

Greater Wellington Regional Council: Submission

To: Ministry for the Environment

Submission on: Building Competitive Cities: Reform of Urban Planning and Infrastructure

1. Introduction

Greater Wellington Regional Council (Greater Wellington) is pleased to make a submission on the discussion document Building Competitive Cities – Reform of Urban Planning and Infrastructure.

In addition to its responsibilities under the Resource Management Act (RMA), Local Government Act (LGA) and Land Transport Management Act (LTMA), Greater Wellington has a number of functions and obligations under the Soil Conservation and Rivers Control Act 1941, Wellington Regional Water Board Act 1972 and Wellington Regional Council (Water Board Functions) Act 2005.

Greater Wellington has both regulatory and operational functions, and is also a requiring authority under the RMA. This submission reflects these functional areas.

2. Key Points

- Greater Wellington welcomes the discussion around spatial planning. Spatial plans can be used as a mechanism for engagement between central government and regions developing spatial plans. Central government is a major investor in infrastructure (education, health, roads, utilities etc), and any investment decisions have the potential to redistribute jobs and population growth. These decisions need to be considered with an understanding of their spatial context, and their impact on the development of a region. It is vital therefore that central government be an active partner in spatial planning.
- While we agree that there are difficulties in achieving long-term, efficient and integrated planning and urban design outcomes we question whether this is because the urban environment has not been adequately recognised in the RMA. Planning for the urban environment may be enhanced through changes to provisions in the RMA, however, any consideration of the options should include a wider scope than just the RMA, and would need to include increased linkages between various Acts.
- The plan development process under the RMA is a lengthy process, often due to the time taken to resolve appeals. Greater Wellington is concerned that options to improve the plan development process were considered during Phase I of the RMA reforms, but not progressed. We believe that

options for improvement to the plan development process to reduce the time and cost of plan changes should be reconsidered and progressed.

- Greater Wellington is a requiring authority for designations for regional infrastructure assets of water supply, flood protection and harbour management. We consider that the existing designation process generally provides for our needs as both a requiring authority and a regulatory authority. It is vital that our use of designations, particularly where Greater Wellington does not own the land, is not overlooked in any proposed changes.

3. Purpose of discussion document

The discussion document is entitled ‘Building Competitive Cities’. This concept mirrors the approach that Greater Wellington is already taking through the Wellington Regional Strategy, the sustainable economic growth strategy for the region. Greater Wellington supports initiatives that contribute to community well-being, and community cohesion will be a core part of any progress towards more competitive cities and regions.

As a consequence Greater Wellington supports the purpose of ‘Building Competitive Cities’.

4. Analysis of the barriers and problems

4.1 Planning and urban design problems

4.1.1 Problem 1 - Inadequate recognition of the urban environment in the RMA

Greater Wellington does not believe that the problem has been identified correctly. While there are difficulties in achieving long-term, efficient and integrated planning and urban design outcomes, we question whether this is because the urban environment has not been adequately recognised in the RMA.

Rather we suggest the inadequate recognition of the urban environment is a result of a lack of future focused strategic planning around infrastructure and the interaction between space and place. While planning for the urban environment may be enhanced through changes to provisions in the RMA, other mechanisms such as guidance notes, training and education, and changes to other legislation, such as the LGA, may be more effective.

4.1.2 Problems 2 and 3 – Complex planning system and lack of consistency in decisions

The current planning system is primarily governed by the LGA, RMA and LTMA. Plans developed under these acts each have different consultation process and timeframes. The discussion document states that this has resulted in duplication, lack of clarity and lack of alignment, creating a complex

regulatory environment and making it difficult to achieve quality urban development.

Greater Wellington notes that each statute serves a specific purpose, with different consultation processes developed to meet that purpose, and that there are provisions within each statute which attempt to align the planning documents. However, we consider that these provisions could be strengthened to provide for greater linkages and alignments. For example, incorporating a planning document prepared under the LGA into a RMA policy statement or plan requires a council to follow the full first schedule process of the RMA. Similarly, regional and district plans when 'giving effect to' a regional policy statement must also follow the first schedule process. A process could be developed to provide for a less litigious pathway for these documents.

The plan development process under the RMA is a lengthy process, often due to the time taken to resolve appeals. Since the adoption of our first generation plans Greater Wellington has undertaken eight plan changes. Plan Change One to the Regional Freshwater Plan was notified in February 2002, with the decision released in January 2003. The plan change was then held up with one appeal for four years and did not become operative until March 2007. Greater Wellington is currently reviewing all our regional plans and is concerned that the appeal period will be lengthy and may add limited value to the process. Options for improvement to the plan development process to reduce the time and cost of plan changes should be reconsidered and progressed.

4.1.3 Problem 4 – Ineffective implementation tools

The discussion document identifies potential barriers to effective implementation of the broader planning system.

Greater Wellington agrees that under the current framework local authorities may duplicate tasks and efforts in respect of common issues. This can be minimised through good practice. For example, in the Wellington region, a forum has been created for planners to share research, knowledge and experience. Regional council planning managers also meet on a regular basis to share knowledge and work on joint projects.

While resource consent and designation applicants may become frustrated because they must deal with a number of different plans across the country, regional differences in planning documents are the result of differences in environmental, social, and cultural characteristics within individual districts and regions, and the desires of communities in these areas.

As stated above, Greater Wellington agrees that the plan preparation and change process can be expensive and time consuming, especially at the appeal stage.

4.2 Social and economic infrastructure development problems

4.2.1 Background on designations

Greater Wellington is a requiring authority for designations for regional infrastructure assets of water supply, flood protection and harbour management. Designations are used for long term strategic planning to protect infrastructure from inappropriate development and in place of a land use consenting process.

An important aspect of the designation process for Greater Wellington is the ongoing protection afforded by acknowledgement of the designation within a district plan, once the asset is in place. This is particularly significant where Greater Wellington is not the owner of the land, for example, in Wairarapa and in the northern suburbs of Wellington city where major flood protection schemes are on private land. In these examples the designation protects flood protection assets including large dams, stopbanks and floodways.

We are concerned that this effective use of designations (where Greater Wellington does not own the land) is not overlooked in any proposed changes. We are also concerned that not all infrastructure defined in the RMA has been discussed in the document, and suggest that all infrastructure needs to be considered to ensure that there are no unintended consequences a result of any reforms.

The emphasis on ‘nationally significant’ infrastructure has also very much influenced the discussion and options in the document. It has led to options for new consenting processes which appear to duplicate the new Environmental Protection Authority (EPA) processes provided for by the 2009 amendments to the RMA. We suggest that these processes should be given time to be tested or, if there are any problems already apparent, these processes should be modified rather than creating an entirely new process

4.2.2 Problem 1 – Lack of clarity and consistency of national objectives and standards

Greater Wellington agrees with the identification of the problem and supports greater clarity in respect of national priorities in respect of infrastructure development. Greater Wellington sees the National Infrastructure Plan as a potential mechanism to provide strategic national infrastructure guidance.

4.2.3 Problem 2 – Mixed access to designations

The current designation system was established when the majority of requiring authorities were either the Crown or local authorities and the majority of the works were publicly funded. This system does not allow for private infrastructure projects or public/private partnerships to become requiring authorities in their own right.

Greater Wellington accepts that there is mixed access to designations but suggests that this is the point of the designation process and would not in itself prevent a public/private partnerships working within the current system. There is nothing we are aware of that would prevent a private organisation in partnership with the Crown applying for a designation/consent on behalf of the Crown/local authority. The Crown/local authority would remain the requiring

authority and the public/private partnership could still deliver the infrastructure project without the need to change who could become a designating authority.

4.2.4 Problem 3 – Complex and inflexible approval processes

Designations are a powerful tool and access to the designation system should be carefully controlled.

Greater Wellington considers that the existing designation process generally provides for our needs as both a requiring authority and a regulatory authority. The main problem with the existing system is the short lapse period for designations - a five year lapse period does not allow for effective long term planning of infrastructure.

Greater Wellington does acknowledge that there is some confusion surrounding the process, but we see this as an issue of practice rather than faults with the designation process framework. For most Greater Wellington projects, clarification and direction around the existing designation process would in our view achieve much of what is intended by the reforms. We note that this is also a recommendation made by the ITAG.

Greater Wellington agrees with the observation that there is an increasing trend to require higher levels of detailed information at the ‘notice of requirement’ stage. It is noted that the level of information required for all RMA applications has increased over the years due to rising public awareness and expectations of accountability and transparency for developers. Greater Wellington supports undertaking comprehensive assessments of applications.

In respect of designations, there has to be a balance between community consultation and involvement and the ability to plan longer term. If a requiring authority wants the ability to set aside a piece of land for a long term infrastructure development and enjoy all the privileges of a designation, then they should provide sufficient justification to warrant these privileges.

Additionally, the level of detail required and the complexity of the process is often a reflection of the scale and effect of the project. The discussion document does not acknowledge the inherent complexities of delivering a large scale infrastructure project that has significant and wide-ranging effects on people and the environment.

4.2.5 Problem 4 – Lack of robust and integrated decision-making

The discussion document highlights that different decision-making processes exist for designations and resource consents. Greater Wellington notes that the larger nationally significant infrastructure projects which are likely to be processed by the EPA have a single decision-maker. In Greater Wellington’s experience, this has not created any problems to date.

4.2.6 Problem 5 – Inefficient and inadequate land acquisition

Greater Wellington agrees that consideration should be given to reviewing the Public Works Act (PWA). Greater Wellington recommends that further

investigation should be undertaken to understand the problems prior to amending legislation.

5. Analysis of the urban options

Recognise urban environment in the RMA framework

- Option 1: Broaden definitions to include the urban environment by:
 - (a) modifying the definition of ‘environment’ to specifically include the urban environment
 - (b) extending the definition of ‘amenity values’ so that it addresses the quality of the urban environment to a greater extent.
- Option 2: Amend the RMA to recognise the benefits of a quality urban environment by making specific reference to it in:
 - (c) section 6 (matters of national importance to recognise and provide for) and/or
 - (d) section 7 (other matters for which to have particular regard).

Recommendation

Greater Wellington:

- Does not support the recognition of a quality urban environment as a section 6 matter
- Believes that adding further matters to sections 6 and/or 7 will complicate decision-making processes and not serve any strategic intent to better plan for our regions
- Supports further consideration of potential options to provide for the wider issue of integrated, long term planning with RMA planning.

Explanation

Greater Wellington considers that clear guidance needs to be provided on the definition of urban environment, possibly through a national policy statement.

Greater Wellington does not object to broadening the definition of environment to include the urban environment but questions the necessity of the change. Common RMA practice is to include the urban environment within the definition of environment. The current definition of environment refers to the natural, physical, social, economic, aesthetic and cultural aspects of any environment and includes both natural and physical resources. For these reasons, Greater Wellington sees no tangible benefit in changing the definition of environment.

Greater Wellington has a similar view on changing the definition of amenity value. The current definition is all encompassing, relating to both natural and physical characteristics of an area. There appears to be no benefit of changing the definition.

We question the appropriateness of recognising the benefits of the quality of the urban environment as a matter of national importance within section 6. While Greater Wellington would not object to a more explicit reference to the recognition of the benefits of a quality urban environment within section 7, we believe that the main issue is the inability of the RMA to facilitate longer term integrated planning. We therefore suggest that including additional matters in section 6 and 7 is not the solution.

Greater Wellington notes that various matters have been added to section 6 and 7 since the RMA was enacted. This has resulted in additional complexity when considering large scale resource consent applications. Adding further matters to these sections would not simplify the decision making process, nor would it guarantee decisions that benefit the quality of the urban environment.

Greater Wellington supports further consideration of potential options to provide for the wider issue of integrated, long term planning. Any consideration of the options should include a wider scope than just the RMA, and would need to include increased linkages between various Acts.

Greater national direction and clarity

- Option 3: Provide for the scope of the NPS to:
 - (a) include policies to require local authorities to provide an adequate supply of land to meet future urban growth demands
 - (b) include policies requiring the consideration of housing affordability in decision-making, and regional and district plans under the RMA.
- Option 4: Rename the NPS from ‘urban design’ to the ‘built’ or ‘urban environment’

Recommendation

Greater Wellington:

- Supports extending the scope of the NPS to include the ‘built environment’ but is concerned that the NPS would become too generalised and provide no benefit to local authorities
- Suggests that the term ‘land supply’ should be expanded to include intensification and infill as well as greenfield land.

Explanation

Option 3 suggests the scope of the NPS should include land supply and housing affordability.

Greater Wellington notes that the majority of territorial authorities in the Wellington region are planning for future urban growth by providing a combination of infill development, intensification around centres and residentially zoned greenfield areas.

Greater Wellington supports the concept that local authorities experiencing growth pressures should develop policies to meet future urban growth demands. Greater Wellington is concerned that the concept of ‘supply of land’ places too much emphasis on the provision of greenfield land to accommodate urban growth. Local authorities should also be encouraged to meet urban growth demand through infill development and intensification where appropriate.

The experience in the highly metropolitan areas of the Wellington region is that local authorities can provide for urban growth through infill development, intensification around centres and residentially zoned greenfield areas, but have limited control over the release of the land for urban development.

In the Wellington region, we looked at the issue of housing affordability when developing the Wellington Regional Strategy (WRS). We found that there are few tools available to allow councils to deal with this matter, and would support central government doing further work in this area and developing a set of tools. We suggest that this work will need to look wider than the RMA as an implementation mechanism.

Greater Wellington agrees that the scope of the NPS should be broadened from ‘urban design’ to the ‘built environment’. The wording ‘built environment’ is preferred over ‘urban environment’.

The scope of the NPS should be carefully considered to ensure the guidance is specific and worthwhile. It should not attempt to address all planning issues associated with the built environment.

Spatial planning – enhancing it for Auckland and implementing it for other regions (Options 5 – 12)

Recommendation:

Greater Wellington:

- Supports spatial planning and recognises that much of the planning undertaken by territorial authorities and regional councils has a strong spatial component
- Proposes that stronger provisions for spatial planning need to be made in the LGA, to underpin planning for infrastructure and services
- Considers that, if undertaken, regional spatial planning should have legal effect
- Supports mechanisms to simplify the implementation of spatial plans through RMA, LTMA and LGA planning documents

- Believes further work is required to identify a spatial planning model that will work outside of Auckland
- Does not believe regional spatial planning should be mandatory.

Explanation

Greater Wellington supports the concept of spatial planning and is currently exploring the opportunities for spatial planning in the Wellington region.

We do not have any preferred model or framework for the development of spatial plans and believe that further work needs to be undertaken to develop a spatial planning model that would work effectively outside Auckland. Spatial planning can occur at a range of levels, and we would not want to see spatial plans restricted to a regional level through legislation. Regions may wish to work together to develop a spatial plan that covers more than one region, and there are also sub-regional areas that would benefit from spatial planning. Greater Wellington would not support spatial planning being mandatory for all regions.

Greater Wellington intends to start discussions with the city and district councils in the region early next year to come to a position on the development of spatial plan for the region. We would also welcome any opportunity to be involved in discussions about spatial planning with central government during the next phase of the RMA Phase II process.

Greater Wellington is of the view that spatial plans should be legislated for under the LGA. We are not opposed to a different consultative procedure to the special consultative procedure under the LGA being used, as suggested in the discussion document. However, if a different consultative procedure is to be considered, we would like the opportunity to discuss the options with central government prior to it being legislated for.

While we do not believe that spatial plans should be mandatory for all regions, if regions do wish to take up the option of spatial planning, then tools should be provided to allow their effective development and implementation.

We see spatial plans strategically sitting above regional land transport strategies, regional policy statements and regional and district plans. Greater Wellington does not believe that spatial plans should include regional land transport strategies and regional policy statements. These documents contain a number of provisions that do not have a spatial element. For example, the Wellington Regional Land Transport Strategy contains a number of policies that support travel demand management and behaviour management related to road safety. The Regional Policy Statement for the Wellington region has a number of policies that relate to the discharge of contaminants to land, air and water. These provisions would be difficult to accommodate in a spatial plan, without the plan becoming very complex, dense and difficult for many people to understand. It appears from international experience that the most effective spatial plans are simple and succinct.

Greater Wellington views a spatial plan as being a long-term, high level strategy for growth and development. For this reason, we question the need to review a spatial plan every three years. While we understand the logic of linking the spatial plan review to councils' long term plans as this would provide a link between the local authorities' budgets and the spatial plan, we consider that more thought should be given to a longer review period.

The region has not had sufficient opportunity to discuss the best approach to gaining central government input into spatial plans. However, we do believe that spatial plans should be used as a mechanism for engagement between central government and regions developing spatial plans. Central government is a major investor in infrastructure (education, health, roads, utilities etc), and any investment decisions have the potential to redistribute jobs and population growth. These decisions need to be considered with an understanding of their spatial context, and their impact on the development of a region. It is vital therefore that central government be an active partner in spatial planning.

While local government decision making cannot bind investment decisions of central government, we do believe that central government entities, agencies and departments must enter the collaborative process of developing a spatial plan, and that the actions of those organisations should be consistent with the spatial plan.

Improve tools

- Option 13: Introduce a national template for local and regional plans.
- Option 14: Stage the implementation of a national template plan for NPSs and NESs.

Recommendation

Greater Wellington:

- Questions the value of a national plan template
- Supports existing mechanisms for collaboration and communication between local authorities e.g. quality planning website.

Explanation

Greater Wellington does not support the creation of a compulsory national plan template. Over the last 20 years, each council has developed a plan format to suit their community. It would be a time consuming and costly process for councils to change templates, with no advancement in policy development. A set template would also restrict innovation in technologies such as developing web-based plan formats.

Greater Wellington would support the development of further guidance on quality planning related to best practice. This could be something that could be developed for the quality planning website.

Greater Wellington is not opposed to the development of standardised planning provisions as part of a NPSs and NESs for inclusion in regional and district plans. To avoid costly and time consuming plan changes to implement standardised definitions, these could at plan review stage or have a long transitional period.

Greater Wellington is concerned that the options suggested in this part of the discussion document may result in considerable work, but may not result in any noticeable benefit.

- Option 15: Provide for the production of a combined NPS and NES as a single document.

Recommendation

A combined NPS and NES would allow for the development of policy and regulation in one document rather having to develop two separate documents. Greater Wellington supports the combining of NPS and NESs where this is appropriate to do so, however, we note that these two document could be published as a single document under the current planning system.

- Option 16: Establish a National Urban Design Panel.

Recommendation

Greater Wellington has no objection to the establishment of a National Urban Design Panel as a resource for local government to draw upon voluntarily. Costs associated with the establishment of a panel should not be passed on to local government unless under a user pays system that is taken up voluntarily.

- Option 17: Establish a Government Architect.

Recommendation

Greater Wellington has no objection to the establishment of a government architect. The purpose and remit of a government architect will need to be made clear.

- Option 18: Rely on existing methods and processes to amalgamate land, including purchase, negotiation and joint ventures.
- Option 19: Extend the scope of the Public Works Act to ensure that local authorities are able to compulsorily acquire and amalgamate land for major urban regeneration projects provided:
 - (a) some form of central government oversight is required as a safeguard and/or
 - (b) the power to compulsorily acquire land for urban redevelopment should be used as a tool of last resort and/or

- (c) power to compulsorily acquire land should be limited to specifically defined works and/or
 - (d) Māori land is not able to be compulsorily acquired under any circumstances.
- Option 20: Develop new tools for land assembly.

Recommendation

Greater Wellington supports further investigation into development of new tools for land assembly and the facilitation of urban regeneration projects generally.

Explanation

Greater Wellington acknowledges that at present local authorities have a limited suite of tools to facilitate urban regeneration projects and supports further investigation into the development of new mechanisms for both land assembly and urban regeneration.

6. Analysis of the infrastructure options

Greater national direction and consistency

- Option 1: Using NPSs, NESs and other forms of national standards in a more systematic way through:
 - (a) Developing an agenda of proposed NPSs and NESs
 - (b) Developing a greater number of nationally-consistent standards
 - (c) Allowing certain aspects of infrastructure construction and operation to be conducted without the need to apply for approval, as long as it meets nationally-consistent standards
 - (d) Taking into account where ‘reverse sensitivity’ issues are, or could be, an issue

Recommendation

Greater Wellington:

- Supports the development of an agenda for future NPSs and NESs to be developed in a collaborative process with local government.
- Supports the use of the existing NPS and NES structure to provide for nationally consistent standards for infrastructure approvals.

Explanation

Greater Wellington supports a more strategic approach to the development of NPSs and NESs. The development of an agenda of future NPSs and NESs should be developed in consultation with local government.

There should be careful consideration as to the matters that require nationally consistent standards. National standards will need to take into account regional variability.

In respect of point (c) the mechanisms already exist to develop an NES for certain aspect of infrastructure construction and operation.

The concept of reverse sensitivity has arisen through case law in recent years, and a definition has been established through this case law. Greater Wellington would have no objection to including the concept in an NPS or NES, but notes that repeating current case law won't add much value.

- Option 2: Making use of the options in Chapter 3 to support the efficient delivery of infrastructure:
 - (a) Enabling the development of combined NPS and NES documents to communicate national priorities, so councils can more easily incorporate national direction into plans
 - (b) Introducing a national template plan for local and regional plans

Refer to Greater Wellington comments on Options 13 – 15 of the urban options.

- Option 3: Amending sections 6 or 7 of the RMA to explicitly refer to importance of infrastructure and the benefits that derive from it

Refer to Greater Wellington general comments in Option 2 of the urban options in respect of amending sections 6 and 7.

Changing access to the designation system

- Option 4: Extend eligibility to a broader range of infrastructure types, particularly to ports and electricity generation

Recommendation

Greater Wellington supports extending the eligibility.

Explanation

Greater Wellington agrees that there are some discrepancies in the range of infrastructure types that are eligible for requiring authority status and this requires further investigation.

The designation system should not be available for all projects – a designation is a powerful tool and the criteria for becoming a requiring authority must

include the purpose of the designation or infrastructure development. A reasonable threshold must be set.

- Option 5: Define eligibility based on the ‘nature of development’ rather than the type of infrastructure

Recommendation

Refer to option 6.

- Option 6: Narrow eligibility for full ‘requiring authority’ status and establish a new status of “limited requiring authority”:
 - (a) Eligibility: a ‘limited requiring authority’ would make more of a distinction between public and private benefit of the infrastructure and/or whether the ownership or financing is publicly or privately provided
 - (b) Approval process: approve ‘limited requiring authority’ status on a project-specific basis only, to reflect the purposes of each particular project
 - (c) Powers: a ‘limited requiring authority’ would have access to a lesser range of powers than available to a full requiring authority. Limits could be applied on one or more of access to compulsory acquisition; protection against incompatible development; and removal of decision-making rights

Recommendation

Greater Wellington:

- Supports the establishment of a limited requiring authority status if eligibility is extended
- Supports the status quo for designation powers for local authorities
- Supports restricted powers for limited requiring authorities.

Explanation

If the option to widen the eligibility of requiring authority status is progressed, Greater Wellington would support the establishment of a two-tiered requiring authority status system.

The differentiation between full and limited requiring authority status should reflect the nature of the organisation applying to be a requiring authority as well as the nature of the development/infrastructure project. Greater Wellington observes that traditionally requiring authorities have been government organisations or local authorities. These organisations/departments have an ongoing responsibility to the general public and the local community through legislation and in other aspects of their work.

Local authorities are accountable on a number of levels to the communities they serve; for example any works approved through the designation process would have to have funding approved through the LTP/Annual Plan process. Additionally, local authorities tend to undertake public works that benefit the local community. Local authorities are also subject to the Local Government Official Information and Meetings Act.

Greater Wellington also considers that consideration of how essential the service is should be a factor in requiring authority status. The works undertaken by local authorities may not be of a scale to be considered 'nationally significant' but are all essential services for the community. For example, the Beacon Hill signal station manages harbour safety, and local authorities provide water supply and waste water systems.

For these reasons, Greater Wellington agrees with the concept that 'limited requiring authorities' should have lesser powers than 'full requiring authorities'. Greater Wellington considers that they should not have power to acquire land under the PWA nor should they have decision-making powers.

- Option 7: Change all references in RMA from 'network utility operator' to 'infrastructure provider'
- Option 8: Amend definition of 'infrastructure' in the RMA so it reflects the full range of eligibility for requiring authority status.

Recommendation

Greater Wellington submits that caution should be exercised as to the flow-on effects of changing these definitions. At present the RMA states that all network utility operators fall within the definition of infrastructure but not all infrastructure providers will be network utility operators. The implications of the proposed changes will depend on changes to eligibility and requiring authority status discussed above.

Improved approval processes: increased streamlining and flexibility

- Option 9: Eligibility for concept designations. Either:
 - (a) All infrastructure projects eligible for designations should be able to make use of concept designations or
 - (b) Only a subset of projects eligible for designations should be able to make use of concept designations and/or
 - (c) Concept designation status should be conferred on any future infrastructure identified in a statutory spatial plan

Recommendation

Greater Wellington:

- Considers that a concept designation process could be a useful tool for long term infrastructure planning
- Supports restricted use of this process.

Explanation

Greater Wellington supports the ability to signal and plan through a designation process both for medium term and long term projects. The designation informs the community of future development priorities and alerts future property owners as designations are identified on district planning maps, as opposed to easements and resource consents. It also requires property owners to seek approval from the designating authority to use the designated area in any way that could affect the purpose of the designation. The ability to plan for long term infrastructure through a 'concept designation' type approach could be beneficial to Greater Wellington.

Greater Wellington considers that the use of concept designations should be restricted to those with full requiring authority status, but should not be restricted to 'nationally significant' projects. Greater Wellington's operational departments have a number of projects which, while very significant for the future of the Wellington region, would not necessarily meet a 'national significance' test. This would mean that the eligibility for 'concept designations' would be narrower than suggested in Option 9(a) but wider than the suggestion in Option 9(b) of the discussion document.

Greater Wellington considers that there should be flexibility around the process used. As is probably the case for many requiring authorities, Greater Wellington applies for designations and/or consents at different stages of the project or uses different pathways depending on the circumstances. For the reasons given earlier around community accountability, Greater Wellington in practice has tended to apply for the designation and resource consents in a package so that the regulatory authorities and the community have the opportunity to assess the full impact of the development.

A concept designation would enable longer-term infrastructure planning. Greater Wellington would support central government doing more work around linking the process and outcomes of spatial planning to designations.

- Option 10: Level of detail required with application. Either:
 - (a) sufficient detail is required to identify a comprehensive envelope of future impacts or
 - (b) sufficient detail is required to identify high-level impacts only.

Recommendation

Greater Wellington:

- Considers that the level of detail provided must be appropriate to the timeframe

- Supports the opportunity for community involvement when the detailed effects are assessed.

Explanation

Greater Wellington submits that the level of detail provided must be appropriate to the timeframe before the project is established. Option (a) and (b) are for two different processes and therefore they are not alternatives. Importantly, if only high level impacts are identified at this stage, there must be the opportunity for community involvement in a later stage.

We consider that a mechanism that requires detail at an early stage is not appropriate for protection of the ability to provide for long term future assets, for example in the 30-50 year time. The nature of longer term infrastructure projects are that at the time of applying for the concept designation, the requiring authority is unlikely to have detailed plans for the project for example a possible water supply dam. In this case both the detail and the community involvement should occur at a later stage in the project.

Greater Wellington is concerned that it may not be possible to define the envelope of effects and standards to be met satisfactorily with the amount of information which is likely to be available at such an early stage of the process. This is particularly important if a ‘controlled activity’ status is conferred on the activity. Experience with scoping reports suggests that there is usually a wide range of options provided and there would need to be some significant work to define such an envelope. We can see some difficulties for local authorities where that level of funding may not have been approved through the LTP. We appreciate that it is potentially easier to develop such an envelope for a relatively defined project such as a water supply or flood protection project than for a major transport route.

- Option 11: Powers, protections and obligations provided to infrastructure providers:
 - (a) infrastructure providers would have the full range of powers currently provided through notices of requirement including access to PWA powers or
 - (b) infrastructure providers would have more limited range of powers than currently provided under notices of requirement, and limited PWA powers and/or
 - (c) a maximum lapse period of 10 years would apply or
 - (d) a longer maximum lapse period, such as 20–30 years would apply.

Recommendation

Greater Wellington supports a standard lapse period of 10 years with discretion for longer lapse periods. This decision should be related to the scale and purpose of the designation.

Explanation

Greater Wellington's comments on powers for infrastructure providers 11(a) and (b) have been discussed under option 6.

The lapse period for a designation should be related to the scale and purpose of the designation. As an example, Greater Wellington is responsible for water supply to the four metropolitan cities in the Wellington region. The urban growth strategies of the individual territorial authorities are currently for a period of up to 40 years and Greater Wellington responds to those strategies in part. A longer lapse period may be appropriate in this instance.

Greater Wellington submits that a 5 year lapse period is too short for any designation and asks that this provision be changed.

The standard lapse period for 'concept designations' could be 10 years, but a longer time period could be approved if the designation is supported by local authority future planning documents or if the effects of the designation are not likely to result in substantial limitations on land use or lead to the possibility of planning blight. This could include future water supply zones and schools intended to service future urban growth or flood protection designations in hazard zones.

The RMA provides for the community to comment on projects and their effects in a meaningful way. If that involvement occurs at an early stage (such as in option 10a) but the project is not undertaken for a longer time frame, it would seem appropriate for there to be a mechanism for the community to be able to reflect any changed expectations which have occurred in the intervening years.

- Option 12: Integrate multiple approval processes into a single approval process for a nationally significant infrastructure project.

Recommendation

Greater Wellington considers that the existing EPA process addresses ITAG concerns.

Explanation

The integration of multiple processes for nationally significant infrastructure is now allowed for by the Streamlining and Simplifying Amendments to the RMA in 2009, and we are not aware of any particular difficulties with the process to date. The need for a new process seems to be linked to funding and construction requirements, rather than resource management.

- Option 13: Remove duplicated processes through:
 - (a) providing for designations to be automatically 'rolled over' into updated district plans when provided for in a spatial plan and/or

- (b) removing the current two-stage process ('notice of requirement' and 'outline plan') for approving development by establishing the development's limits when the initial designation is approved and/or
- (c) providing that where a concept designation is in place, 'controlled activity' consent status would automatically apply to any subsequent resource consent applications.

Recommendation

Greater Wellington:

- Supports automatic 'roll over' of designations for both future and established projects
- Supports retention of the current two-stage process.

Explanation

Greater Wellington supports the automatic 'roll over' of designations for future designations in the district plan, but is concerned about making this provisional on spatial planning as not all regions are likely to have a spatial plan.

Designations where the structures already exist and are in use should automatically 'roll over'. The protection of assets is an important function of the designation, particularly when the requiring authority does not own the land. A designation has clear advantages over other mechanisms, as it becomes part of a district plan. The requiring authority is then notified of any potential changes that may affect the land or the assets, which is particularly important when the asset may not be visible, such as a flood path. Further, the designation gives ongoing guidance as to the rights and responsibilities of both the land owner and the requiring authority. At present there is a huge compliance cost in reconfirming existing designations.

The removal of the current two-stage process might work for some forms of development, but Greater Wellington considers that there should be the flexibility to provide an Notice of Requirement (NOR) with limited detail and further information at the outline plan stage. In many cases, Greater Wellington will provide information to the NOR process in essentially the same detail as for a resource consent process.

Greater Wellington submits that providing for controlled activity status for consents in a medium term consent designation is a significant change from the current process because it includes regional consents. There are considerable uncertainties around the consent designation process and the different pathways that can be followed. Until there is more detail about how such a process might work, we would not want to approve operations as controlled activities.

- Option 14: Establish consistent processes by:

- (a) Requiring clearer and earlier notification for individual landowners who may be affected by a compulsory acquisition, specifying the amount and location of their land likely to be affected to the extent that this is known; and the type of interest to be acquired and/or
- (b) Introducing pre-application consultation requirements for concept and project designations and/or
- (c) Requiring public hearings for any concept designation and/or
- (d) Providing non-statutory guidance to inform ‘notice of requirement’ and ‘outline plan’ processes and/or
- (e) Applying consistent statutory timeframes to all project designations

Recommendation

Greater Wellington:

- Supports Options 14(b), (c) and (d)
- Does not support Option 14(e) as there is no evidence to warrant a change.

Explanation

Greater Wellington supports the introduction of pre-application consultation requirements for concept and project designations and the provision of non-statutory guidance on the designation process (Option 14(b) and (d)).

Greater Wellington submits that public hearings should be required for a concept designation where the envelope of effects is being assessed (Option 14(c)). If the designation is for a 30-50 year time frame, current practice for a growth framework is that the community is consulted, and there seems to be no reason why a long term NOR should be different.

Greater Wellington considers that time frames were addressed in the 2009 RMA amendments. The different time frames for different processes have been instituted for particular reasons. There appears to be no evidence to warrant providing consistent time frames (Option 14(e)).

- Option 15: Improve investment certainty for resource consents.
 - (a) introduce a new process for re-consenting with the following features:
 - (i) confer rights to apply for an existing consent holder
 - (ii) expressly allow renewal applications well within the existing consent term
 - (iii) provide for the consented scale of activity to continue while the re-consenting application is being processed

- (iv) limit the scope of the new consent to the existing scale of activity within the same ‘effects envelope’, where practical
 - (v) constrain the information required in an application to the effects of the existing operation, emerging/new effects, or emerging values or expectations. Applicants would not be required to provide information about the effects of the existence of a physical structure, such as the existence of a dam occupying a river bed
 - (vi) constrain notification and consultation requirements to directly affected parties, rather than the public at large
 - (vii) take account of Treaty settlement issues where they are relevant.
- (b) When deciding on re-consenting applications, consider either:
- (i) requiring consent authorities to confine their concerns to the effects of the existing operation, emerging/new effects, or emerging values or expectations. Consent authorities would not be permitted to consider the effects of the existence of a physical structure or
 - (ii) allowing a consent authority to consider any matter it considers relevant and reasonably necessary to determine the application.

Recommendation

Greater Wellington supports amendments to align regulation with practice, provided that some clauses are clarified.

Explanation

Greater Wellington submits that the process described in Option 15(a) generally reflects the practice used in re-consenting processes and we therefore support any amendments needed to align legislation with practice, or the provision of guidance.

We would emphasise however, that both the definition of ‘scope’ in Option 15(a) (iv) and the bounds of the information in Option 15(a)(v) needs to be clarified. Whether the scope of the new consent is within the existing scale of activity has been the subject of case law and further opportunities for litigation should be avoided. The information around emerging values and expectations should include the extended list in the ITAG report (pg 25) which includes the implications of new plan provisions amongst others.

Greater Wellington submits that, in principle, if the matters and effects are carefully defined as suggested above, then the decision on re-consenting applications can appropriately use the information as outlined in Option

15(b)(i). However, if these matters are not satisfactorily defined, the consent authority may need the ability to consider any matter it considers relevant to determine the application.

Enhanced decision-making framework

- Option 16: For “limited requiring authorities” only require a decision-maker for designations to be independent of the infrastructure provider:
 - (a) for notices of requirement, remove the decision-making role from requiring authorities to make the decision-maker independent from the infrastructure provider and
 - (b) if the option to remove the outline plan stage is not adopted (option 13b), consider retaining decision-making for outline plans with the infrastructure provider and
 - (c) the decision-maker for concept designations, if sought by limited requiring authorities, would also be independent of the infrastructure provider and
 - (d) the significance of the project should determine the most appropriate decision-maker.

Recommendation

Greater Wellington:

- Supports local authorities being the decision maker on designations for ‘limited requiring authorities’
- Supports requiring authorities which are local authorities retaining decision making powers.

Explanation

Greater Wellington considers that ‘limited requiring authorities’ should not be the decision makers on designations (see earlier discussion).

Greater Wellington submits that requiring authorities, which are local authorities, should retain their decision making ability. This ability has been criticised by some as too permissive and not in the spirit of the RMA. Given that very few designations are appealed to the Environment Court, we are not convinced that there is a problem to be solved.

The possible change would make it more difficult for Greater Wellington, as a requiring authority, to implement key infrastructure projects as it would significantly alter the relationship between a council and a requiring authority and place the requiring authority in the role of a submitter.

If the system is changed, requiring authorities will have to use the legal process to challenge any onerous conditions placed on designations and outline plans.

Bearing in mind that currently very few decisions by requiring authorities are appealed to the Environment Court, this will add uncertainty on the part of the requiring authority, as well as delays and increased costs at both stages.

- Option 17: Ensure the objectives of infrastructure investment are appropriately recognised. Decisions on designations (both concept and project) should be based around the following considerations:
 - (a) whether the project is consistent with the purpose and principles of the RMA
 - (b) the extent to which the project is consistent with any relevant NPSs, NESs, regulations and/or other nationally consistent standards
 - (c) the extent to which the infrastructure provider's objectives are delivered by the project – guidance on these matters could be provided by relevant NPSs
 - (d) the extent to which any adverse effects of the option have been avoided, remedied or mitigated
 - (e) the benefits of the project
 - (f) the impacts of any conditions that are imposed on the delivery of the objectives of the project
 - (g) the extent to which the proposal is consistent with other planning documents such as a spatial plan, regional policy statement, national infrastructure plan, growth strategy, etc, and the need for consistency in approach across council boundaries
 - (h) the extent to which realistic options for co-location of infrastructure could be appropriate and have been considered.

Recommendation

Greater Wellington:

- Supports Options 17(a), (b), (d), (e), (g), and (h) as these are similar to existing requirements within section 171 of the RMA
- Does not support Option 17(c) as this is a responsibility of the infrastructure provider not the decision maker
- Does not support Option 17(f) as this is a matter for planning practice rather than legislating in the planning framework.

Explanation

Greater Wellington has no issue with considerations (a), (b), (d), (e), (g), and (h) as these are similar to the existing requirements within section 171 of the RMA.

Greater Wellington questions consideration (c) as it not the responsibility of the decision-maker to ensure that the project delivers the infrastructure provider's objectives.

Consideration (f) is not referred to specifically in the RMA but is considered to be good planning practice when decision-making.

- Option 18: Ensure that national consistency is achieved where appropriate by making use of the identified options (1 to 3) to provide greater national direction on objectives and standards set out in option 17.

Recommendation

See above for comments on national direction.

- Option 19: Amend the RMA in relation to projects called-in by the Minister, to give greater status to the reasons for ministerial call-in.

Recommendation

Greater Wellington does not support giving greater status to the reasons for ministerial call-in.

Explanation

The reasons for ministerial call-in can be relatively broad and are not related to whether a policy is consistent with central government policy objectives. There is no evidence to support giving greater weight to the reasons for calling a project in.

Greater Wellington suggests that the Ministry look for other methods to give central government policy objectives greater primacy and priority. This is not the appropriate mechanism to achieve this goal.

- Option 20: Support integration with spatial planning
 - (a) decisions about individual project or consent designations should seek to 'give effect' to infrastructure that is consistent with an existing spatial plan, where the effects of the development are reasonable given the scale of the project
 - (b) any applications for designations that are not consistent with an existing spatial plan would need to provide additional justification.

Recommendation

Greater Wellington supports these options, which may assist the implementation of a spatial plan.

Explanation

Greater Wellington recognises that designations are a tool that could be used to implement a spatial plan. If a designation is proposed that is inconsistent with the existing spatial plan, more careful consideration may be required.

An efficient compensation process under the Public Works Act 1981

- Option 21: Increase the current solatium¹ of NZ\$2000.

Recommendation

Greater Wellington supports a review of the compensation process, and revision of the current solatium.

- Option 22: Link the value of the solatium to the length of time an affected landowner has owned the property.

Recommendation

Greater Wellington does not support linking the solatium to length of ownership.

- Option 23: Widen the solatium provision to provide for a discretionary payment when acquiring land that does not include a dwelling used as a private residence.

Recommendation

Greater Wellington does not support discretionary payments as discretion becomes the norm with all compensation issues. Other compensation provisions are more than adequate for classes of property other than dwellings used as a private residence.

- Option 24: Introduce a hardship payment mechanism.

Recommendation

Greater Wellington does not support this proposal. The PWA 1981 provides for this already.

- Option 25: Undertake further research into the accuracy, objectivity and reliability of current New Zealand valuation practices used to determine 'fair market value' based on the average 'willing purchaser willing seller' price settlement.

Recommendation

Greater Wellington supports this only in as far as PINZ, NZIV and NZ Valuers Registration Board should be engaged to ensure valuation standards are appropriate and that education modules are in place. Valuers acting for the acquiring authority tend to understand their role and requirements while

¹ A solatium is paid as compensation for emotional loss when acquired land contains a dwelling used as a private residence. It is in addition to compensation for loss of value.

valuers acting for claimants can inflate their assessments in order to gain an unreasonable advantage for their client. Frequently the issue is one of changing an owner's unrealistic expectation arising from the valuation advice they receive more than overcoming the requirement to dispose of their property for the public work.

- Option 26: Authorise requiring authorities to pay a premium of up to 10 per cent where there is demonstrable benefit to the requiring authority in securing early settlement.

Recommendation

Greater Wellington does not support this option. The value plus 10% simply becomes the new minimum price. The variations in value will remain unresolved as both valuations will contain the premium over current market value. If a % over CMV is to be introduced, it need to be meaningful i.e. 30% or more.

- Option 27: Allow a requiring authority to take early possession of a property by paying an affected owner the amount specified in the valuation it obtained.

Recommendation

This is done now, but it does require owner consent. It is referred to as a payment by way of compensation. When it is exercised, the acquiring authority pays the maximum it can justify for both the property and all the other items of additional compensation. An adjustment is made, if required, after the LVT determination is available.

- Option 28: Require the requiring authority to obtain a further valuation on the affected landowner's behalf if the affected landowner has not done so after a reasonable period.

Recommendation

Greater Wellington does not support this proposal. Where an owner is reluctant to engage with the acquiring authority, any valuation obtained by an acquiring authority is viewed as tainted simply because the instruction to value is issued by the acquiring authority. The other option to deal with an owner who refuses to engage is to commence the compulsory acquisition procedures. In our experience, as soon as the procedure commences, the owner is likely to appoint a legal representative and the legal representative understands what is required and obtains a valuation for the owner. In any event the cost of that valuation is met by the requiring authority.

Transitional issues

- Option 29: Introduce a sunset clause on existing designations that have not yet been used.

Recommendation

Greater Wellington submits that there should be an opportunity for requiring authorities to extend the time frame for designations. For a long term project, the designation may not have been given effect to but is still relevant.

- Option 30: ‘Grandfather’ existing designations into any new system for minor improvements or maintenance.

Recommendation

Greater Wellington submits that requiring authorities should be able to use the ‘status quo’ system for any minor works or augmentation of an existing designation. Greater Wellington is at present preparing an outline plan to allow works on the Stuart Macaskill water storage lakes. These have been in operation for twenty five years and upgrading is required to improve seismic resilience and allow for a modest increase in storage capacity.

- Option 31: Ensure that the next generation of district plans give due account to existing designations, where development and investment has taken place in accordance with the designation.

Refer above.

7. Conclusion

Thank you for the opportunity to comment on the discussion document Building Competitive Cities – Reform of Urban Planning and Infrastructure.

Greater Wellington would welcome any opportunity to be involved in discussions about spatial planning, or other matters raised in this submission, with central government during the next phase of the RMA Phase II process.

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Honourable Fran Wilde

Chair
Greater Wellington Regional Council

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