

Submissions

on the

Resource Management and Electricity Legislation Amendment Bill

February 2005

1. Introduction

- 1.1 The New Zealand Council for Infrastructure Development Inc (NZCID) is a non profit organisation.
- 1.2 Members comprise a diverse range of organisations, private and public all sharing a concern to see world class infrastructure developed and provided in New Zealand to help New Zealanders to achieve the standard of living to which we aspire.
- 1.3 NZCID's vision is to promote the provision of world class infrastructure by both the public and private sectors for the benefit of New Zealanders.

2. Purpose of the Bill

- 2.1 NZCID supports the purpose of the Bill, "to improve the Resource Management Act 1991 and make amendments to the Electricity Act 1992".
- 2.2 NZCID supports any legislative or executive action which promotes and facilitates the provision of world class infrastructure in New Zealand.
- 2.3 NZCID recognises the key role that the Resource Management Act plays in the provision of infrastructure, and in these submissions proposes some different points of view and changes to enhance the effectiveness of the Resource Management Act as intended to be amended by the Bill.

3. Resource Management Act

- 3.1 NZCID believes the starting point for any review of the Resource Management Act must be to understand and identify its shortcomings.
- 3.2 NZCID approaches this from the standpoint of its interest in infrastructure provision. In doing so NZCID recognises that there are numerous potential and useful enhancements proposed by the Bill and which will be commented on in the submissions of others. NZCID supports any changes that improve the working and effectiveness of the Act. For the purposes of these submissions NZCID restricts itself to observations and comments on points of principle, believing that with those principles correctly argued and addressed, process and particular wordings can follow.
- 3.3 In this context NZCID believes the Resource Management Act is deficient, either in itself or in the way in which it has been administered since enactment, in the following principal respects:
 - (a) Uncertainty of outcome – leading to delay and the cost of delay.
 - (b) Inconsistency of process – leading to delay and the cost of delay.
 - (c) Lack of clear and certain standards.
 - (d) Bias, in operation at least, against sustainable development, including a bias against any environmental change.

- 3.4 In these submissions NZCID tests the amendments proposed by the Bill for improvement on each of these issues under the head of each of the 6 main objective stated for the Bill.

4. Better expression of the national interest

- 4.1 The Resource Management Act already provides for the adoption of national policy statements and national environmental standards. The difficulty since the enactment appears to have been one of resourcing, will and obligation rather than a lack of legislative authority.

NZCID:

- (a) supports the adoption of national policy statements and national environmental standards in all areas;
- (b) urges Government to adequately resource those charged with the responsibility to develop standards as a priority;
- (c) submits that the Minister should set down a programme for development and promulgation of national policy statements and national environmental standards with funding and other resources allocated, as required, without delay;
- (d) submits that local authorities should not be permitted to impose more stringent standards than those in the relevant national environmental standards;
- (e) particularly supports the development of national environmental standards for land use activity such as infrastructure.
- (f) submits that the definition of “infrastructure” in clause 5 of the Bill is unnecessarily narrow and submits that paragraph (b) be amended as follows:

“(b) includes buildings, power supplies and distribution network, roads, transport, water, wastewater, telecommunications and other network utilities.”

- 4.2 NZCID supports the extended powers of call in and submits that:

- (a) submitters should be entitled to initiate call ins;
- (b) a specific time frame for the Minister to make a decision and give reasons should be provided for; and
- (c) it is not persuaded that the right of appeal from a Board of Inquiry decision be directly to the High Court and not to the specialist Environment Court.

- 4.3 NZCID further submits that:

- (a) Government should participate in consent hearings as proposed and that greater weight be given to national values and principles; and
- (b) Government submissions should be authorised by the relevant Minister with any conflict resolved in Cabinet so that Government takes a whole of Government approach to its participation.

- 4.4 NZCID considers that the amendments proposed to better express the national interest each contribute to addressing the principal shortcomings with the Resource Management Act

identified. NZCID observes, however, that it is essential that adequate funding and additional resources be made available to develop and promulgate national policy statements and national environmental standards.

5. **Effective and efficient process – certainty**

5.1 NZCID supports any initiative that improves certainty of process and can be demonstrated to reduce cost and delay.

5.2 Accreditation of members of hearings panels

This is welcome. NZCID is concerned however that that Bill still leaves responsibility for first instance hearing at the local authority level as the default position. With the large number of local authorities and significant diversity of wealth and resource within those local authorities the current position of inconsistencies around the country and within regions is not fully addressed.

NZCID urges the Government to adequately resource the Ministry as the accreditation agency and to police compliance by local authorities with the accreditation requirements. Sufficient numbers of accredited persons will be required in each Council to avoid further delays. NZCID suggests that appointment of Commissioners be compulsory, at the cost of the local authority concerned, where the local authority is unable to adequately “man” hearings committees.

NZCID is unconvinced that decision making by elected representatives necessarily leads to consistent quality decisions. NZCID submits that local councillors as elected representatives are always subject to local and vocal lobbyists, especially in smaller and less resourced local authorities. NZCID believes trained and accredited commissioners as the default setting for local authority hearings would lead to consistently higher quality decisions. NZCID believes that the role of local politicians in this respect should primarily be in the preparation and maintenance of the District Plan, rather than sitting also as adjudicators on their own rules and requirements.

5.3 Inquisitorial style

This is welcome and NZCID supports this change. NZCID does have the following reservations which it believes will be best addressed by good training and consistency of format and style of hearings by local authorities:

- (a) more robust, care will need to be taken by those hearing applications that the process not be held up and distracted by the inherent drama of an inquisitorial system;
- (b) it is likely that there will be a need for greater legal representation to minimise procedural flaws and the attendant risk of judicial review;
- (c) local authority officers and others presenting evidence could be ambushed by unanticipated lines of questioning in an inquisitorial setting by submitters who have questionable standing. This will require hearing chairs to be vigilant and procedurally wise in dealing with hearing requirements and formalities. Additional training in the requirements and standards of the inquisitorial process will be required.

5.4 Power to direct – information and action

NZCID supports the proposed changes to allow the Minister to direct action and require information from a local authority. NZCID urges the Government on a whole of government approach to provide adequate resourcing so that this power is actually used on appropriate

occasions and when it is that it does serve the objective of improving certainty and consistency of process under the Resource Management Act.

5.5 Joint management agreements

NZCID supports the principle of joint management agreements. NZCID submits that the Minister should have the authority to require local authorities to enter into joint management agreements and to impose terms and conditions where they cannot be agreed by the local authorities concerned.

5.6 Requests for further information and responses

NZCID supports the proposed provisions dealing with requests for and the giving of reasons for a request for further information.

5.7 Pre hearing meetings

NZCID is concerned that pre hearing meetings may add to the cost and time required for matters to be dealt with and considers that pre hearing meetings may not be required on every occasion, having regard to the nature and substance of the issues to be determined.

5.8 Existing use certificates

NZCID supports the proposed process for the issue of existing use certificates as a means of providing clarification and certainty.

5.9 Further improvements

NZCID submits that the following further changes should be made:

- (a) Provision should be made on application to the Minister for the Minister to direct that major issues be referred directly to the Environment Court
- (b) NZCID is not convinced, for the reasons set out above of the veracity of the default position whereby hearings are, in the first instance, heard by elected representatives. NZCID favours greater use of Commissioner decision making at local authority hearing level
- (c) The Environment Court should be encouraged, by the Bill, to use awards of costs as a deterrent to applicants or submitters who:
 - (i) are not ready for hearing;
 - (ii) cause delay;
 - (iii) are frivolous or vexatious;
 - (iv) have not prima facie case to answer or address.

6. Improve effectiveness of planning documents

6.1 Contents of regional plans and district plans

NZCID:

- (a) supports the principle of requiring regional and district plans to state policies and rules for implementation of policies;
- (b) submits that the provisions on allocation of resources need to make it explicit that a regional plan cannot adversely affect the allocation of a resource the subject of existing consents.

6.2 Minister's power to direct local authorities to address a resource management issue

- (a) NZCID supports proposed new section 25A giving the Minister powers of direction on dealing with resource issues in plans.
- (b) NZCID submits:
 - (i) the Minister should be resourced to allocate funds to assist or facilitate the work required for the local authority to deal with the direction made; and
 - (ii) a specific timeframe should be laid down by the Minister for the issue to be addressed and dealt with.

7. Improve certainty of consultation

7.1 Iwi

- (a) NZCID supports the proposed requirement that local authorities keep and maintain records of each iwi authority and relevant related information.
- (b) NZCID submits that:
 - (i) this work should be mandated to occur within a period of time from the Bill receiving Royal Assent;
 - (ii) on that period elapsing the records held by the local authorities should, for Resource Management Act purposes at least, be able to be regarded and treated as full complete and binding;
 - (iii) local authorities should also be required within the period mentioned, to note all wahi tapu and other interests claimed or made by iwi in the region in the local authority planning documents, with those records to be able to be relied upon as complete and accurate from the end of the period;
 - (iv) proposed section 36A(1)(b)(ii) should be struck out, as it will be time consuming and confusing for local authorities to determine whether or not particular parts of an operative plan had been the subject of consultation with iwi or the tribal runanga. Iwi and tribal runanga would have had the opportunity to make submissions at the time of introduction of the plan, change or variation. Additionally not every aspect of a plan would warrant or require consultation with iwi or a tribal runanga; and
 - (v) proposed section 36A(1)(d) should reciprocate the consultation provisions of the Land Transport Management Act in the case of consultation required under that Act to confirm that duplicate consultation is not required.

8. Provide certainty over the allocation of natural resources

8.1 Existing consent holders

NZCID supports the proposal that an existing consent holder has priority over any competing applications for the same resource.

8.2 Transferability of discharge permits

NZCID supports clarification of the provisions dealing with an entitlement to transfer part or all of a holder's interest in a discharge permit to the classes of persons identified.

9. High voltage electrical works in the road corridor

NZCID supports these provisions of the Bill.

10. Conclusions – Bill

10.1 NZCID is generally supportive of the Bill and the changes and enhancements proposed.

10.2 NZCID has identified some areas where refinement and change may enhance the prospects of the objectives of the Bill being achieved.

10.3 NZCID remains concerned that the Bill does not go far enough in emphasising and directing a bias for sustainable development and that the present interpretation of the Resource Management Act in a contrary manner is likely to continue.

10.4 NZCID believes that the success of the reforms proposed by the Bill as much lies in:

- (a) full and proper resourcing of central and local government to apply and operate to the law in a consistent and transparent manner;
- (b) the development of national 'best practice' standards, policies and procedures consistently applied for greater consistency of process; and
- (c) wise and timely use of call in and other powers relating to the national interest, which is particularly important in the case of infrastructure development.

11. Agenda for wider reform

NZCID submits that there are areas for further deliberation and reform which it intends to pursue as follows:

- (a) review Part II of the Resource Management Act to enable social and economic benefits to be taken into account;
- (b) limit standing of submitters on resource management matters to those materially affected rather than the public at large;
- (c) consider the appropriateness and lack of economies of scale, resource and talent with the large number of local authorities which presently exist;

- (d) reinforce the “effects” based approach heralded for the Resource Management Act by creating a presumption in favour of activities being permitted, subject to conditions.

12. **Appearance**

NZCID respectfully requests that it be permitted to address these submissions to the Select Committee in person.