Submission to the Local Government and Environment Select Committee

In the Matter of
The *Resource Legislation Amendment Bill*

Submission by

Ashburton District Council

3 March 2016

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1. Context

1.1. Ashburton District Council (*"this Council"*) welcomes the opportunity to submit to the Local Government and Environment Select Committee on the *Resource Legislation Amendment Bill*.

1.2. The Ashburton District is located to the south of the Rakaia River and is bounded to the south by Timaru District, to the north by the Selwyn District and shares a narrow border with Westland District Council at its most westerly boundary. It comprises three main urban areas, Ashburton, Rakaia and Methven with the remainder of the District primarily rural and serviced by smaller townships.

1.3. Ashburton town suffered reasonable damage in the Canterbury earthquakes, primarily to its commercial center. Although not subject to the recovery legislation which covered its northern neighbours, the Council has developed policies and collaborative strategies which have resulted in a number of rebuild and regeneration projects. This demonstrates that, even without additional legislation, development in this District has not been hindered.

1.4. The district has completed its second generation District Plan which commenced in 2008 and became fully operative six years later on 25 August 2014. The cost of the review was $2,285,840 which was funded by way of loan. This is not expected to be repaid until 30 June 2026.

1.5. Ashburton District actively collaborated with neighbouring authorities, Iwi and other interest groups in relation to local, regional and national issues through the district plan review and continues to maintain and foster these relationships in a number of formal and informal environments.

1.6. As a result of the District Plan review process and other related work, Ashburton District has an ample supply of residential and business land available for expected demand.

1.7. The District Plan sought to protect the productive soils of the District from loss due to unrestrained residential development so as to ensure the viability of the land. This process occurred through the democratic and legal "Schedule 1" process prescribed within the RMA.

1.8. This Council has adopted a collaborative approach to Planning by encouraging participation by stakeholders at an early stage creating an open door policy for discussion and developing processes for the efficient processing of consents. As a result of this, during the 2014/15 financial year and with a staff of two full time planning officers average, processing time for non-notified consents was less than ten working days (9.3). In the period July 2015 through January 2016 106 consents were processed by one full time graduate planner with assistance from part time consultants, resulting in an average processing time of 14 days and with all consents within statutory timeframes. Ashburton District Council has not had a consent or objection decision appealed in four years. Over this period customer satisfaction has increased from 67% in 2010 to 77% in 2015 (See fig.1 below).

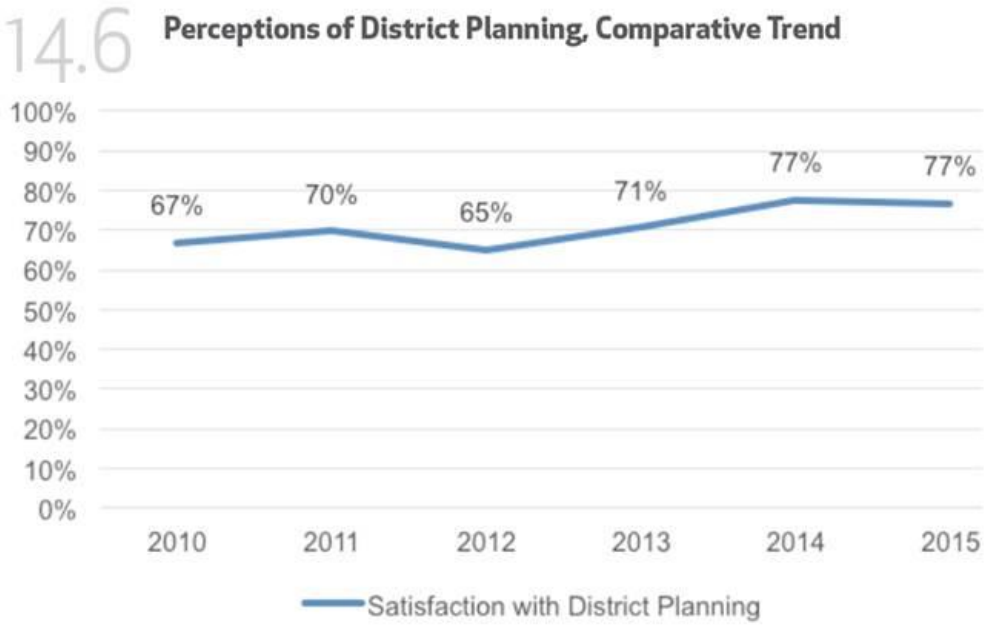

Fig.1

(Source ADC Customer Satisfaction Survey 2015)

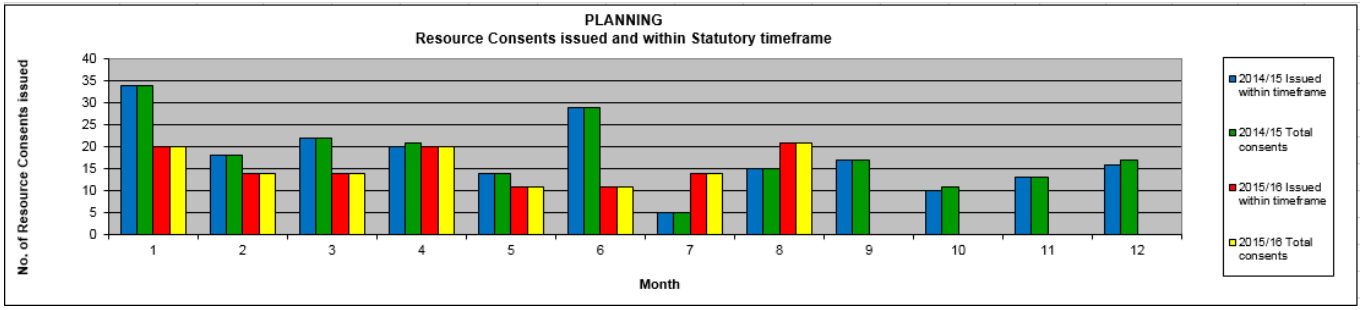

Fig. 2

(Source ADC Consent Statistics)

2. General Submission

2.1. While it is noted that the performance of this Council as referred to above may not be representative of all Councils in New Zealand, this Council is concerned that many of the proposed reforms within this amendment could be counterproductive to Ashburton District, particularly in view of recent work undertaken on the District Plan review by the Council.

2.2. With the above said, the Council supports or is not opposed to the following components of the *Resource Legislation Amendment Bill*:

- The National Planning Template where it is limited in its scope and if its development is facilitated by technical advisory groups formed at least in part of local authority planning practitioners.
- An exception to the one year timeframe for the National Planning Template where a proposed plan has already been notified subject to extension to cover plans that have recently been made operative.

- The streamlined planning process for Councils subject to clarification of how the processes would function in practice and input from technical professionals with local authority experience.
- Inserting the management of natural hazard risks as a matter of national importance;
- On-line servicing of documents;
- Iwi participation agreements where the joining of an agreement is not mandatory.

2.3. The Council is opposed to, or is concerned about:

- National Policy Statements (NPS) and National Environmental Standards (NES) applying to specific areas of New Zealand,
- The development of National Planning Templates (NPTs) which are overly prescriptive and which do not allow for local conditions.
- The proposed provisions over use of land for residential purposes given the agricultural and other needs of this district for its economic viability.
- Regulatory power to prohibit or override District Plan rules developed via local democratic processes;
- Concerns over the potential extent of exclusion of stock from waterbodies and the impact on rural viability of this District.
- Concerns over the fixing of fees relating to resource consent matters and the potential for the ratepayer to incur unexpected costs.
- Mandatory striking out of submissions without an adequate definition of "insufficient factual basis" and without a clear authorization of who will determine this.
- The controls, methodologies and reporting of monitoring and the implications for resourcing, as rationale for these requirements appears limited.
- Compulsory participation in Alternative Dispute Resolution.

The Regulatory Impact Statement (RIS) accompanying the Bill attempts to define the overarching problem contributing to the overall inefficiencies of the resource management system. The RIS acknowledges that the RMA was designed to allow plan development and decision-making to be undertaken at the level of the affected community, so that local biophysical conditions and community priorities could be reflected in Regional and District Plans. The RIS then states a key, self-evident truth that "for this reason, variation in Regional and District Plans is expected and necessary".

However the RIS goes on to state that not all variation is desirable, but does not give sufficient explanation of why. The RIS states that inconsistencies and differences between plans creates problems for cross-boundary applicants, however no detail is provided about what these problems are nor how more adjustments to the RMA in this Bill will address those alleged problems. Organisations and businesses working across a range of local government jurisdictions ought to have an adequate sophistication to manage the inevitable variation that comes from different biophysical conditions and community priorities across the nation, particularly given New Zealand's vast diversity in biophysical conditions. The RIS fails to cogently state the overarching definition of the problem.

On face value, a National Planning Template, and collaborative and streamlined planning processes, would appear to be useful tools for the legislation to provide. However, how these are implemented or work in practice, may lead to a different view. It would appear that these instruments are quite generic, but until the detail is provided about their content and workability, this Council is concerned about their integration with its District Plan and the cost implications to local government of complying with a national template, particularly (as is the case for this Council) where District Plan reviews have been recently completed or are in an advanced change. There is also the matter of how the National Planning Template will

consider the amendments proposed around resource consents, and how local communities views and expectations are addressed and considered.

Local Government New Zealand's "Blue Skies" discussion document about the resource management system (December 2015) suggests that rather than going through yet another RMA amendment process, consideration should be given to overwriting the core statutes within the resource management system to reduce their complexity and enhance their connectivity. This Council supports the LGNZ call for a broad-based and fundamental reform of New Zealand's resource management system.

3. Specific Points of Submission

This Council supports Local Government NZ and shares their deep concern over the alterations to regulatory powers and also to the lack of planned consultation in the preparation of the Bill.

3.1. Sharpen processes for developing NES and NPS

Clauses 25(3)(b) and (c) and the new S45A(3)(b) and (c) of the Bill provide for National Environmental Standards (NES) and National Policy Statements (NPS) to apply to any specified district or region of any local authority, or to any other specified part of New Zealand. If a regulation is made for a NES or NPS to apply to a specific area of the nation, that environmental standard or policy, by definition, is no longer a national standard or national policy. Clause 25(3)(b) and (c) and the new S45A(3)(b) and (c) should be deleted from the Bill because, by definition, these provisions are not national standards or national policies.

Similarly, the bar for a national standard should be consistent across the nation, and clause 27 of the Bill amending S43B of the RMA provides for a more lenient rule or resource consent to prevail over the NES. This provision diminishes the meaning and general understanding of a national standard, and so clause 27 of the Bill is not supported and should be deleted.

3.2. National Planning Template

Clause 37 of the Bill inserts the new S58B to S58J for a National Planning Template (NPT), however the purposes set out in the proposed new S58B do not provide any helpful reasons why there should be a National Planning Template. The purposes of a NPT as proposed do not assist in achieving the purpose of the RMA, and do not contribute to matters of national significance or which require national consistency, since these are the functions and purposes of National Policy Statements and National Environmental Standards.

The rules, policies and objectives of regional and district plans are necessarily reflective of the particular community's aspirations represented in each plan. As the Regulatory Impact Statement (RIS) on the Bill points out, the RMA is designed to allow plan development and decision-making to be undertaken at the level of the affected community, and variation in regional and district plans is expected and necessary.

The assertion in the RIS that inconsistencies and differences between council plans create problems for cross-boundary applicants and submitters, is not supported by evidence or examples in the RIS or, in fact, in the experience of this Council. As the *Rules Reduction Taskforce* Report (August 2015) points out, many of these alleged problems are more imagined than real.

The benefit in legislating for a national template has not been explained in the RIS, explanatory notes of the Bill, or the Departmental Disclosure statement. Each district and region in New Zealand is unique, and has its own set of issues, hopes and

objectives for its communities. The purposes of a National Planning Template (S58B) are thus redundant, excepting perhaps for the provision of common definitions and agreed defaults and formatting and are inconsistent with Schedule 1 of the RMA and its requirement for exhaustive consultative process to glean community aspirations.

In the proposed new S58D(2)(b), the Minister may have regard to the desirability of national consistency in relation to a resource management issue, however the Minister already has these instruments available with NES and NPS which makes these additional measures in the proposed NPT redundant.

Local authorities must make amendments to existing documents to be consistent with NPT (proposed S58H(2) and (3)) which is itself inconsistent with the stated purposes of the Bill to increase flexibility and adaptability of processes and manage resources in an efficient and equitable way. The cost to local government in amending and notifying existing documents within at least one year (S58H(30(b)) is not insignificant.

This part of the Bill is also inconsistent with the Productivity Commission's recommendations from their Inquiry into *Local Government Regulatory Efficiency* (May 2013), recommending that changes were needed to improve:

- the interface between central government and local government, with local government recognised as co-producers of regulatory outcomes;
- central government's policy analysis prior to making changes to local government regulatory functions;
- central government's knowledge of local government capability to undertake robust implementation analysis;
- the quality of engagement with local government early in the process.

The proposed Section 58I(1) requires the Minister to have the first NPT within two years of assent of the Bill. Some local authorities have only just completed their second generation District Plans at great cost to their communities as explained above These provisions mean that these local authorities would be required to amend their District Plans within 2 years of royal assent to be consistent with the NPT instead of the current 10 year review period under S79 of the RMA. These provisions of the Bill are neither efficient nor equitable.

This Council is concerned that it will be penalised through the reforms for having moved quickly to review its District Plan in a timely manner. Section 58H (7) (a) makes an exception to the NPT timeframe where a proposed plan is notified ahead of the NPT coming in, the intention of this is noted, however it is considered by this Council that the exemption should be extended to Councils who have recently completed a review. This Council would recommend that where a Council has completed its second generation review, that the requirement to comply with the NPT be deferred to coincide with its review cycle. At least this would allow this Council to address its outstanding loans before embarking on more changes.

This provision in the Bill is therefore not supported in its current form.

3.3. Regulation power to prohibit and remove council planning provisions

The new regulation powers in Clause 105 which insert S360D and S360E are of concern to this Council, because this regulatory power prohibits a local authority from making specified rules, and enables the overriding of rules in a District Plan that then must be withdrawn (360 D (1)(b) and (d)). District Plan rules have gone through a rigorous public process, including access to the Environment Court, and reflect the values and aspirations of the community. It is conceivable that some rules will be unpalatable to some particular developers, who after making a representation to the Minister can have these rules prohibited or overridden by regulation. This regulatory

power undermines the purpose and intent of RMA District Plans, weakens public confidence in the integrity of a plan, and devalues the exhaustive and comprehensive public process to develop the rules in the first place.

3.4. Natural Hazard Risk

Clause 5 inserts S6(h) for the management of significant risks from natural hazards as a matter of national importance, and is supported. The amendment of S106 of the Act (Clause 133 of the Bill) to "significant risk from natural hazards" is a welcome reform and long overdue. The only concern is consistent administration of what constitutes a "significant" hazard, although this could be determined by a NPS.

3.5. Sufficient residential and business development capacity to meet long-term demand

Clause 11 and 12 amending S30 and 31 place local government planning into the province of the private sector, and significantly alter the onus of responsibility and burden of risk for the provision of infrastructure. By inserting a definition of "development capacity" to include the provision of infrastructure existing or likely to exist, the Bill risks out-of-sequence development, provision of infrastructure ahead of when it is needed, and transfers the burden of risk onto existing ratepayers rather than private sector developers seeking to profit from the development.

3.6. Hearings Commissioners

Clauses 16 and 17 amend S34A and introduce a new S34B. This Council has concerns over the implications of needing hearings commissioners to cover Iwi perspectives relating to the overall number of suitable and qualified commissioners, and the issue of costs for councils and applicants outside of the main urban areas.

The new S34B may fix a fee for hearings commissioners but must fix a fee if required by a regulation. This Council is concerned about the implications of the number of commissioners available at the fixed fee and the subsequent quality of those commissioners or, alternatively, the cost to ratepayers of Commissioner fees which exceed the cap due to unforeseen circumstances**.**

3.7. Objections can be heard by Commissioners

While there is no "in principle" objection to the use of commissioners to hear objections under S357 of the RMA. This Council is concerned that the provision as currently formed is unclear as to who would be responsible for the costs associated with the use of Commissioners in hearing objections. This Council would not support the ratepayer being required to incur additional costs associated with an objection if commissioner costs could not be recovered from the applicant to cover their request.

3.8. Duty to gather information, monitor and keep records

The Bill proposes to amend S35 to impose additional monitoring requirements and to require such monitoring to be undertaken in accordance with any regulations (S18(2AA)). This Council has no issue in principle with reporting on its monitoring performance and has a monitoring strategy in place. However, there is concern that there is already a significant amount of resource required to be devoted to performance reporting both under the RMA and through other processes and Acts for which this Council has responsibilities.

This Council would be concerned if it was required to devote resources to the reporting of its monitoring systems and outcomes, if it could not be demonstrated that

such reporting would lead to better outcomes for its ratepayers as it is likely that resources for other functions performed by the Planning Unit (such as investigation or consent processing) would likely have to be diverted to these activities.

3.9. Two new planning tracks for Councils

The collaborative planning process prescribed in the new S80A and new part 4 of schedule 1 gives the Council concern as discussions within the group are discoverable under LGOIMA, this is likely to result in less exploratory discussion of potential options and therefore less collaboration. This Council considers that an alteration to the process so that the "record of final agreement" was subject to LGOIMA but not the detailed discussion points.

This Council is also concerned that the use of the collaborative process could increase bureaucracy, however would note that it is an optional process.

The streamlined planning process prescribed in the new S80B and 80C appears to enable expeditious planning processes that are proportionate to the complexity and significance of the issue, and is also supported in principle provided that the option is retained for Council initiated processes only.

3.10. Iwi Participation Arrangements

This Council has effective Iwi participation arrangements through local Iwi that have been effectively operating for many years. The Bill (new S58K-58P) does not seem to take account of existing arrangements and appears to advocate statutory participation arrangements over and above current practice, which may in fact hinder and appear to undermine the trust and work that has resulted in extant working relationships. Nevertheless, it is noted that the TA only must offer an IPA but that Iwi do not have to accept this approach.

3.11. On-line servicing of documents

Clauses 68-70 (amend S149c-f), new S87AAC, and clause142 (amends s352) are sensible reforms and are supported. Some minor administrative processes would need to be established to cater for situations where email addresses are changed, such as a practice note to ensure that electronic addresses for serving of notices are automatically sent with a request for a delivery and read receipt.

3.12. Provides for regulations to remove stock from water bodies

New section 360(1)(hn), to provide regulatory power to remove stock from water bodies, is supported in relation to the prohibition of intensive farming, however this Council would have concerns in relation to regulations which prohibit "extensive" grazing where animals control weeds in riverbeds and where impact on water quality is minimal whilst still assisting in the economic viability of the District.

3.13. Restrictions on subdivision of land

The proposed bill seeks the amendment of S11 to remove the presumption of consent for subdivision activities. While the intention of this change is noted, there are technical difficulties in creating a fully compliant subdivision. Any applicant would still need to demonstrate that they could satisfy the density, infrastructural, access and other such requirements before the Council could be satisfied that a S223 certificate could issue. It is uncertain how this would work in practice but it is submitted that many Councils may take a cautious approach and that the majority of subdivisions would still require some form of consent, perhaps in the form of a certificate of

compliance. This would simply substitute an alternative form of bureaucracy and would in any event require resource allocation by the Council and time to consider.

3.14. Boundary activities

Clause 122 creates the new S87BA and is not supported in its current form. Although in principle it could assist in reducing unnecessary resource consent costs, its mandatory impact does not allow for cumulative effects to be considered, and could give rise to undesirable outcomes where developers give consent to themselves with large scale subdivisions. One way of managing this scenario would be for the Bill to prescribe that the sites with the affected boundary need to be in different ownerships.

Another major concern with the new S87BA is that it only requires the written approval of each owner **or** occupier. This could mean that the tenant could give their written approval and the landowner be excluded from the process even though they might not agree with the activity. Conversely the landowner may give their written approval with little regard to their tenant, who could have a long term tenancy and be significantly affected by the activity. In order to manage these circumstances written approval should be required from both each owner and their tenants. The status of unconditional sale and purchase agreements also needs to be considered, as an owner may give their written agreement to an activity before a final property settlement which may significantly affect the prospective purchaser to the extent that they may not have decided to purchase the property had the adjoining activity been known. In terms of the new S87AA (2) it would appear that boundary activities only relate to setbacks and recession planes, and if this is correct, the Bill should make this clear.

Also the processing costs of determining that a boundary activity is a permitted activity (new S87BA) are still going to be incurred, and these can (and will) still be charged to the applicant so the advantage of this amendment is not apparent.

Sections 87BA and 87BB are not based on the same premise. S87BB provides for a consent authority to have discretion to determine an activity as permitted, whereas S87BA provides for a permitted activity if the requirements are met regardless of the consent authority's views. These proposed amendments introduce internal inconsistency into the Act, and S87BA does not give Councils the opportunity to assess cumulative impacts from a number of breaches within the same development (such as a 50 lot subdivision where the developer seeks permitted activity status to reduce all setbacks from internal boundaries to zero having given consent to himself as the adjoining property owner of the affected boundary). This has serious repercussions for the determination of a permitted baseline when boundary activities do need a resource consent, because the District Plan bulk and location rules may become progressively obsolete.

This Council supports S87BB in that it provides the Council with a level of discretion. Whilst this would appear to be a clearer discretion with temporary non-compliances, a subjective judgement is required when an activity is marginal, and the determination will vary depending on site specific circumstances and between different community expectations.

Clause 128 creates the new S95DA and raises concerns about persons considered to be affected. With a "boundary activity" the only persons eligible as affected are the owners or occupiers with an affected boundary. It is not clear in the Bill whether this means the actual boundary affected, and not all boundaries. There is concern that there are no individual owners or occupiers for a subdivision unless that subdivision is non-complying. The only affected persons are owners of infrastructure, the medical officer of health, and the fire service which is very limited. Iwi are not identified as an eligible party even though the subdivision proposal may be a discretionary activity because it falls within a silent file area or is subject to a wahi taonga. Equally the site

could be a heritage or archaeological place with no eligible parties in relation to these matters. This limitation could potentially lead to more public notifications however this could only be done under special circumstances. This Council's District Plan is not set up to automatically preclude notification for all discretionary (restricted) and discretionary subdivisions. This amendment would require this Council to review its subdivision objectives, policies and methods in the District Plan, imposing more costs to local government.

There is also concern over persons eligible to be considered affected for any activity other than a boundary adjustment, subdivision or non-complying activity, which is very limited to just adjoining properties, and can no longer support an effect beyond one property deep (which is not sensible for effects such as noise and odours). Whilst the new S95DA (5) does clarify that allotments on the other side of the road, right of way or watercourse are considered adjacent, there is no way of reflecting a property that might be only separated by a narrow property width. This in some cases would be less than those separated by a road and could easily be affected more adversely than some of the persons eligible to be considered affected. Again this amendment would require this Council to review its objectives, policies and methods for discretionary (restricted) and discretionary activities.

Clause 129 replaces S95E and there is concern about recording the adverse effects that are the basis for any decision that that person is affected or not, when the effects on them may be the same as their neighbour a short distance away but that neighbour is no longer eligible to be considered affected.

3.15. Reduced Rights of Appeal

Clause 135 amending S120 reducing rights of appeal is opposed by this Council and the lack of public involvement in the process. This, particularly in conjunction with the proposed limitation on rights of objection removes a significant degree of public consultation and participation in the Resource Management process. This Council has not found that the ability of the public to participate in the appeal process has significantly delayed or hindered economic development.

3.16. Delegation of Parties to Make decisions in Alternative Dispute Resolutions

Proposed Section 268A(3) of the Bill requires parties present in Alternative Dispute Resolution (ADR) processes to have appropriate delegation to make decisions on matters raised. While it is clear that the intention is for the removal of obstacles to constructive and timely resolution, there is concern that Council representatives may be required to attend an ADR with a position brief and a specific delegation, then be expected through the process to approve compromises. Often, such concessions require further Council approval, for example land transfer or the addressing of substantial infrastructural issues which were not anticipated to be part of the negotiations and which might be subject to other processes. Councils may be reluctant to or unable to give delegations which provide for all such situations and it is therefore considered that the section is currently not practical to implement and may place Councils at risk.

3.17. Mandatory Participation in Alternative Dispute Resolution

Clause 91 replaces the existing section 268 with a revised section including requirements for mandatory participation in ADR processes under s268A. While this Council views alternative dispute resolution as a useful tool, in certain instances it is Ashburton District Council's experience that a party may be committed to a fixed position. This Council understands that the assumption of ADR procedures is that parties do so in good faith and with an expectation of compromise. When a Council

or participant has a clear position however, there may be instances where this process will either not be an efficient use of time or one or more of the parties may be put in the uncomfortable position of feeling compelled to change their position for the sake of compromise.

3.18. LGOIMA Applicable in ADR proceedings

This Council is concerned that the mandatory nature of the requirements for ADR as part of the Court process will mean that discussions between participants will be discoverable. There is concern that the provisions may limit the willingness of participants to explore options or alternatives. It is suggested that the applicable sections of the Bill be clarified to ensure that only any agreed resolution arising from the meeting is discoverable.

3.19. Regulations Relating to Fast-track Applications

Clause 151 inserts new sections 360F and 360G for fast tracked applications (as proposed by new S 87AAB to 87AAD inserted by clause 121 of the Bill). However the Order in Council required by the new section 360F can add particular activities or classes of activities. These could end up conflicting with District Plans, and in the case of effects-based plans, nominating particular activities may lead to changes being required to the District Plan. The same issue arises under proposed new S 360G with an Order in Council precluding public notification for particular activities or precluding limited notification to certain affected persons beyond those already identified in new S 95DA under Clause 128.

It appears that technical working parties at least partly comprising local authority technical staff would assist in the detail as to how the intentions of this proposal would be implemented.

3.20. Striking Out Submissions

Clause 120 introduces a new S41D. This Council is concerned about S41D(2) where Council must strike out submissions where S41D (2)(b) (i-iv) is met. The definition of, and the delegation of who will determine, compliance or otherwise is not clear in the Bill and this Council is concerned regarding the potential risk and or cost associated with making such decisions for the ratepayer.

This Council would suggest that the word “must” in Section 41D(2) be replaced with “may” to allow additional discretion in specific circumstances where a judgement call is required. This would give greater comfort than existing provisions.

3.21. Formation of Technical Advisory Groups

Many of the proposed changes in the Bill, such as: the content of the NPT; the interpretation of “marginal” in respect of permitted activities; and the criteria surrounding what constitutes acceptable evidence for a submitter, all lack detail. This lack of detail makes it difficult to provide more constructive comment on its intentions and how best to achieve good outcomes. This Council would suggest the formation of Technical Advisory Groups, at least partly formed of local authority technical officers, who can give practical feedback and advise on how best to achieve the aims of the Bill and potential implications for local authorities. This Council would be willing to devote resource to be part of such an exercise.

4. Conclusion

There are some worthwhile and long overdue reforms in the Bill such as the amendments to S106 relating to natural hazards and including natural hazards as matters of national importance into Section 6 of the Act. The intentions of the Bill, in seeking to improve Resource Management process in New Zealand and changes such as sensible clarification and standardization of nationally consistent matters will assist in this.

It may be that certain parts of the country are in urgent need of greater controls over Resource Management process however, it is this Council's experience that the current system does not actively disadvantage either developer or neighbor and provides the ability to assess the implications of a development or plan change/review in a logical and reasonable manner. This is borne out by the customer satisfaction surveys referred to earlier in this submission. In its current form and with the level of detail provided, it is difficult to see how the Bill improves flexibility and/or efficiency, particularly since the overarching problems with the status quo (particularly for this District) are ill defined. Elements of the Bill do however raise the prospect of significant additional costs on this Council, both through a lack of identified relief for changes to its recently adopted plan, more discretionary powers of decision in streamlining consents (with consequent risk of challenge) as well as a concerning reduction in democratic process through the powers of central intervention and the proposed limitations on public participation in planning processes. It is this Council's position therefore that the net benefits of the bill in it is current form would not outweigh its costs.

The Council wishes to be heard in support of its submission.