appears intended to reverse the effect of that Supreme Court decision as it requires that consent conditions can be imposed only if they are agreed to by the applicant or are "directly connected to" either or both of an adverse effect of the activity on the environment or an applicable district rule or regional rule.

13.3 The Council has concerns with that change. Rules in plans can require compliance with outline development plans, and the outline development plans can specify some infrastructure required in that development area - for example, roads of particular widths. So some strategic infrastructure needs would still be within the proposed constraint of conditions to be directly connected to "an applicable district rule". But there are more fine grained level infrastructural needs that arise when considering a resource consent application that would seldom be expressly addressed in outline development plans or other rules - for example, the need for a pump station in the applied for development to be sized bigger than needed for just that development as the Council's development plans would have the same pump serving a wider area yet to be developed. The need for that pump would not be directly connected to either an adverse effect of the activity on the environment or to an applicable district rule.

13.4 The relief sought is that proposed section 108AA is deleted.

14 Notification of resource consents

Clause 125 new sections 95 to 95B; clauses 126-127; clause 128 new section 95DA and clause 129 new section 95E

14.1 The Council opposes the bulk of the changes to the notification provisions for resource consents. The Council acknowledges that notification of applications can in practice be a deterrent for development as it increases delays and costs. However, there are also significant benefits for the community in the notification of resource consent applications remaining unchanged. Developments that do not proceed due to them being notified may have been without merit in the first place. Submissions following notification can highlight effects and issues that would otherwise have been missed. Sustainable management of natural and physical resources can be enhanced as a result.

14.2 "Residential activity" as defined in new section 95A(6) cannot be publicly notified unless there are special circumstances, but it is unclear whether the definition confines "residential activity" to a single dwelling. Is an apartment block "residential activity" that cannot be publicly notified? The restriction on rights of appeal when an application is for a "residential activity" that "is to occur on a single allotment" (clause 135 new section 120(1A)) suggests that "residential activity" can include multiple households.

14.3 The proposed changes to the notification provisions are over-complicated and confusing. When the complicated nature of the provisions is unravelled, it appears that the provisions may have broadly the same result as the status quo, except for some changes that result in ambiguity, inefficiency and inequity.

14.4 Regulations (new section 95(5)(b)(iii) for public notification, 95DA(2)(b) for limited notification) and the National Planning Template should not be specifying whether

applications can be publicly or limited notified. That should be a decision of the local authority or hearings panel based on local needs.

14.5 The new defined term of "Boundary activity" (clause 121 new section 87AAB - an activity that breaches a rule about setbacks or dimensions in relation to boundaries) is used to limit notification. The proposed provisions provide that unless it is a non-complying boundary activity it cannot be publicly notified unless there are special circumstances and that limited notification is limited to the "owner or occupier of any allotment with an affected boundary" s95DA(4)(b). It is not clear under the definition of boundary activity/rule whether living room window setback rules etc. are covered. Clarity is required on this matter.

14.6 That restriction of notification of a boundary activity to owners or occupiers of properties with "affected boundaries" is both ambiguous, and inequitable. For example where a recession plane is breached on the eastern boundary of an application site it may be the property to the south that is most shaded by a recession plane breach rather than the property to the west. Without such a definition the Council is concerned at the perverse outcomes with some parties being excluded from the process when they may be affected to a greater degree than those that are included.

14.7 For those reasons regarding inequity and unfairness around use of the defined term "affected boundaries", the Council opposes the proposed new section 87BA (clause 122) that provides for boundary activities approved by "each owner *or* occupier" (which must be in error - it should be owner *and* occupier) on affected boundaries to be permitted activities. Moreover, under s87BA limited information is required - only height, shape and location on site. This restricts the ability of councils to check all rule breaches i.e. location of windows breaching rules, second kitchen, garage size etc. This is a customer service matter as not providing full plans will mean other breaches are not picked up until later frustrating customers who then need to apply for additional consents or exemptions. Full plans need to be provided, and this will also assist with neighbours with a detailed set of plans held on Council record. This will also assist alignment with building consent processes.

14.8 Similar difficulties and inequities arise with s95DA(4) limiting limited notification of some activities to "the owner or occupier of an allotment that is adjacent". The definition of "adjacent" in subsection (5) creates unfairness. Persons beyond adjacent sites may experience effects such as noise or traffic, which can travel well beyond "adjacent" allotments - for example, childcare facilities in residential areas. Also, where adjacent allotments are very narrow such as a drainage reserve or accessway (that is not a right of way) this could preclude parties that may otherwise, and in the Council's view still should, be eligible for notification. The amendments do not provide adequately for management of those potential effects. In order to be able to address that issue, councils would need to amend District Plans to make breaches of noise limits and other such effects non-complying.

14.9 There is no need to draft provisions to exclude public notification of a "boundary activity" as applications of that type would be publicly notified only in the most extraordinary of cases.

14.10 Regarding designations, the Council is concerned about the limitations here where activities could have effects completely unanticipated by the designation, whereas the requiring authority essentially has the power of veto under s176(1)(b) so notification to them is to some extent redundant.

14.11 Subdivisions that do not have more than minor adverse effects (and are therefore not publicly notified) cannot be served on adjacent owners (new section 95DA(4)(b)). That limitation cannot be justified in terms of the effects of the activity, especially where subdivision is out of zone, such as the subdivision of rural land to residential lot sizes.

14.12 The effect of the proposed provisions is that controlled activities that are not subdivisions must be non-notified (new section 95(5)(b)(i) precludes public

notification and 95B(6)(b)(i) precludes limited notification). Whilst controlled activities would very seldom if ever be publicly notified, limited notification should be an option still available to the consent authority. The management of effects of controlled activities by consent conditions can result in big differences for affected people.

14.13 The Council has no concerns with the additions to the notification provisions which focus on Maori interests.

14.14 The requirement that public notices and limited notification notices to affected people specify the effects that are the reason for the notification (new section 95A (7)(a) and (9) for public notification, and 95B(9) and (10)(a) for limited notification) appears to have been added for no reason other than to support a grounds for striking out submissions if they are not focussed on those reasons. However, in many cases there will be several overlapping and cumulative effects that are the reason for a notification decision or a special circumstances decision. The statement of the effects is in many cases going to be broad.

14.15 The Council opposes proposed new section 95D(c) (clause 127(2)) which provides that when deciding whether adverse effects are more than minor the Council may disregard adverse effects that are "*already taken into account by the objectives and policies of that plan*". This is too vague to be sensibly applied. There will be uncertainties about whether an adverse effect has been "taken into account" by the objectives and policies.

15 Fast tracked applications

Clause 121 new section 87AAC and clause 151 new section 360F(1)(a)

15.1 The ten working day limit for notification and substantive decisions on controlled activities (other than for subdivisions) and activities prescribed by regulations is opposed by the Council. The Council supports simple applications being dealt with quickly. That is what the Council already does as a matter of good practice. But there is no assurance that controlled activities, or activities prescribed in regulations, are simple applications. Expert reports and assessments can be needed to assess the effects and appropriate consent conditions for even controlled activities.

15.2 There are insufficient safeguards around the type of activity that regulations could prescribe to be fast tracked (clause 151 new section 360E).

15.3 It is more appropriate that such matters be left to individual councils to determine, and at best the amendments should require councils to have a policy on these. There will be difficulty in prescribing types of applications that are sufficiently simple across all councils. Any fast track applications should be limited to those not requiring any specialist input.

15.4 Further, costs to Council will likely increase as 20 day timeframes allow councils and individual planners to better balance peaks and troughs as well as staff being on leave so additional staff would likely be required.

15.5 Where an application ceases to be a fast track as a result of being notified or if a hearing is to be held (new section 87AAC(2)), then proposed s87AAC(3)(b) provides that councils may use section 92 to make up information gaps. If section 92 has already been utilised councils need the ability to stop clock a second time.

16 Marginal/temporary non-compliances to be permitted activities

clause 122 new section 87BB

16.1 The Council supports this provision in principle but changes are needed to address some issues.

16.2 The benefit for the community and the work involved for the Council is little different from that which arises in the bulk of cases from the simple resource consent

processes that it replaces. There still needs to be an application. Council still needs to assess it and prepare a report, and costs still need to be recovered. Where a resource consent would have otherwise been a simple non-notified approval, in all likelihood this will result in significant administration issues.

16.3 Cost recovery and timeframes are unclear.

16.4 Temporary non-compliance is particularly problematic. How is this defined? Is a music concert that would otherwise be a more than minor adverse effect less than minor because of such a short (i.e. one off) duration? What about lifting a house for six months? Improved clarity over terms is required.

16.5 There ought to be provision to consider cumulative effects in greenfield subdivision for example where ownership of multiple sites may have a perverse outcome despite each one being a "marginal" non-compliance. .

16.6 Consequential change may be needed in relation to the identification of the permitted baseline for notification and resource consent decisions, as the activity deemed to be permitted under this enabling provision should not then be part of the permitted baseline for future applications.

17 Reduced rights of appeal

clause 135 new section 120(1A)

17.1 The Council opposes the removal of rights of appeal in relation to boundary activity consents, subdivision consents that are not non-complying activities, or residential activity on single allotments that are not non-complying activities. Appeal rights are an important part of the participatory rights. There is little evidence that appeals on those activities are a significant barrier to development.

18 Fixed fees for hearing commissioners and other matters

18.1 The Council does not support setting fixed fees for hearing commissioners. If fixed fees are not sufficient to engage suitably experienced and qualified professionals, the Council would still have an obligation to, and would, ensure appropriately skilled decision makers, and in practice would have to absorb any additional costs that could not be passed on to applicants. If Council was to appoint lower quality commissioners then this would be a false economy given the greater likelihood of judicial review and appeal. This amendment would potentially affect the rates funding model and is opposed by the Council.

18.2 For other fixed fees for resource consents, there may be a shortfall between the fees and the costs for some applications. Shortfalls would need to be met by rates revenue. The rates funding model may need to change. It may be that good applications will be disincentivised as fees for processing consents based on time cost are an incentive for preparation of high quality applications as this reduces the processing time needed (i.e. it will make sense to lodge lesser quality applications and use Council requests for further information to fix them up with multiple iterations). With the Council's customer service ethos it will be difficult to resist this, whereas at present the Council's charging regime makes it worthwhile in many instances to engage appropriate professional support and have a high quality up front application.

19 Ability to take financial contributions removed in five years

Clauses 153-155 repealing parts of sections 108, 110 and 111

19.1 The operative district plan places little reliance on the ability to take financial contributions. The development contributions policy is relied on for the bulk of funding for infrastructure. In the Replacement District Plan financial contributions are proposed solely for esplanade reserves.

19.2 The Council has considered the implications of the removal of the ability to take financial contributions as these by definition in the RMA can include money or ***land***. There are significant community and natural environmental benefits arising from the ability to require provision of land for esplanade reserves. The development contributions policy does not provide for equivalent benefits. The Council acknowledges that there is no proposed change to sections 230, 231 and 236 of the RMA which provide for the Council to require esplanade reserves to vest in the Council at the time of subdivisions without relying on resource consent conditions requiring financial contributions. However, the Council opposes the changes for the following reasons.

19.3 The proposal to remove the ability to require financial contributions is based on the assumption that there is a duplication with development contributions under the Local Government Act 2002. That assumption is wrong. Whilst the Council is not currently relying on the ability to take financial contributions, it has some concerns with this change:

- Development contributions can be used only for capital expenditure on growth. The basis of development contributions is that an effect of a development is the requirement for new assets and the council incurs expenditure in providing for them. The basis for financial contributions is that there will be effects on the environment, which is broader than demand for and expenditure on infrastructure;
- If growth in a district is low, the ability to take financial contributions is a useful tool. Some councils have been changing their development contribution policies to state that financial contributions will be required rather than development contributions;
- The Crown is not bound by the part of the LGA that enables the Council to require development contributions on triggering events (resource consent, building consent or service connection);
- The ability to take development contributions for reserves in section 198A of the LGA 2002 is limited to residential developments only.

19.4 **Possible relief**: either retain the ability to take financial contributions or amend the LGA 2002 so that the trigger for taking development contributions is development occurring, not "growth"; widen the definition of development and provide that the Crown is bound by subpart 5 (development contributions) of Part 8 of the LGA 2002.

20. Other RMA matters of concern to the Council

20.1 Appointing Commissioners

Clause 16 section 34A

The requirement to consult with iwi authorities on the appointment could result in a breach of timeframes unless the Council can specify a reasonable time for response.

20.2 Contents of national policy statements

Clause 29 new section 45A

Some of these provisions regarding information and monitoring have potential to be onerous and costly for local authorities.

20.3 Minister power for amending, replacing or revoking a National Planning Template

Clause 37 new section 58G

Exercise of those powers could result in wasted expenditure for the Council amending plans.

20.4 Consequential amendments arising from a National Planning Template

Clause 38 new section 58H

These provisions leave the Council with a possibly complex and uncertain task of identifying what consequential amendments are needed to avoid conflict or duplication.

20.5 Change to assessment of resource consent applications regarding National Planning Template

Clause 62 amending section 104

This seems to require particular regard being given to a National Planning Template even if it is not as yet incorporated in the district plan.

21 Alignment between Reserves Act and RMA processes when a change in reserve status is involved

21.1 The Council supports the changes intended to remove duplication between Reserves Act and RMA applications. The proposed amendment to the existing s15 of the Reserves Act and the proposed new sections 14A and 14B do not appear to significantly alter the existing processes under the Reserves Act for giving effect to exchanges of reserve land in general, other than in respect of recreation reserve.

21.2 In respect of recreation reserve only (and not in respect of other reserves) the proposed new section 14B of the Act would:

(a) remove any need for public consultation under the Reserves Act in circumstances where a resource consent under the RMA is obtained which complies with the matters in the proposed s14B(1)(b); and

(b) allow the administering body for the reserve (typically the Council) to authorise the exchange (rather than the Minister of Conservation as previously).

21.3 Given the very low number of exchanges of reserve land (averaging less than one a year) Council property staff are ambivalent to these proposed changes. The proposal to "streamline" the process for approving exchanges of recreation reserve by removing the need for public consultation under the Reserves Act if that is undertaken under the RMA will obviously be beneficial in terms of avoiding a duplication of consultation process. However, given the very low number of section 15 reserve exchange transactions experienced by this Council, our view would be that the benefit gained will be more of perception rather than provide a substantial reduction in actual process.

21.4 On technical drafting points:

(a) Proposed Section 14B(2)(a) - it could be made clearer that the submissions referred to here are those received as part of the RMA process (as there will be no Reserves Act consultation process);

(b) Proposed Section 14B(3) - this section creates confusion as to the relationship between proposed sections 14A and 14B. If the intention is that, in respect of recreation reserve, either the process under the section 14A or that under section 14B may be used, it would be preferable for section 14B(3) to expressly say that.

21.5 It appears that under the proposed amendments to the Act the Council, at its option, could use either the s14A or s14B process to give effect to an exchange of reserve land. Thus, the Council could choose to ignore s14B (the section that allows public consultation to be avoided if an RMA consent is obtained), the use of which is not mandatory, and consult under the Act on the proposed exchange even if an RMA consent was obtained. That residual power may be unintended.

21.6 The Council supports public notification of the resource consent application being mandatory if the application includes a proposal to exchange recreation reserve land under section 14B of the Reserves Act (clause 125 section 95A(3)(c)).

22 Amendments to Public Works Act

22.1 The Council has significant concerns regarding the proposed changes to the Public Works Act 1981 ("PWA"). The Council recognises that the solatium payment referred to in the existing section 72 of the PWA should be increased to reflect inflation and changed circumstances since the original enactment of the PWA in 1981, but it considers that:

a) an increase in the level of solatium compensation from $2000 to a level of $50,000 cannot be justified; and
b) there is no reasonable rationale for extending the scope of when a solatium compensation payment is payable to circumstances where there is no dwelling on the land being used as a principal place of residence, as proposed by section 72C; and
c) the circumstances when solatium compensation will be payable need to be very clear.

Clauses 171 & 172 - Quantum of proposed solatium compensation payments

22.2 The increase in the quantum of solatium compensation from $2000 to $50,000 is not justified by inflation. The Reserve Bank Inflation Calculator at the Reserve Bank website calculates that the 2016 value (using CPI adjustments) of $2000 in 1981 is in fact $8448.

22.3 The payment of such significant sums as solatium compensation will have the effect of over compensating landowners at the expense of the Council's ratepayers and of distorting the property market. At present, in the circumstances of an unwilling owner, the Council will ordinarily pay a premium to that owner to achieve a pragmatic and agreed outcome. The obligation to pay such a significant additional solatium compensation payment will exacerbate that issue, and have the effect of significantly increasing the cost burden to ratepayers and also of distorting the property market.

22.4 **Relief**: Reduce the proposed solatium compensation payment from a maximum of $50,000 to a maximum of $8,500.

Clause 172 – new section 72A – Payment of solatium compensation under section 72

22.5 Under the proposed changes, the amount of the solatium compensation payable where there is a dwelling used as a principal place of residence will be increased from $2,000 to up to $50,000 (and, in any event, not less than $35,000). Given the size of the increase, it is likely that there will be more disputes around whether or not the compensation is payable. The criteria for payment under section 72A would need to be very clear. The Council has no objection to the compensation being increased to a reasonable level, but it wants to ensure that there are clear rules governing when it is payable so that it can fairly assess (in a consistent manner) whether or not payment is due.

22.6 The reference to the compensation only being payable when "notified" does not limit its scope to any significant degree. Section 59 of the PWA currently defines "Notified" as meaning, among other things, the situation when land is made the subject of negotiations under section 17 of the PWA. This covers all purchases of any estate or interest in land made by the Council, irrespective of whether any steps have been taken to commence the compulsory acquisition process under the PWA. Thus in determining whether the solatium payment is payable, or not, no account is taken of whether the land purchase is undertaken on an 'open-market' basis (i.e. where the owner is a willing seller, and may have the property on the market for sale), or whether the owner is unwilling to sell and the land purchase is undertaken with an element of compulsion. The Council submits that the obligation to pay the solatium compensation should only apply in the latter circumstance.

22.7 A key area for dispute is likely to be around whether the landowner was “a willing party to the taking or acquisition of the land, or was a willing party to the taking or acquisition principally because the land was notified”. This has not previously caused any great difficulty for the Council because the quantum of the compensation was reasonably low. However, the Council anticipates that this issue will become much more important to landowners, and the Council would like to see very clear legislative direction on what constitutes a willing party. For example, if a landowner comes to a Council seeking to have their land purchased because of flooding or erosion issues allegedly caused by that Council, is that a willing vendor? How will the compensation amount fit with an exchange of land under the Reserves Act 1977? How will this affect a situation if a Council is wanting to be proactive in relation to sea level rise and offers to buy susceptible properties? The Council suggests that a "willing party" could be defined as a person actively marketing their property at the time or immediately prior to the acquisition of the land by the Council.

22.8 **Relief sought**: Amend sections 72 and 72A so that it is clear when the compensation will and will not be payable. In particular, amend these sections so that there is a clear definition of “willing party” and that there is no obligation to pay the solatium compensation where the owner is a "willing party".

Clause 172 - new section 72C –Additional compensation for acquisition of "notified land".

22.9 As mentioned above, the definition of "notified" will extend the ambit of this section to cover all land acquired by the Council for a public work, irrespective of whether the owner was a "willing" seller or not. The Council submits that the obligation to pay solatium compensation should not apply where the owner is a "willing" seller.

22.10 The Council cannot see any rationale for extending the scope of when the solatium payment is payable to circumstances where there is no dwelling on the land used as a principal place of residence, as proposed by section 72C.

22.11 In addition, the proposal to extend the scope of when solatium compensation is payable is extremely broad, and is likely to add a significant cost onto the Council’s land transactions. This is because the definition of Land in the PWA “includes any estate or interest in land”. This means that section 72C would apply, among other times, whether the Council was buying a whole property, part of a property, an easement or a lease.

22.12 The Council is concerned that:

- There is scope for dispute as to whether or not the landowner is a willing vendor, and therefore eligible for the new type of solatium compensation payment.
- There is scope for dispute when several parcels of land are in numerous certificates of title, but owned by one owner. There would need to be clear direction on what would apply in that situation.
- The apportionment provisions in section 72C are potentially difficult to apply, particularly when leases and subleases are involved. If there are to be apportionments, the Council would prefer to have a clear provision recording that its obligation is discharged by paying the compensation to the registered proprietor. The registered proprietor could be responsible for disbursement of the apportionments.

22.13 The Council is satisfied that section 17 of the PWA gives it sufficient flexibility to negotiate purchases, and there is no need for there to be a mandatory new class of solatium compensation as contained in the proposed section 72C.

22.14 **Relief**: Delete sections 72B, 72C, 72D and amend 72E accordingly.

Concluding Remarks

The Council looks forward to presenting its submissions to the Local Government and Environment Select Committee and will be represented by Mayor Lianne Dalziel and Council staff.

Please contact Megan Pearce, Governance and Partnerships Unit, to make arrangements in relation to the oral hearing of the Council's submission. Ms Pearce's contact details are Megan.Pearce@ccc.govt.nz or (03) 941-8140.

Yours faithfully

Dr Karleen Edwards
Chief Executive
CHRISTCHURCH CITY COUNCIL