

6 April, 2009

Clerk of the Committee  
Local Government and Environment Committee  
Select Committee Office  
Parliament Buildings  
WELLINGTON  
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## **NZCID Submission on Resource Management (Simplifying and Streamlining) Amendment Bill**

The New Zealand Council for Infrastructure Development (NZCID) appreciates the opportunity to submit on the Resource Management (Simplifying and Streamlining) Amendment Bill.

### **Synopsis**

NZCID is generally supportive of the amendments proposed, particularly in respect of reforms that will streamline approvals for projects of national significance, but considers that the focus on network projects of national significance as being unnecessarily restrictive. We propose a change of wording that will enable projects of national or regional significance to be called in. There are also a range of more substantive reforms that NZCID proposes should be considered in the phase two reform process. NZCID seeks the Select Committee's support to recommend such forms be considered at that time.

We wish to be heard in support of this submission.

### **Background Information about the New Zealand Council for Infrastructure Development**

The Council was formed in 2004 to promote world class infrastructure development for the benefit of all New Zealanders, a goal we are committed to achieving by:

- Raising awareness of the fact that infrastructure underpins our community's quality of life and that inadequate infrastructure holds back New Zealand's economic, social and environmental development
- Generating valuable debate on the quality and level of infrastructure provision to meet New Zealanders' needs
- Encouraging the implementation of best practice infrastructure provision and management

NZCID is a non profit organisation. Members comprise over sixty of New Zealand's leading private and public organisations including infrastructure equity owners, financiers, constructors, service providers, public sector agencies, and major infrastructure users. Information on the Council, its members, policy and work can be found at [www.nzcid.org.nz](http://www.nzcid.org.nz) .

In developing its policy position on infrastructure issues, NZCID consults extensively with its member organisations and with key stakeholders within central and local government and business and community interests and undertakes workshops and seminars on policy and undertakes independent research. This submission represents the views of NZCID as a collective whole, and may not necessarily represent the views of individual member organisations, some of whom will be making their own individual submissions.

## NZCID supports key aspects of this Bill

NZCID supports the key elements of the reform package including:

- Streamlining processes for projects of national significance
- Creating an Environmental Protection Authority
- Improving plan development and plan change processes
- Improving resource consent processes
- Streamlining decision making
- Improving workability and compliance
- Improving national instruments
- Removing frivolous, vexatious and anti-competitive objections

The most directly relevant proposals relate to streamlining approval processes for projects of national significance. We support the intention to make greater use of the existing board of inquiry process, but to also improve the capacity for local authorities and communities to have confidence and involvement in that process.

We agree that the objective of the reform measure is to provide an efficient and robust process for the consideration of, and decision making on, resource consent applications, plan changes and notices of requirement for large infrastructure or public work projects that are of national significance.

## Projects of National Significance are too narrowly defined in the Bill

However we are concerned that the Bill defines projects too narrowly. The wording relating to projects of national significance set out in Clause 95 specifically refers to network projects...

*“Minister's power to call in matters that are or are part of proposals of national significance*

- (1)Section 141B(2) is amended by adding “; or” and also by adding the following paragraph:
  - “(i) relates to a network utility operation ...”

Depending on definition of what comprises a “network utility” if narrowly interpreted as meeting network utilities such as pipes, wires, roads or railways, this may preclude projects of national / regional

significance such as power generation plants, water treatment plants, irrigation schemes, waste facilities, prisons, quarries and national and or regional institutions and facilities like hospitals, schools, universities and the like from being considered as projects of national or regional significance.

Such projects have the potential to be as strategically significant as a network utility operation such as a new road, transmission line or pipeline, and can be of a highly contentious nature. In these situations consideration of relevant projects by local Councils places them in a position of potential conflict and may result in a lack of balanced consideration of national and or regional needs as compared with local district or community interests.

While it could be argued that infrastructure projects of this kind could potentially be called in under other criteria listed in section 141B(2), such conditions may not always apply to projects of significance. This was the reason that the Bill makes specific mention of network utilities in the first place, to make it clear that such projects might be considered for call in. For the same reason, NZCID recommends that specific recognition of projects of national or regional significance importance that are not network utilities needs to be provided.

Accordingly, NZCID recommends that Clause 95 of the Bill be amended as follows:

*“Minister’s power to call in matters that are or are part of proposals of national or regional significance*

- (1)Section 141B(2) is amended by adding “; or” and also by adding the following paragraph:
  - “(i) relates to a network utility operation or
  - “(ii) an infrastructure project of strategic economic, social, or environmental significance to the nation as a whole or to the region in which it is situated

Such wording would allow the Minister to consider and, if appropriate, approve direct referral for regionally or nationally significant infrastructure projects. The purpose of such a provision is to provide for balanced and timely consideration of key infrastructure projects while improving the capacity for local authorities and communities to have confidence and involvement in that process.

## International Precedents

We note that such a provision is consistent with comparable jurisdictions that have sought to streamline processes for projects of significance such as Ireland and the state of New South Wales in Australia. For example Clause 3 of the Ireland Planning and Development (Strategic Infrastructure) Act 2006 provides for direct referral to a planning board for projects where:

- (a) the development would be of strategic economic or social importance to the State or the region in which it would be situate,
- (b) the development would contribute substantially to the fulfilment of any of the objectives in the National Spatial Strategy or in any regional planning guidelines in force in respect of the area or areas in which it would be situate,

(c) the development would have a significant effect on the area of more than one planning authority.<sup>1</sup>

In New South Wales (NSW) a new Part 3A the Environmental Planning and Assessment Act in 2005 provides for any project to be declared a critical infrastructure project. NSW adopted a process where an application to declare a project to be critical infrastructure will be evaluated on a case-by-case basis. A guideline is gazetted by the Minister setting out the procedures and the preliminary assessment required before a project can be declared to be a critical infrastructure project.

The preliminary assessment needs to include a justification for the project being declared critical infrastructure taking into consideration social, economic and environmental factors, infrastructure and land use planning considerations, and the likely risks and benefits of the project proceeding, including:

- financial risks to the Government and the likely economic costs or benefits to the region or the State of delivering or not delivering the project in a timely manner
- community implications of delivering or not delivering the project in a timely manner, including the extent of social dislocation, benefits in terms of significantly improved services, or hardship or cost to the community if the project is not delivered quickly
- environmental risks of streamlining the project's delivery, for example:
  - How will the environment benefit from the timely delivery of the project?
  - What are the risks, and are any adverse changes likely to be reversible?

The Minister will consult with the relevant portfolio Minister prior to declaring a project to be critical infrastructure.

Like these jurisdictions, New Zealand's approval processes for infrastructure projects had become complex and circuitous. As is the case here, the reforms were designed to provide balanced but timely consideration of infrastructure projects of strategic importance.

## Support for more substantive reform as part of the second phase of the RMA review

We note that the second phase of the RMA review will look at improving infrastructure provision by providing more generous compensation for landowners in the Public Works Act, and a streamlined and better integrated process. NZCID supports these moves and seeks the support of the Local Government and Environment Select Committee by way of recommendation that the phase two reforms include:

1. An integrated approval process for projects of national significant
2. Adoption of outline or concept planning approach

These changes are discussed below.

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<sup>1</sup> Planning and Development (Strategic Infrastructure) Act 2006 p 6

## An integrated approval process for projects of national significance

Resolving issues with the RMA is not the only matter that affects timely delivery of key infrastructure projects. Unlike other jurisdictions that have implemented one stop shop approval processes for critical infrastructure, New Zealand has a number of laws in addition to the RMA that often must be traversed.

By way of example these can include:

- **The Historic Places Act 1989 (HPA).** Archaeological Authorities are required under the HPA for a number of projects. These are normally sought after RMA approvals. The Wellington Inner City Bypass for example required two Environment Court processes, one under the RMA and one under the HPA.
- **The Reserves Act 1981.** Where a project requires land from a Reserve under the Reserves Act, the specific approval of the Minister of Conservation is required. This effectively could prevent implementation of a project, even though consents may have been gained through the RMA;
- **Local Government Act 2002.** Often a road needs to be stopped in order to implement another transport solution. Where the road to be stopped lies outside of the designation, a road-stopping process under the Local Government Act is required. This process has an appeal right to the Environment Court. The LGA Act also places a constraint on private sector partnerships for water infrastructure and limits service contracts to a maximum of 15 year terms,
- **The Public Works Act 1981.** Often one of the causes of project delay is land assembly. With the relevant Minister's consent, certain authorities have the ability to compulsorily acquire land. Even though the designation may be in place, there are still appeals rights as to the level of compensation;
- **Foreshore and Seabed Act 2004.** Where foreshore or seabed is required, there may be specific approvals required;
- **Reserves and Other Land Disposal and Public Bodies Empowering Act 1915,** In the case of the SH20 Mount Roskill extension currently under construction it was found that this historical Act was relevant to implementation. Further cost and delay was added to the project in order to resolve this anomaly.

Consideration of a single consenting process, incorporating one dominant set of provisions governing strategic infrastructure, would streamline the consent process, remove duplicity, and provide a transparent process for all affected parties. As noted in the preceding section, Ireland and the Australian states have faced similar challenges and provide useful models for New Zealand.

In 2005 the New South Wales State government amended their Environmental Planning and Assessment Act to streamline consents for critical infrastructure projects, without compromising on environmental outcomes. The need for additional approvals under eight other Acts was replaced by a single integrated assessment and approval process. The process ensures a focused integrated assessment and consultation regime is undertaken prior to a decision to proceed being made. In most circumstances, a concept approval will be obtained to establish the environmental performance requirements for a project. The project must then be delivered in accordance with that approval. The decision is not appealable except if the appeal is initiated or approved by the State government.

The reforms were designed to ensure timely and efficient delivery of critical infrastructure projects; provide certainty in the delivery of key infrastructure projects; ensure appropriate environmental benefits; focus on outcomes rather than process and encourage innovation in design to achieve the outcomes sought. NZCID recommends similar reforms should be passed in New Zealand and should be considered as part of the phase two review.

### Provision for outline or concept planning approvals

International experience has shown that advanced procurement techniques such as Alliancing and Public Private Partnerships encourage design innovation through the collaborative engagement or competitive design processes that are inherent in each procurement method respectively.

Under such models, projects are described in broad output terms and private sector expertise is sought in developing solutions that meet or exceed the minimum performance standards or design parameters that have been specified.

This is in marked contrast to normal New Zealand experience where, by the time a project is brought to market; detailed designs have been prepared by the procuring agency as a result of the RMA approval process. Design innovation is almost always constrained in such circumstances and this inhibits the opportunity to explore alternative design approaches that might achieve better social, environmental and economic outcomes.

While it is possible under the RMA to apply for resource consents on a worse case envelope of effects, existing custom and practice seldom operates in this fashion. More often than not, proponents are required by Councils to provide detailed information on projects under section 94 of the Act. This has led to standard practise being to provide detail designs so that the effects can be assessed in detail by the consenting authority. Consequently, by the time a project goes to market, there is little scope for design innovation or opportunity to deliver improved value. This has the potential to substantially inhibit innovation in design which is one of the very reasons for proceeding with sophisticated procurement options including Alliances and Public Private Partnerships.

To overcome this problem, NZCID recommends adoption of outline or concept planning approval processes illustrated in Figure 1 below. The process is centred on early determination and specification of the environmental, social, economic, and service outcomes required of a project, and selection of the best procurement option to deliver those outcomes.

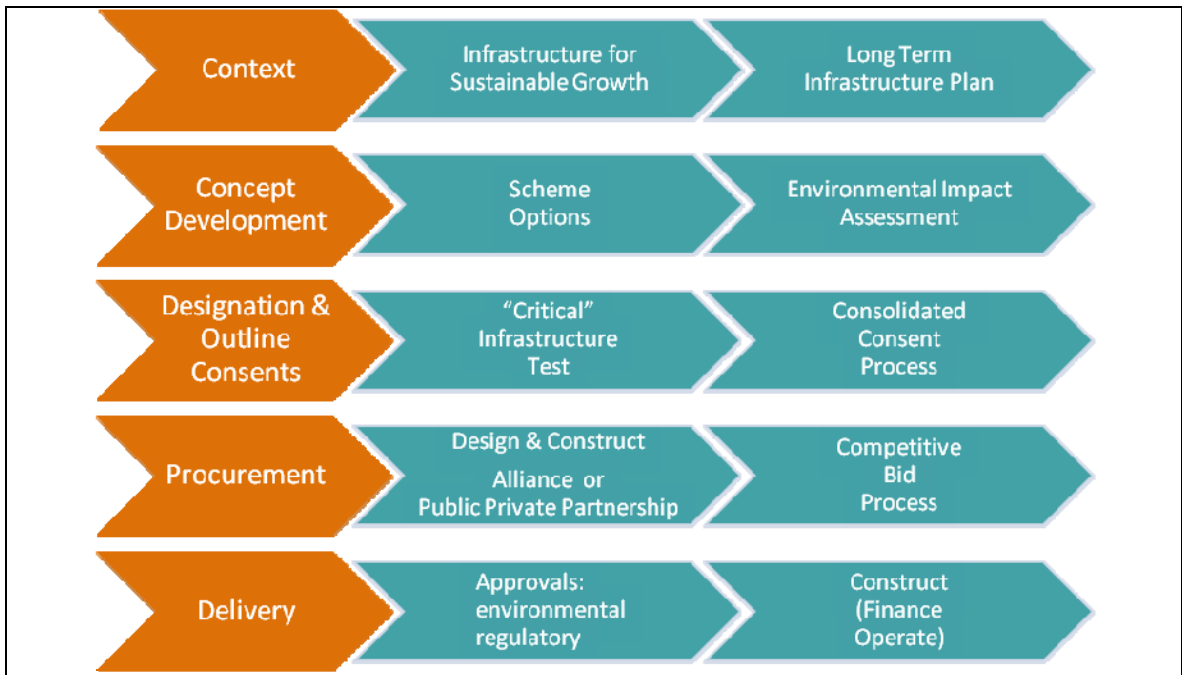


Figure 1: Consolidated Infrastructure Approval and Outline Consent Process

Such a process would encourage innovative design approaches unconstrained by strict design parameters, potentially enhancing environmental outcomes.

In many ways it is not unlike the process currently allowed under the RMA for designations. The Act makes specific provision for a Requiring Authority to designate land in the District Plan in a similar manner to an outline consent process described above. This avoids the need to apply for numerous land use consents, and once designated, the specific rules of the District Plan do not apply.

Having established a designation, the detailed consideration of the work is considered under the Outline Plan of Works (OPW) process. Public notification is not required for the OPW; and specific procedures and timeframes apply. While this can work reasonably well for infrastructure projects requiring designations for land use, there is no equivalent process for consents. Some current projects require multiples of consents from multiple agencies. These are sometimes in conflict, and are often not subject to agreed timeframes for processing.

An option to address this would be to introduce a new consent process through the regional councils which is similar to the designation process i.e. a 'designation equivalent' or 'outline consent' process for resource consents. This would minimise the detail to be included in the initial application, avoid the need for multiple resource consents, and would establish a statutory process and timetable for the regional council to consider the later detail of the proposed work. A further advantage is that the assessment and evaluation process would focus on effects of the work rather than the details of the various regional plan and the specific rules, as is currently the case.

NZCID contemplates that under the kind of changes proposed, any application for designation equivalent for resource consent would necessarily require an Assessment of Environmental Effects which would enable the approving authority to make a strategic assessment of effects to determine the conditions that

would ultimately need to be satisfied. Subsequent designs would then be subject to a compliance check prior to approvals to proceed being granted.

We note that it will not be possible to incorporate such reforms into the first round of changes to the RMA. However we do think there is merit in exploring possibilities for outline consents type processes in the second phase reforms. NZCID seeks select Committee support for examination of such process improvement for inclusion any future amendments to the Act.

Yours faithfully,



Stephen Selwood  
Chief Executive