



**Resource Legislation  
Amendment Bill 2015**

**Submission to the Local  
Government and Environment  
Select Committee**

*March 2016*



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New Zealand Public Service Association  
Te Pūkenga Here Tikanga Mahi

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# Resource Legislation Amendment Bill 2015

## PSA submission to the Local Government and Environment Select Committee, March 2016

### Preamble

#### *Who we are*

The New Zealand Public Service Association : Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand, representing 62,000 members across the country who work in the core public service, the state services, DHBs, community-based public services and local government.

#### *In developing this submission we sought the views of our members*

Our members who work in local government and in the state agencies that administer the Resource Management Act are the ones whose jobs may be most directly affected by the amendments proposed in the Bill; however, our entire membership has an interest, both as part of civil society and as ratepayers / residents of their communities, in any proposals that will affect their ability to participate in (and have confidence in) the decision-making that shapes the natural and physical environment of their locality.

We do not seek to appear before the select committee to speak to this submission.

### Summary and recommendations

#### *Local democracy will be further undermined by the provisions of the Bill*

This submission addresses PSA members' misgivings that the Resource Legislation Amendment Bill will seriously constrain local democracy by giving too much power to central government to direct changes to local and regional plans that are developed through a well-tested process that provides for full community consultation. Local democracy is also undermined by the intention to place limitations on who must be notified of planning and consent proposals. This deprives the public of their full chance to have their say on matters that affect their locality and their community.

#### *The select committee should eliminate damaging unintended consequences*

We **recommend** that the select committee amends clauses 25 – 36 to ensure that the Bill's objectives of achieving national consistency and efficiency do not consequently disempower the legitimate voice of communities.

There may well be a number of unintended consequences if the proposals proceed, such as mis-alignment of rules and policies following the requirement on Councils to implement plan changes following a national planning template within two years. The Department of Conservation has reportedly pointed out that it

may not be able to carry out its statutory duty in some cases because it will not be a party to be notified.

*More information is needed about the costs to Councils of implementation*

There are elements of the changes that are bad public policy, and we **recommend** that the select committee looks very carefully to eliminate damaging consequences to Councils, state agencies and to the public.

There will be costs to Councils in implementing the changes, and we **call for** a comprehensive, evidence-based cost / benefit analysis of the costs.

*Information is needed about likely workforce impacts*

PSA members' jobs, particularly in local government, will be affected by the proposed changes; the select committee should seek information about what these impacts are likely to be.

## **PSA submission**

*The role of local government must be respected in the relationship with central government*

### **Local democracy**

Local government is a sphere of government in its own right and the relationship with central government should be a balanced one of equals, each operating in its own sphere and respecting and supporting the other. However, the suite of amendments to the Local Government Act in recent years (2010, 2012 and 2014) have narrowed the scope and functions of local government by removing the four well-beings and defining core services, facilitating private sector delivery of local authority services and limiting the ability of councils to raise income by imposing debt and rate caps. Central government has acted to clip the wings of local government, and it is hard to escape the view that it sees local government as its operational arm, doing its bidding.

Transparency International in its National Integrity System<sup>1</sup> assessment in 2013 stated:

*... the apparent absence of clear and agreed principles to govern relationships between the two spheres of government in terms of the legitimacy and sustainability of local democracy. The principle in action seems to be that local government is free to take decisions – as long as central government does not disagree. This is a shaky foundation for the future ...*

*Local democracy is at the heart of the RMA and the LGA and must not be constrained*

This shaky foundation remains, and has the potential to become even more shaky with the provisions in this Bill that have the potential to further undermine the foundations of local democracy – which are at the heart of the Local Government Act and the Resource Management Act. Local democracy is expressed in different ways: the ability of residents to elect the Councillors for their city / district and region, based on the policy platforms that candidates put forward to the electorate; and the right of the public to be consulted and to participate on issues

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<sup>1</sup> <http://www.transparency.org.nz/docs/2013/Integrity-Plus-2013-New-Zealand-National-Integrity-System-Assessment.pdf> p144

that shape the places where they live or have an interest. Both Acts are clear about the right of Māori participation, which is also part of local democracy.

*Decisions should be taken at appropriate level*

Our view is that this Bill has the potential to seriously constrain local democracy. The principle of subsidiarity is good public policy: matters ought to be handled by the smallest, lowest or least centralised competent authority. Political decisions should be taken at a local level if possible, rather than by a central authority. The Bill does not support this.

*The National Policy Instruments give too much power to the Minister*

### **National Policy Instruments (NES + NPS)**

The provisions for National Policy Instruments (clauses 25 to 36), to be issued by the Minister, give too much power to the Minister [central government] to direct changes to local and regional plans and potentially overrides the ability of local communities to have a voice in major matters affecting their locality. These directions do not need to relate solely to matters of national significance (as is currently the case with National Policy Statements). This breadth of scope on what National Policy Statements will encompass may well mean that they include matters that are more appropriately resolved at the local level to reflect local circumstances and the different outcomes sought by local communities. The ‘sledgehammer to crack a nut’ approach, in other words.

*This is ‘prescriptive and controlling’, and the clause should be amended to ensure the voice of communities is not disempowered*

Local Government New Zealand in its submission<sup>2</sup> on the Bill sees this as ‘prescriptive and controlling’; we agree, and believe that it undermines the original principles of the legislation. This is a significant and worrying change, and we urge the select committee to consider the implications for local democracy very carefully by amending the clause to ensure that the Bill’s objectives of achieving national consistency and efficiency do not consequently disempower the legitimate voice of communities.

Should the government continue with plans to override local level decision making, additional certainty needs to be provided so that local and regional stakeholders (especially Councils) can meaningfully engage and advise on the contents of such instruments.

*Local government must have sufficient flexibility to make the Act work at local level*

### **National Planning Template**

The PSA agrees that a consistent national framework could be helpful – but it will depend on the content of the national planning template and how workable it is at local level. Centrally imposed inflexible policy directives will not be helpful. Local government administers the Act at local level, and must have sufficient flexibility to make it work at local level. The Bill, as it is written, undermines this. National planning tools should be for national purposes, not local purposes. Councils have

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<sup>2</sup> <http://www.lgnz.co.nz/assets/In-background/LGNZ-submission-on-RLAB-8-March-2016.pdf>

*Communities must have the chance to have their say*

over the years put great efforts into developing the pathways for genuine community consultation on the matters that affect communities; the importance of people being able to have their say (even if the outcome is not what they seek) is crucial. If people are treated fairly and have the chance to put their views, they can respect and buy-in to the final decision. Elected Councillors, who stand or fall at the ballot box, are well aware of this; they are located within their communities and communities of interest and their job is to represent those communities as part of the expression of local democracy. The role of communities in holding Councils and government to account for their decisions is a cornerstone of local democracy, and the public's ability to participate must be maintained.

*The 2 year timeframe is too short, and will deprive the public of the chance to have their say*

The requirement to deliver national templates within 2 years is too short, too prescriptive, and will not support good planning outcomes. The template could require Councils to adopt what are largely standard district / regional plans prepared by central government with little or no ability for local and regional councils and their residents, to influence content. This could mean that plans become disjointed, with mis-alignment between rules and policies – for example, making a rule without public consultation, but having to wait for the public consultation process to remove the corresponding policy. This process deprives the public of the full chance to have their say, leading to inequitable outcomes.

*The proposed collaborative approach increases the potential influence of chosen groups, but reduces the opportunity for the general public to make changes*

We are extremely concerned about the loss of opportunities for public consultation for new plan change making processes and resource consent decision making. This covers the new collaborative and streamlined plan making process, the ability to use limited public notification for some plan changes<sup>3</sup>, reduced eligibility for notification of resource consents, increased requirements for submissions on resource consents and reduced appeal rights for submitters on plan changes and resource consents. We note that the proposed collaborative approach increases the potential influence of the chosen collaborative group but reduces the opportunity for the general public to make changes. If the collaborative group is poorly informed, non-representative or biased, then there is real scope for significant problems.

Consultation and appeals can add to the time taken for plan changes but this is a necessary element of local democracy. We made the same point in our submission<sup>4</sup> to the Productivity Commission's Inquiry into Using Land for Housing. Good planning relies on diverse inputs.

*We are concerned about the impacts of narrowed eligibility*

We have serious concerns about narrowing eligibility to make further submissions on plan change processes. Excluding interested members of the public who are not

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<sup>3</sup> We note that the Department of Conservation is reported as having advised its Minister that the proposed changes mean it may not be able to carry out its statutory duty, because of the limitations on which parties must be notified. Presumably this is an unintended consequence of the amendments.

<http://www.radionz.co.nz/news/national/298858/rma-changes-may-hobble-doc>

<sup>4</sup> <https://www.psa.org.nz/media/resources/submissions/>

*to submit on plan change processes*

directly affected could be discriminatory and advantage landowners and developers over community groups. This could adversely affect people with a real interest in a site-specific change that could drastically alter their community.

*Lack of certainty will not support faster, consistent and streamlined processes*

Our members have real concerns about the lack of certainty that the changes will generate – both for the public seeking resource consents and good quality local planning frameworks, and on staff who administer the processes. There is a considerable body of case law to provide guidance, which may be lost. It is likely that new legislative provisions will lead to expensive court cases to determine their precise meaning and applicability. It is hard to see how this will lead to faster, consistent and more streamlined and collaborative processes, which is one of the objectives of the changes.

*There will be significant additional costs to Councils in implementation*

### **Costs to Councils**

Local Government New Zealand points out that the Regulatory Impact Statement does not address the financial costs to local government and communities in implementing the proposed changes. This is a significant failure, and bad public policy. Our members' view is that it is likely that the changes will bring increased costs for Councils including: cost of plan changes to District Plans to match new legislation and national policy instruments, increasing increased administration costs for fast-tracked 10 working day consents and decisions as to whether minor breaches are permitted activities, increased steps to notification decision making, increased screening of submissions on plan changes and resource consents, new IT and system costs and cost of defending legal challenges. Yet the RIS refers only to some general possibilities of cost increases or savings in various options. A comprehensive, evidence-based cost / benefit analysis is needed.

*A comprehensive, evidence-based cost / benefit analysis is necessary*

All of these costs will impact on Councils' staff costs, with flow-on implications for overall Council budgets.

*PSA local government members' jobs will be affected*

### **Impact on PSA local government members' jobs**

There is no doubt that the proposed changes will have significant impacts on the jobs of PSA members who work in the planning and policy field, and as administrative support. The costs and benefits of the proposals warrant thorough investigation with planning practitioners, and with the PSA, to make sure they deliver the efficiency gains that are sought.

*There has been no analysis of the workforce impacts of the proposed changes*

Additionally, it does not appear that the government has done any work to assess what the local government workforce impacts of the proposed changes may be. Our members' view is that there will be impacts; for example, front-line contact centre and reception staff may well have to bear the brunt of increased community and business dissatisfaction with changed processes and timeframes. The provisions place considerable pressure on Councils and their staff to make rapid changes to District Plans, leading to a possible need to increase planning staff. The 10 working day period for consents will also place pressure on existing

staff capacity, which Councils will have to deal with. These are all matters that local government employers will need to work on with the PSA.

*Over the long-term, there may be job cuts and loss of knowledge and skills*

The national planning template approach, which could lead to standardised district and regional plans could result in a reduction in the long-term need for Councils to employ planners and other staff involved in plan preparation. This would both reduce the planning and consenting capability of Councils, and lose institutional and local knowledge and expertise.

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