Dunedin City Council submission
On the
Resource Legislation Amendment Bill

This is a submission from the Dunedin City Council to the Ministry for the Environment on the **Resource Legislation Amendment Bill** to amend the Resource Management Act 1991.

The Dunedin City Council has reviewed the Bill and would like to make the submission as set out below.

The Dunedin City Council welcomes the opportunity to discuss the submission should the opportunity arise.

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INTRODUCTION

1. The Dunedin City Council (DCC) is supportive of improvements to the resource management system and practice where it is well considered and justified. The DCC is supportive of some of the approaches in the proposed reforms and does not support some of the approaches proposed. The DCC certainly supports the purpose of the Bill, namely to create a resource management system that achieves the sustainable management of natural and physical resources in an efficient an equitable way.

THE DUNEDIN CONTEXT

2. The DCC has a dual interest in the Bill because of its regulatory responsibilities and as the owner of land and buildings throughout Dunedin and other parts of the country.

3. In September 2015, the DCC notified its second generation District Plan (2GP) for submissions. This is a full review of the District Plan and builds on the 'Dunedin Towards 2050: A Spatial Plan for Dunedin' adopted in 2013. It was developed as a cross-departmental project of the DCC and relied heavily on an intensive community engagement process and findings from a three year research programme. Among the many issues the two documents address is urban land supply and housing. The DCC supports in principle the need to ensure adequate urban land supply and this is reflected in the Spatial Plan and proposed 2GP. However, both of these documents provide for housing needs and housing type aspirations in a way that balances issues related to affordability and loss of values that are important to the city's future. For many places like Dunedin, where housing pressures are less intense there are more opportunities to provide for housing needs and, therefore, less need to sacrifice other values or increase costs to ratepayers. It is important that the legislative framework supports the approach of smart growth rather than urban growth as a goal that overrides other considerations. The 2GP provides housing capacity to meet at fifteen years of projected demand, with a five year rolling review of that capacity.

4. The DCC has a good resource consent processing record and is continually looking for opportunities to improve the quality and timeliness of consent processing.

OVERALL SUMMARY

Proposals Supported

5. There are a number of proposals that the DCC supports either in whole or in part. These include:

    - Management of risks from natural hazards (clause 5)
    - Voluntary Iwi participation arrangements (clause 38)
    - Collaborative planning process (clause 52)
    - New permitted activities (boundary breaches) (with amendments) (clause 122) (although the DCC notes that amendments will be required to avoid unintended cumulative effects, particularly through developers in large subdivisions giving themselves neighbour's consent).
    - Amendments to the Reserves Act 1977 (clauses 163 and 164).

Proposals Not Supported

6. There are a number of the proposals that the DCC either does not support or would only support with significant amendment. These include the:

    - Requirement for Councils to provide for development capacity (clause 12)
    - Fixing of fees (clauses 17, 21 and 105)
    - Ability to set a lesser standard than a National Environmental Standard (clause 27)
    - Councils to acquire land if unfair or unreasonable burden (clause 54)
    - Use of offsets (clause 62)
    - Changes to consent conditions (clause 63 and 64)
    - Broad scope of the regulation making powers (clause 105)
    - Changes to the notification and submissions processes (clauses 120 and 125)
    - 10 working-day time limit for determining simple applications (clause 121) (the DCC notes that the principle is supported by the current reform causes significant practical difficulties).
    - New permitted activities (marginal/temporary breaches) (clause 122)
    - Removal of Appeal rights (clause 135)
    - Removal of Financial Contributions (clauses 153-161)
    - Amendments to the Public Works Act 1981 (PWA) to extend the scope of when a solatium will be available (clauses 166-175)
    - Limited notification of plan changes (Schedule 1)
    - Streamlined process for developing or amending a district plan (with amendments) (Schedule 1).

7. Where the Council has not supported a proposal it has endeavoured, when possible, to put forward a practical alternative.

Proposal that is neither supported nor opposed

8. The DCC neither supports nor opposes the Mandatory National Planning Template (clauses 9, 10 and 37), but notes important issues that should be addressed before the adoption of the template. The DCC does not support the prescription of definitions, but proposes these should be adopted on a voluntary basis. There should be a requirement that the National Planning Template must be consistent with the RMA, National Environmental Standards and National Policy Statements.

Regulation Making Powers and Delegated Legislation

9. The DCC notes that it found it difficult to comment on some of the reforms as a lot of the detail will be in the regulations, and there is some uncertainty as to what those regulations may contain.

10. The DCC has concern regarding the new regulation making powers as they are far reaching and have the potential to override rules that have been made by local authorities pursuant to specific legislative processes.

11. The DCC agrees with the points made by LGNZ regarding regulation making powers, and delegated legislation. The DCC is particularly concerned that it will not have an opportunity to have input on the new regulations.

General Comments

12. The DCC is unconvinced by the regulatory impact statement's assertion that the benefits of the reforms outweigh the costs. The changes proposed have the potential to cost millions to local and central government. Further analysis is required on the extent of the benefits nationally.

13. The DCC notes that some matters included in the regulatory impact statement have not been included in the Bill. In particular, the DCC notes the deletion of the new duties in part 3 to minimise restrictions on land and the possibility of having private consenting providers. The Council supports their deletion.

14. A more detailed analysis of specific clauses is set out in the following part of this submission.

15. In the final part of this submission, the DCC has put forward for consideration possible reforms to sections 86A-86G of the RMA.

DETAILED ANALYSIS OF SPECIFIC CLAUSES

16. This part of the DCC's submission follows the order of the clauses in the Bill.

Management Risks from Natural Hazards (Clause 5)

17. The inclusion of managing risks arising from natural hazards is supported for inclusion in Part 2 of the Act. The inclusion in Part 2 will ensure that the risks are factored in to decisions on plans and resource consents.

18. It would be useful to have some guidance around the term 'significant risks', and to include some transitional provisions. In the DCC's case, it is likely that any changes will come into effect before decisions on the hazards provisions of the District Plan review are released.

Submission

- The amendments proposed are supported. Additional guidance around the term 'significant risks', together with transitional provisions, are requested.

Mandatory National Planning Template (Clauses 9, 10 and 37)

19. The DCC is currently in the further submissions phase of its second generation District Plan. The DCC has invested a substantial amount of time and costs into this full plan review (the first full review since 1999). As part of this the Council has also made a significant investment in technology for producing its district plan in an electronic format.

20. While the national template may seem to have a number of benefits on the surface, Council would want to ensure that a number of aspects would be included if the proposal is to be adopted.

    a. That the DCC would be able to maintain its investment in its own electronic platform, and not be required to adopt an alternative platform.

    b. That adoption of the template will not be required until the next scheduled 10 year full plan review. Attempting to alter an operative or proposed plan by "retro-fitting" various provisions into it is both risky in terms of retaining the integrity of the remaining provisions and an inefficient use of time and resources. It is also extremely costly. The cost of repeating the full plan review to get a new plan in the

template workable would cost ratepayers millions of dollars. A staged roll out of the template across the country using the 10 year review process is a significantly more efficient option.

c. That any template provisions included for NPS and NESs are well drafted and possible different drafting style versions are available to adapt to different plan structures (e.g. our 2GP uses activity status tables but many first generation plans use combined activity/standards statements in lists) to maintain plan readability.

d. The drafting of plan provisions within the template needs to be of extremely high quality. If not, there is the potential to create further uncertainty and additional effort required to remedy the drafting, potentially on a national scale. It is highly recommended that draft template content is reviewed by a team of local authority policy practitioners. In many instances the drafting quality of RMA policies and standards produced from central government has not reflected good drafting practice and is below that produced at the local authority level. The DCC would welcome the opportunity to be involved in reviewing the draft template.

21. The prescription of definitions in particular is not supported (unless their adoption is done as part of a full plan review in the normal 10 year review cycle) as this could result in anomalies or unintended consequences. One example is the definition of "height". Some local authorities define height differently to each other – a national definition of height could make existing compliant structures non-compliant causing unnecessary compliance costs for the land owners in some districts. In addition, changing definitions in a draft plan may have the unintended consequence of changing the effect of a rule or policy, with the more likely outcome of increasing consents (as bespoke definitions tend to be done to restrict the scope of rules).

Submission

- The DCC neither supports nor opposes the template but notes important issues that should be addressed before the adoption of a template.
- The DCC does not support the prescription of definitions, but proposes these should be adopted on a voluntary basis.
- There should be a requirement that any National Planning Template be consistent with the RMA, National Environmental Standards or National Policy Statements.

Require Councils to Provide for Development Capacity (Clause 12)

22. The proposed option requires every Council to analyse demand and supply for a district. This exercise is conducted as part of a plan review process. It is unclear what this additional assessment will contribute to existing planning processes, particularly given the requirements in the Local Government Act 2002 in relation to infrastructure strategies.

Submission

- The proposed option is not supported as this will require Councils without significant demand to incur costs to prove that demand does not exist. This is not considered a prudent use of public funds.
- The alternative option of requiring high growth Councils to commission a study to assess supply response is preferred.

Fixing of Fees (Clauses 17, 21 and 105)

23. Clauses 17, 21 and 105 provide for a number changes dealing with administrative fees. New section 360E, providing the ability to have a regulation requiring the use of fixed administrative fees for some or all applications, is not supported. The certainty of a fixed fee can be desirable for an individual applicant, but it is not necessarily equitable for applicants as a whole, or for ratepayers. In 2009 the DCC stopped using fixed fees mainly because of cross subsidisation by applicants, and because reasonable and actual costs for every application were not being recovered. Going to compulsory fixed fees does create the possibility of cross subsidisation. The risk could be acceptable if the

application of fixed fees is limited to the simplest of resource consent applications. However, until the regulations are drafted, the full effects are not known. For all the other resource consent applications, there can be quite a lot of variability in scale and complexity, making it difficult to avoid the undesirable outcome of cross subsidisation. Other options to assist applicants should be considered. An example of a non-regulatory method used by the DCC is guidance on the average cost for specific resource consent activities (analysis from previous year), which functions like a default estimate and provides applicants with reasonable guidance on the likely consenting costs at the time of lodging their application.

24. The other change of some concern is the introduction of fixed fees for hearing commissioners (clause 17). Having the discretion to fix commissioner fees is supported but having them fixed through regulations is not supported. While the DCC makes quite limited use of commissioners, it is concerned a compulsory fixed fee could limit the number and quality of commissioners.

Submission

- The fixing of fees should be at the discretion of the consent authority, but if fixed fees can be required by regulation, they should be limited to the simple applications where variability is at its smallest.

Ability to set a lesser standard than a National Environmental Standard (Clause 27)

25. The DCC does not support the ability to make rules or consent conditions that are more lenient than the standards in a National Environmental Standard. This seems to be inconsistent with the role of a National Environmental Standard to achieve national consistency and to ensure that there is a minimum standard. It appears to undermine the role of a National Environmental Standard.

Submission

- Delete Clause 27.

Voluntary Iwi Participation Arrangements (Clause 38)

26. The DCC welcomes input from iwi and enjoys a good working relationship with local iwi. The DCC would be concerned if the new iwi participation arrangements resulted in established relationships being constrained or compromised, but this appears to be addressed by the proposed section 58M(b)(ii). The DCC's understanding is that the intent of the iwi participation arrangements is to simply formalise consultation procedures (as opposed to introducing special rights of veto or the like). On that basis, the DCC supports the principle of iwi participation arrangements.

Submission

- The proposal is supported as one effective means of ensuring that Maori participation in decision making is maintained and enhanced.

Collaborative Planning Process (Clause 52)

27. This planning tool is supported in the form proposed, but it is noted that provision for remuneration of panel is not provided for in the proposal. Remuneration (or lack of remuneration) may introduce a bias in panel membership. This may lead to an unintended consequence of failing to provide for full and equal participation. It may be helpful to include an independent facilitator in the process. This change may also have the effect of an increase in non-complying activities, as Council's attempt to retain appeal rights.

Submission

- The proposal is supported, but limitations to the participation in this process are noted. The use of independent facilitators should be considered.

Councils to acquire land if unfair or unreasonable burden (Clause 54)

28. It is considered that this amendment to the legislation is unnecessary and will increase the costs of Councils who are required to respond to an application to acquire the land. The proposed change represents a shift in the underlying premise that compensation is not available. There is a risk that local authorities will be hesitant to classify land with protective overlays, or to put in place certain policies, if there is a risk of forced purchase. The Court's current powers are adequate to ensure that unduly restrictive planning processes are addressed.

Submission

- Delete clause 54.
- If this proposal was to proceed, it is requested that this provision should not apply to land where the provision is necessary to manage the risks of natural hazards or is a designation.

Use of offsets (Clause 62)

29. The DCC does not support the use of offsets for the mitigation of environmental effects. We cannot recall this being used by the DCC. The DCC is aware of the practice not being supported by the Environment Court. The cases were *Puke Coal Ltd v Waikato Regional Council*, *Ngati Kahungunu Iwi v Hawkes Bay Regional Council* and *Sustainable Matata v Bay of Plenty Regional Council*. While they dealt with water issues, the basis of the consideration can be applied to other resources. In 2015, the Parliamentary Commissioner produced a report concerning water quality, which included concerns about offsetting.

Submission

- Delete clause 62.

Consent conditions (Clauses 63 and 64)

30. Clauses 63 and 64 introduce a new section 108AA that places limits on resource consent conditions. The section states that the condition can only be 'directly connected' to an adverse effect or applicable rule. The use of the word 'directly' is concerning because it creates the opportunity to challenge a condition on the basis the applicant considers the condition subjective. The change questions the validity of a condition to address wider cumulative effects. It also has the potential to prevent development and the scope of mitigation measures that may be proposed by a developer. The change is seen as unnecessary and problematic, and it does not properly recognise well-established case law or the ability to object through section 357 RMA or make an appeal.

31. The DCC is also concerned that litigation is likely to arise in relation to the word "applicable" in the new section 108AA.

Submission

- Delete clauses 63 and clause 64.

Regulations that permit or prohibit certain rules (Clause 105)

32. The regulation making provisions are a significant override of local decision making. The development of plans (including rules) goes through a rigorous process involving public notification, evaluation against section 32 of the RMA and hearing by accredited commissioners. The regulations could easily lead to quite substantial short term

interference with planning processes pending the gazettal of the first National Planning Template. This could be highly significant to the DCC in the development of its 2GP (second generation plan), particularly as submissions have already closed in regard to the 2GP and the DCC is in the process of arranging hearings.

Submission

- Delete section 360D.

Notification of resource consent applications and hearing process (clauses 120 and 125)

33. The Clause 125 amendments to sections 95 to 95B somewhat complicate the process of deciding whether notification is required or not. More importantly, they place new limitations on submitters.

34. It is a concern section 95(A)(7)(a) will require the consent authority to include in the public notice the adverse effects it considers relevant. This is practical for an application for a restricted discretionary activity, but conflicts with the current benefits of notifying for discretionary or non-complying activities. It likely means a more detailed section 95 report where required, potentially missing useful information raised in a submission, and may reduce public participation in major resource consent applications. On balance, the change does not appear to improve or streamline the process.

35. Of particular concern is the ability of section 95(A)(7)(a) to limit the scope of submissions. While some positives will have been identified, the change would result in the loss of the significant benefit of having a submitter raise a relevant matter not already identified, especially when the proposal is for a non-complying activity. There are situations where members of the public will have useful knowledge or understanding of a site and, as such, insight as to the possible effects arising from a proposal. The change does not sit comfortably with the existing practice of enabling the public to freely participate in the planning process. It is considered a disproportionate response to the small number of applications that are notified (less than 5% overall) when only a small percentage of that number cause the issue the change is attempting to tackle.

36. Clause 120 introduces new section 41D(2)(b)(iv) as the mechanism to give effect to section 95(A)(7)(a). It requires the consent authority to strike out submissions where they are "unrelated to an activity's actual or likely adverse effects, if those effects were the reason for notifying the application or review". In addition to sub-clause (b)(iv) there are three other sub-clauses. They require submissions to be struck out for one or more reason. These are because of insufficient factual basis where not supported by any evidence, when evidence is not prepared by an independent expert, or when evidence is prepared by someone who has insufficient specialised knowledge or skill to give expert evidence on the matter. It will be challenging for a hearing committee or commissioner to determine what is an 'insufficient factual basis'. If it is unclear, then caution in favour of the submitter is the likely outcome, but this presents a risk of judicial review should the submitter lodge or become party to an appeal.

37. This amendment will make it more difficult for the public to submit because they will have to engage an independent expert on each matter they wish to contest or support. This is contrary to the practice of allowing the public ready access to the planning process. The significant impact on public participation is not considered warranted for the small number of notified resource consent applications. Most issues covered by submissions are invariably addressed in an application and in comments from experts working for a consent authority. The number of different matters brought up by submitters is generally quite small but can be useful. Hearing commissioners know what weight to give to expert evidence over non-expert evidence. They don't need to be compelled to strike our submissions. They know if a submission is frivolous or vexatious and the ability to strike it out already exists.

38. There are some practical process issues to consider. A submission that has to be struck out can be struck out before, at, or after a hearing. A submission may have not

included expert evidence but that is not to say the evidence will not be provided at the hearing. The consent authority will not officially know if this is the case until five days before a hearing; that is, after the s42A recommending report and applicant's evidence have been circulated. A consent authority is unlikely to strike out a submission prior to a hearing. It should be done after the start of the hearing and before the right of reply occurs. This is to recognise the s357 objection right that allows a struck-out submitter to object up to fifteen working days after the decision has been made. If the objection does occur, does the right of reply wait until the s357 objection is heard in case the objection is upheld? There are also potential additional costs arising from this process which should be passed onto the applicant where possible. There are also possible delays that could compromise the current statutory maximum processing time; there should be provision to account for delays beyond the control of the consent authority.

Submission

- Delete Clauses 120 and 125.

10-working day time limit for determining simple applications (Clause 121)

39. The DCC supports LGNZ's submission in relation to the 10-working day time limit for determining simple applications. In essence, the DCC supports the principle of what is proposed but considers the current proposal to be problematic.

40. Priority is primarily established by the statutory deadline and discount regulations. In practice, the amendment will alter the existing order of priority where the minor activity (10 day consent) will take priority over the more significant activity (20 day consent) i.e. the relatively inexpensive minor house extension will likely be prioritised over the commercial activity. When all of the applications are subject to a twenty day maximum processing time there is some ability to prioritise (juggle) applications, which fluctuate in numbers from week to week. The ability to prioritise will be compromised.

41. It has not been clearly demonstrated there is a clear demand for the change, or it will result in a worthwhile reduction in overall costs. There are examples where territorial authorities make a 10 day process a voluntary option, which is an alternative response to the issue if there is the potential of undesirable negative effects.

42. The use of section 88 RMA to reject applications may be used more often because of a shorter turnaround. A practice of making a section 92 further information request, so as to be more customer focussed, will be less attractive because of extra statutory demands. This is not a good outcome for applicants, nor Councils, as it will be slower and cost more.

43. New clause 360F provides the mechanism to establish the, as yet undetermined, regulations for fast-track applications. It is difficult to comment without the provision of details, as these are important for allaying concerns. Depending on the scope of the applications covered by fast track, the change may be more problematic. Of concern is the requirement to decide whether or not to notify within ten days when the statutory maximum is twenty days for non-fast track applications. There is a risk the regulations will cause situations where is it simply not possible to decide on notification within ten days because specialist staff are not available, or there is a large spike in the number of applications, etc. The problem addressed by the 2013 amendment may be re-created when a 20 day period to notify is not available.

Submission

- The DCC agrees with the concerns raised in LGNZ's submission in relation to the 10-working day time limit, and agrees that an alternative based on a percentage being processed within 10-working days is a more practical option.

Allowing councils to treat certain activities as permitted (clause 122)

44. There are two proposed changes, which are to:

- allow breaches of a boundary activity (side yard rule) to be treated as a permitted activity (new section 87BA)
- give consent authorities discretion to treat marginal or temporary breaches as a permitted activity (new section 87BB).

Boundary breaches

45. The amendment is supported in part. In the DCC District Plan, a minor side yard breach is a restricted discretionary activity. With an agreeable neighbour, the resource consent for such a minor rule breach is essentially a contractual agreement between neighbours, which the consent authority authorises. The net benefit to applicants in cost savings may be quite small.

46. The proposed change could allow for no separation between dwellings. Physical change in established neighbourhoods would likely be very slow but can accumulate over time. In a green-field development, the change could be more pronounced and rapid. In the short term, if the change is limited to side yard breaches, it may not compromise the policy goals of a District Plan; however, there is the potential for adverse cumulative effects and for the permitted baseline to be compromised.

47. It is not clear if the need for affected party approval includes the occupier or just the owner of the property. Best practice is to obtain approval from the both the owner and the occupier. A tenant can live at a property for years and will likely have an interest in property and their neighbourhood. This is likely to be more relevant if home ownership rates continue to decline.

48. Section 87BA does make it a requirement to provide specified information to the local authority. A good record is necessary to deal with any questions in the future about the legality of the work. This is information a person looks for in a LIM. In some situations, a building consent may not be needed, so there is no check to ensure compliance with section 87BA. If the Council is not made aware of the work, it will have difficulty responding to questions in the future e.g. if a new neighbour queries the legality of the work. The property owner will have to demonstrate the work was lawfully carried out, or follow the requirements of section 87BA and hope the neighbour provides their approval. The Council can be drawn into conflict between neighbours, and will incur costs that cannot be recovered. There should be an ability to recover costs above those associated with administering the proper use of section 87BA. An infringement fine could be issued because, technically, a breach of section 9 RMA has occurred, but a fee would be a preferable option.

49. Section 87BA can be made clearer. New section 87AAB assists by providing some definitions, but is not complete. Section 87BA seems to state a house can breach a boundary rule (the distance between the outside wall and allotment boundary), but what happens if it also breaches a 'height plane' (minimum sunlight provision)? The definition of a boundary rule appears to exclude a breach of a height plane rule. The use of the section 87BA may be more limited than intended. The new clause does not make it clear when approval will lapse, which creates potential risks for the property owner, the owner of the affected property and the consent authority. Clarification now would be better than dealing with real situations or having to await case law.

Submission

Section 87BA

- The change is supported provided if it remains limited to side yards only.
- Consideration should be given to modifying the amendment so as to try and avoid unintended adverse cumulative effects (particularly through developers of large subdivisions giving themselves neighbour's consent).

- Both the property owner and the occupant should be considered when obtaining affected party approvals.
- Territorial authorities should be able to recover actual and reasonable costs.
- Make it clear when each individual approval will lapse.

Marginal and temporary breaches

50. New section 87BB provides the discretion for a territorial authority to treat marginal or temporary breaches as a permitted activity. No guidance is given on what is marginal or temporary. If used judiciously and sparingly, the change is unlikely to impact negatively on the territorial authority, but if it is hardly used at all, the expectation behind the legislative change will not be realised. The change can have some minor benefits but also some costs. There may be pressure to exercise the discretion. Councils must be mindful of not causing a default permitted activity. When used, there is a risk that disgruntled people who feel left out of the process will apply for a judicial review. The issue can be best dealt with through rules in a district plan.

51. For temporary events, the risk is a lot less and can provide some benefit. The Council included temporary events in the second generation District Plan. The Council has carefully considered what temporary breaches should be included. These were identified from experience with the current plan, section 32 analyses and public consultation. The public hearings start in April 2016 and the public can speak about the changes. The temporary activities included in the second generation plan should be able to meet the needs of the community. On balance, the change is not needed because the plan change process has considered the issues, also the amendment may not be used much at all because it is discretionary and may just result in extra costs for councils.

Submission

Section 87BB

- Delete section 87BB.
- If this section is included in the RMA some guidance should be provided on what constitutes marginal and temporary breaches.

Appeal rights (clause 135)

52. Clause 135 amends s120 RMA to exclude resource consent for certain residential activities from being appealed to the Environment Court. This change is not supported. It is considered inappropriate to prevent a neighbour from appealing a decision to grant a resource consent that has an adverse effect on them. The same applies to the developer undertaking a subdivision who has the application declined, or when consent conditions are not changed through the s357 RMA objection process. Differentiating between a discretionary or non-complying submission does not recognise that there are times when there may be no practical difference in terms of effects i.e. the subdivision activity could be non-complying for a technical inconsequential reason. It is noted the change would not prevent a person from applying for a judicial review, which is possibly an unintended consequence.

Submission

- Delete sub-clauses 1A(a) and 1A(b) of Clause 135.

Financial Contributions (clauses 155 – 161)

53. Financial contributions are an important means of transferring the burden of resource use to the resource user. Development contributions can only be charged for new developments where growth occurs. However the adverse effects of resource use are not always attributable to growth in demand. Financial contributions are important for ensuring that burden/costs of resource use are met by the resource user.

54. Removing the financial contributions would mean that historic costs are not able to be recovered as a development contribution.

Submission

- Delete the proposal to remove financial contributions.

Amendments to the Reserves Act 1977 (clauses 162)

55. The new sections 14A and 14B more closely align with the RMA.

Submission

- These provisions are supported.

Amendments to the Public Works Act 1981 (clauses 166 – 175)

56. The Council has significant concerns regarding the proposed changes to the PWA. The Council recognises that the solatium payment should be increased, but:

- it cannot see any rationale for extending the scope of when a solatium is payable, as proposed by section 72C; and
- if the solatium is to be up to $50,000 under section 72A, then the times when it will be payable need to be extremely clear.

Clause 172 - Section 72C – Additional compensation for acquisition of notified land

57. The proposal to extend the scope of when a solatium is payable is extremely broad, and is likely to add a significant cost onto the DCC's land transactions. This is because the definition of Land in section 4 of the PWA "includes any estate or interest in land". (The DCC notes that there is a proposal to include a further definition of land in section 72B, but it is unclear why two definitions are necessary and whether there is any conflict between the two definitions).

58. The effect of the section 4 definition of "land" is that section 72C would apply, for example, whether the Council was buying the whole of a property, part of a property, an easement or a lease. 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 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 solatium to the registered proprietor of the fee simple estate.

59. 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 compensation.

Submission

- Delete sections 72B, 72C, 72D and amend 72E accordingly.

Clause 172 – Section 72A – Amount of compensation to be paid under section 72

60. The amount of the solatium 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 solatium is payable. The Council's submission is therefore that the criteria for paying the solatium under section 72A would need to be extremely clear. The Council has no objection to the solatium 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.

61. The reference to the solatium only being payable when "notified" does not limit the scope of when it will be payable to any significant extent. 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.

62. The 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 solatium 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 solatium 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?

Submission

- Amend section 72A so that it is clear when the solatium will and will not be payable. In particular, amend section 72A so that there is a clear definition of "willing party".

Limited Notification of Plan Changes (Schedule 1)

63. This proposal for Councils to choose limited notification is not supported on the grounds of natural justice and the limitations on the public's ability to participate in the process.

Submission

- The proposed option is not supported.

Streamlined Process for Developing or Amending a District Plan (Schedule 1)

64. The ability to apply to the Minister for a streamlined plan process is not supported on the grounds of natural justice, particularly in light of the proposed removal of the right to appeal to the Environment Court as a specialist judicial body.

Submission

- The proposed option is not supported.

ADDITIONAL CHANGES TO THE RMA

Sections 86A – 86G

65. While not included in the current round of amendments, there is scope for simplifying these sections. The sections are complex and have resulted in considerable effort being required to determine the status of rules following notification of the District Plan review. In particular, the practicality of determining which rules are operative under s86F, as a result of a full plan review, where submissions are in their hundreds or thousands. Currently the RMA states the rules have effect the day after submission close. The time taken to assess the rule status, and the consequent effect on resource

consent applications in process, is not provided for in the Act leading to delays with consent processing and confusion as to the rule status. The planning assessment of building consent applications is also hampered until all the submissions have been assessed and affected rules identified.

66. Consideration should also be given to treating groups of provisions as operative or not, rather than rules in isolation. For example, if the objectives and policies which support a rule are subject to submissions, but the rule itself is not, then it is more logical if the rule is not treated as operative. Clarification is also required on the meaning of 'rule' in this context. For example, is a performance standard a rule? Another option is to delay rules becoming operative until submission have been assessed the effect on the rules recorded.