



## RESOURCE LEGISLATION AMENDMENT BILL

### SUBMISSION TO THE LOCAL GOVERNMENT AND ENVIRONMENT COMMITTEE

14 MARCH 2016

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#### ABOUT THIS SUBMISSION

This submission is made on behalf of the Institution of Professional Engineers New Zealand (IPENZ), the Association of Consulting Engineers New Zealand (ACENZ), Water New Zealand and Civil Contractors New Zealand and their respective members. Information about these organisations is presented at the end of this submission.

#### SUBMISSION

##### GENERAL COMMENTS

In general we support this amendment Bill. We particularly support:

- stronger national policy direction and guidance by improving processes for developing National Policy Statements and National Environmental Standards.
- enabling the development of national planning templates to improve consistency of regional and district plans and policy statements and to reduce complexity
- the provisions that assist in increasing urban land supply
- arrangements for property owners whose land is required for infrastructure
- better management of the risks of natural hazards.

Our detailed comments below suggest some improvements to the Act, particularly to support sound decision-making for the management of natural hazard risks.

##### DETAILED COMMENTS

##### Definition of Natural Hazards – Interpretation, Section 2 in the 1991 Act

We note the Bill does not amend the definition of natural hazards in the Act to include liquefaction. The existing definition includes subsidence and earthquakes.

Subsidence has a very different risk profile from liquefaction. It usually involves settling of the ground due to imposed loads, weak soils or slope instability, and is most commonly not associated with earthquakes.

Liquefaction occurs most commonly with larger and infrequent earthquakes and require a specific combination of circumstances, ie ground shaking associated with earthquakes, specific soil types and a water table in reasonable proximity to the surface. Liquefaction usually involves sand boils, sideways movement of the ground towards river channels, loss of support for building foundations and buried pipes, and subsidence.

While subsidence can occur as a result of liquefaction it mainly occurs in the absence of earthquakes. Liquefaction doesn't occur with every earthquake.

Therefore the definition needs be amended to make it clear liquefaction is regarded as a natural hazard in its own right.

**Recommendation:** Amend the definition of natural hazard in the Act to specifically include liquefaction.

### **Natural hazards – Clause 5, Section 6 – Matters of National Importance**

We fully support the inclusion of the management of significant risks from natural hazards as a matter of national importance.

While the Canterbury earthquakes had major national repercussions, relatively smaller scale natural hazard events such as the June 2015 flooding and storms in the lower North Island (assessed insurance cost of \$41 million<sup>1</sup>), and the 2013 Cook Strait earthquakes (\$30 million) had broader economic and social implications.

The key word here is “significant” risks. A localised slip or dropout on a road would not be regarded as significant.

We note there is no definition of “significant” in the amended Section 2 – Interpretation. To address this we suggest this Section should reference the amended Section 106 (discussed below), which essentially outlines how to assess a risk for its significance.

**Recommendation:** Amend this section so it refers to amended Section 106, clarifying how to assess a risk for its significance.

### **Affected Persons – Clause 128. Section 95DA (4)**

We note this new Section specifies affected persons, for the purposes of limited notification of a consent application for a designation or a subdivision, include the owners of infrastructure associated with providing services to the land, or the owner of infrastructure assets that pass through, over or under the land.

We support this.

The term infrastructure is defined in Section 2 – Interpretation, but this definition only applies to Section 30. This definition needs to apply to the new Section 95 DA. For example it is not immediately clear in the new Section 95 DA that infrastructure includes roads as the current wording implies pipes/cables etc.

**Recommendation:** Ensure the definition of infrastructure applies to both Sections 30 and the new Section 95DA.

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<sup>1</sup> Insurance Council of New Zealand, Cost of Disaster Events in New Zealand

## **Power to refuse Subdivision – Clauses 133(1) and (2) (a) Section 106**

This amended Section enables a consent authority to refuse subdivision consent and is two pronged – the first (1) (a) provides the ground for declining consent (significant risk from natural hazard) and the second (2) (1A) sets out how to assess the significance of a risk.

The assessment factors include likelihood of the hazard occurring, the extent of damage and the likely subsequent land use. We fully support this approach as it includes the two elements of risk – likelihood and consequence.

Using the liquefaction example, it may be appropriate to decline a subdivision on liquefaction-prone land in Wellington but not in Northland where the probability of a large earthquake (and hence liquefaction) is very low.

However an essential element is missing: the need to weigh up the costs and benefits of declining a subdivision. The current Section 32 has some very sound provisions but these do not apply to subdivisions. Section 32 includes the following wording:

- *To identify and assess the benefits and costs of the environmental, economic effects of the proposal*
- *Be undertaken at a level of detail that corresponds to the scale and significance of the proposal.*

For example if a subdivision is declined, the amended Section 106 allows the assessment of some of the benefits (the reduced exposure to damage should the event occur), but not the economic loss from decreased land values that would result.

For consent authorities to make a balanced and fair decision they need to be provided with information and analysis on both the costs and benefits of declining a subdivision.

**Recommendation:** Amend the Clause to require consent authorities to weigh up the costs and benefits of declining a subdivision as part of their decision-making process.

## **No Right of Appeal to Subdivision Consent Decision – Clause 135, Section 120**

This amendment to Section 120 (Right to Appeal) means that if a consent authority declines a subdivision consent there would be no opportunity for the developer to appeal that decision if it is a complying activity – and yet they may have suffered significant economic loss as a result of the decision. This would be particularly concerning if Section 106 is not amended as we suggest above ie there has not been an adequate weighing up the costs and benefits of declining the subdivision consent.

We suggest there will be many instances where land is currently zoned for urban development – and hence the subdivision would be a complying activity.

As outlined above there may well be a number of circumstances (such as in Northland) where the probability of a large earthquake (and hence liquefaction) is very low – the consent authority may decline a subdivision and the developer would have no appeal rights.

**Recommendation:** Amend Clause 135 to maintain a right to appeal decisions to decline subdivision consents.

## Repeal Financial Contributions for Developments – Clause 158, Section 409

Development contributions are a very important mechanism for funding infrastructure required as a result of the development. This includes infrastructure within the development (such as a subdivision) and often for upgrading infrastructure beyond the development that requires upgrading because of the increased demand.

The proposals to repeal the Financial Contributions provisions for network infrastructure from this Act are supported.

This will mean there will only be one mechanism to levy contributions for network infrastructure – development contributions under Section 198 of the Local Government Act 2002. This Act has also been recently improved by including sound and cost effective mechanisms for dealing with objections to development contributions. This is in contrast to the Resource Management Act 1991 objections provisions, where an appeal to the Environment Court is required, which can be both costly and time consuming for both parties.

Hence the Local Government Act 2002 is a better mechanism for levying development contributions.

### CONCLUSION

We appreciate the opportunity to make this submission and wish to appear in person before the Select Committee to speak to our submission.

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## **ABOUT IPENZ**

The Institution of Professional Engineers New Zealand (IPENZ) is the lead national professional body representing the engineering profession in New Zealand. It has approximately 16,500 Members, including a cross-section from engineering students, to practising engineers, to senior Members in positions of responsibility in business. IPENZ is non-aligned and seeks to contribute to the community in matters of national interest giving a learned view on important issues, independent of any commercial interest.

## **ABOUT ACENZ**

The Association of Consulting Engineers of New Zealand (ACENZ) represents the consulting industry for engineering and related professionals that work in the built and natural environment. The organisation is approaching 200 member firms which represent about \$2 billion a year in combined turnover, and collectively employ in excess of 10,500 engineers, architects and supporting staff.

## **ABOUT WATER NEW ZEALAND**

Water New Zealand is a not-for-profit organisation that promotes and represents water professionals and organisations. It is the country's largest water industry body, providing leadership and support in the water sector through advocacy, collaboration and professional development. Members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies and scientists.

## **ABOUT CIVIL CONTRACTORS NEW ZEALAND**

Civil Contractors New Zealand is the national industry body representing the interests of over 400 contractors who carry out the country's general contracting and civil infrastructure construction and maintenance work. The civil construction sector carries out more than \$10 billion of work annually and employs in excess of 30,000 workers.