Submission

by

to the

Ministry for the Environment

on the

Discussion Document: Improving our Resource Management System

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IMPROVING OUR RESOURCE MANAGEMENT SYSTEM - SUBMISSION BY BUSINESSNZ[1]

1.0 INTRODUCTION

1.1 BusinessNZ welcomes the opportunity to make a submission to the Ministry for the Environment on its discussion document entitled 'Improving our Resource Management System', dated February 2013.

1.2 BusinessNZ considers that there are four integrated elements that all need to be delivered for a reform of the Resource Management Act (the 'Act') to be successful. These are:

a. scope (more careful consideration of what falls within the scope of the Act and its subsidiary plans);

b. more efficient planning and consenting (making 'the regulatory boat go faster');

c. compensation (a critical economic check and balance to prevent the arbitrary regulatory taking of private interests that are inconsistent with the purpose of the Act); and

d. an economic cost-benefit test (to ensure only changes seeking to alter the balance between public and private interests that are overall welfare enhancing, proceed).

1.3 BusinessNZ welcomes many of the proposed improvements to the planning and consenting processes. However, the reforms attempt to address only this element of the package. The absence of careful consideration of the other elements and their interface with planning and consenting processes will result in a failure to fully unlock the potential of New Zealand's productive capacity in a way that balances the various interests and delivers an overall increase in economic activity, while protecting the environment. It is also unlikely to substantially contribute to the Prime Minister's goal of making New Zealand "a magnet for investment".[2]

1.4 In failing to look more broadly for both the nature of the problems and solutions, the reform package almost entirely misses an opportunity to address the real underlying problems associated with the implementation of the Act – a lack of clarity over property rights and the associated inaction of the Crown (as principal) to adequately specify its expectations of the courts and the local authorities (its regulatory agents). This dual failure will severely hinder the ability of the packaged proposed to deliver real and enduring economic and environmental gains.

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[1] Background information on BusinessNZ is attached as Appendix One.

[2] Prime Minister's speech to the North Harbour Club, 25 January, 2013.

1.5 BusinessNZ addresses each of the four elements outlined above, in the following sections.

1.6 But first a note on process. This is the first major review of the Act since its passage into law in 1991. However, offering submitters 22 working days to make a submission while simultaneously running another consultation process on the emissions trading scheme demonstrates an almost complete disregard for the views of submitters and makes the Ministry for the Environment look as though one hand does not know what the other is doing. BusinessNZ expected better.

1.7 Due to the severe time constraint, BusinessNZ has focused only on the most important of the proposals and reserves to right to return to other issues not directly addressed in this submission.

2.0 THE SCOPE OF THE REVIEW: ONLY HALF OF A REVIEW WITHOUT LOOKING AT SECTION FIVE

2.1 Section five of the Act has been, for reasons unknown to BusinessNZ, determined to be outside of the scope of the review. This is a major failing of the review and will, in BusinessNZ's view, seriously constrain its potential benefits. While process concerns are often front-of-mind for business, BusinessNZ questions how the review can adequately address the following question posed in the consultation document, without looking first to the purpose statement of the Act:

> "a key underlying question is whether all these consents were actually necessary"[3]

2.2 Such a question tantalisingly raises the prospect that too many activities have come to be covered by the Act, and that work should be undertaken to limit the scope of the Act, but such promise quickly evaporates on further reading. Despite this disappointment much column space is given to the goals of greater certainty and predictability. Officials believe that this can be provided by high-quality resource management plans. This is only half the picture. The other half is the growing plan and rules-based gulf that now separates how the Act was intended to operate (the legitimate protection of the public interest in the environment) from its increasing use (via plans and

[3] A New Zealand Government discussion document entitled 'Improving our Resource Management System', dated February 2013, page 22.

rules) to reallocate private property rights[4] in order to achieve often opaque or highly dubious public goals.[5]

2.3 Decisions weighing up where the public and private interests lie in the natural and built environment are to a large extent determined by the framework set out in the Act. This distinction between public and private interests lies at the heart of the Act. Unfortunately, the Act has become a tool to increasingly extend the ambit of government regulation of private rights in the name of the public interest. This has involved the progressive blurring of the boundary between public and private interests in favour of determining the public interest by a process of constant legislative and judicial review and adjustment, and by regulatory creep by local authorities (the Crown's regulatory agent in regard to the implementation of the Act).

2.4 The practical effect of the Act (even if not its intended purpose) has therefore become one of reallocating private property rights into the public domain rather than acting as a tool which manages the effect of the use of private property.

2.5 This is consistent with the view of the TAG where it states:

> "If practice has shown us anything over the last 20 years, faint regard is being given by decision-makers to private property rights when imposing restrictions on them for the better public good."[6]

As a result, the implementation of the Act has become almost completely disconnected from the very being of its legislative origins – that is to navigate between the protection and use of natural and physical resources *that have been determined to be in the public interest.*

2.6 This is the very core of the business community's on-going dissatisfaction with the implementation of the Act despite numerous attempts to address its problems.[7] In particular, the absence of clarity about public and private interests is reflected in the Act's implementation becoming a quagmire of guesswork, opacity, complexity and cost which has only served to dampen and frustrate the

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[4] The term "private property rights" should not be confused as referring solely to ownership by private interests (as ownership can be held by either a public entity or a private citizen), nor does it only reflect the status of ownership, but can encompass a range of rights, such as use or management rights, and the responsibilities that accompany them.

[5] A number of relatively well-known examples of such an extension are set out on page 52 of the document entitled 'Report of the Minister for the Environment's Resource Management Act 1991 Principles Technical Advisory Group', dated February 2012. For example, 1.2 metre limits on heights of front fences and rules requiring lounge rooms to face the street.

[6] Report of the Minister for the Environment's Resource Management Act 1991 Principles Technical Advisory Group, dated February 2012, section 3.3.4, page 52.

[7] BusinessNZ understands that at least 20 legislative amendments have been made to the RMA since it was passed in 1991.

desires of business (and government) to progress developments that involve projects of low, or in some cases net positive, environmental impact. BusinessNZ predicts that this dissatisfaction will remain even if the Government makes its proposed changes.

2.7 In light of these concerns, BusinessNZ strongly urges officials to consider the following changes to section five of the Act.

> **5 Purpose**
>
> (1) The purpose of this Act is to promote the sustainable management of natural and physical resources where doing so is in the public interest, taking into account the protection of private property rights.
>
> (2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources while—
>
> (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
> (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
> ~~(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment~~

A Brief Explanation of the Proposed Amendments to Section Five

2.8 The objective of these suggested amendments is threefold:

a. to narrow the intent of the Act away from the open-ended regulation of all natural and physical resources back to the regulation of those that are considered to be in the public interest. This places the onus on the Crown and its regulatory agents to demonstrate that the regulation, contained in a plan or proposed for addition to a plan, is either in the public interest or will be in the public interest;

b. to ensure that there is an adequate recognition of the ability of the holders of private property rights to contribute to the sustainable management of the environment in a manner that is outside of the scope of the Act; and

c. to better reflect the Brundtland Report.[8] This report contains most elements of section 5(2) with the exception of 5(2)(c) and its emphasis on the need to avoid, remedy, mitigate. BusinessNZ considers that a more strategic focus on how effects are considered and managed, according to sustainable management principles:

   i. is more in line with the goals of the Brundtland Report;

[8] A United Nations Report of the World Commission on Environment and Development entitled 'Our Common Future', dated March 1987.

ii. allows a more targeted focus on environmental priorities and will facilitate better resource use and protection within local authorities; and
iii. is appropriate given the proposed changes to sections five, six and seven (for more on sections six and seven, see the following section).

2.9 An implication of this rebalancing between the public and private interests, and therefore what should be within the scope of the Act and what should not be, is that the purpose of this Act should provide a mechanism for addressing problems with private arrangements with respect to natural and physical resources that arise from those circumstances where there is a mismatch between marginal social costs and benefits and the marginal private costs and benefits. The Act should not otherwise apply to private arrangements, leaving other institutional arrangements (such as bargaining, low cost arbitration or the courts) to prevail on the basis that they are more likely than the status quo to deliver efficient outcomes.[9]

2.10 Further comments on the appropriate placement of the consideration of property rights in the Act are set out in the following section on more efficient planning and consenting.

2.11 The proposed changes are also intended to give practical meaning to a change in the onus away from non-development. In other words, the current onus is on environmental protection and for resource users/developers needing to prove that the effect of their activity is manageable (that is, can be avoided, remedied, or mitigated) before the use or development can proceed, rather than a presumption that the use or development can proceed unless the effects can be shown to be unmanageable.[10] BusinessNZ cannot conceive of any other practical means of effectively re-orientating this onus other than in the way outlined above.

2.12 As a general comment, the business community places much importance on a single overriding objective whose pursuit dictates how conflicts between subsidiary objectives should be traded-off, and relevant assessment criteria. A loosely defined purpose statement only serves, in BusinessNZ's view, to perpetuate the absence of clarity about what in practical terms the Act intends to do.

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[9] BusinessNZ does not believe that such alternative processes for issues that would fall outside of the Act need to be overly complex or costly (especially relative to the status quo). Nor does BusinessNZ believe that there would be a rush to use the courts as we prefer to believe that individuals make rational decisions based on an assessment of the costs and benefits of various courses of action, from bargaining between neighbours through to reliance on the courts.

[10] The alarm with which a number of groups responded on the announcement of the reform proposals by the Minister for the Environment indicates that these groups consider that rather than use and development, the Act is *appropriately* targeted at the protection end of the spectrum and that any changes will by definition shift the emphasis of the Act in the wrong direction.

2.13 This focus, on drawing a brighter line between the public and private interest, starts to frame the overall construction of a reform package that focuses on:

a. prioritising the planning and consenting process on to what is in the public interest;

b. how to accommodate not only where the boundary between public and private interests is set, but also any shifts in where that boundary is drawn; and

c. the disciplines necessary on the Crown and its regulatory agents to ensure high quality decisions are reached.

3.0 MORE EFFICIENT PLANNING AND CONSENTING

3.1 Process improvements are important to business and BusinessNZ generally welcomes the suggestions set out in the discussion document. But focusing on the planning and consenting processes without undertaking the more fundamental assessment of the purpose of the Act is akin to shuffling the deck chairs. And more importantly, failing to undertake a fundamental assessment gives rise to some risks with some of the proposals set out (most notably those relating to the diminution of appeals).

3.2 In this section of the submission, BusinessNZ canvasses issues associated with:

a. sections six and seven;

b. clarifying and extending central government powers;

c. narrowed appeals;

d. the new proposed 10 day time limit;

e. a Crown-established body to process consents; and

f. preventing land-banking.

Sections Six and Seven

3.3 The discussion document sets out a preferred version of sections six and seven of the Act. This version is based on the work of the RMA Principles Technical Advisory Group (the 'TAG') undertaken in 2011. The crux of the TAG's findings related to how the courts have, to date, exercised an 'overall broad judgement' in their consideration of sections six and seven. This has meant that instead of the intended 'environmental bottom-lines' approach (where issues where meant to

have been clearly identified as in the public interest and warranting regulation in the public interest), the courts have in the absence of these bottom-lines read sections six and seven according to their relevance to the particular issue being determined.

3.4 The evolution of the courts' interpretation of sections six and seven has meant that all matters are considered in view of their overall impact on whether the purpose of the Act (section five) is achieved. However, despite their obvious interconnectedness, the TAG was prevented from considering section five.

3.5 The practical effect of this – despite the proposed changes to sections six and seven – is to entrench the absence of any clear boundary between the public and private interest in the sustainable management of the environment, and to allow the courts and local authorities the unfettered ability (largely unconstrained by direction from the Crown, as principal) to trammel private property rights in order to achieve often opaque or highly dubious public goals. As a result, the proposed changes will not address the underlying problem that business faces with the implementation of the Act.

3.6 In terms of drafting of these sections, BusinessNZ has set out below some suggested improvements. In light of the view outlined immediately above, these improvements need to be read in conjunction with the amendments outlined above, to section five. In the absence of changes to section five, BusinessNZ considers that any changes to sections six and seven will, from a business perspective, be largely cosmetic.

6 Principles

(1) In making the overall broad judgement to achieve the purpose of this Act, all persons exercising functions and powers under it in relation to managing the use, development and protection of natural and physical resources shall recognise and provide for the following matters:

(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;

(b) the protection of specified outstanding natural features and landscapes from inappropriate subdivision, use and development;

(c) the protection of specified areas of significant indigenous vegetation and significant habitats of indigenous fauna;

(d) the value of public access to and along, the coastal marine area, wetlands, lakes and rivers;

(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, taonga species and other taonga including kaitiakitanga;

(f) the protection of protected customary rights;

(g) the benefits of the efficient use and development of natural and physical resources;

(h) the importance and value of historic heritage;

(i) the resilience of natural and physical resources to the potential impacts of climate change;

(j) the benefits of efficient energy use and renewable energy generation;

(k) the effective functioning of the built environment including the availability of land for urban expansion, use and development;

~~(l) the risk and impacts of natural hazards;~~

(m) the efficient provision of vertical and horizontal infrastructure;

(n) areas of significant aquatic habitats, including trout and salmon;

(2) For the avoidance of doubt section 6(1) above has no internal hierarchy.

7 Methods

All persons performing functions and exercising powers under this Act must:

(1) Use best endeavours to ensure timely, efficient and cost-effective resource management processes;

(2) in the case of policy statements and plans:

(a) include only those matters within scope of this Act;
(b) use concise and plain language; and
(c) avoid repetition;

(3) Have regard to any voluntary form of environmental compensation, off-setting or similar measure ~~which is not encompassed by section 5(2)(c)~~;

(4) Promote collaboration between local authorities on common resource management issues~~; and~~

~~(5) Achieve an appropriate balance between public and private interests in the use of land.~~

A Brief Explanation of the Proposed Amendments to Sections Six and Seven

3.7 In the context of BusinessNZ's proposed amendments to section five, BusinessNZ considers that the formulation of sections six and seven above would reinforce that decision-makers must have regard to a balance of factors and priorities for the sustainable management of the environment in the public interest.

3.8 With regard to the above amendments, the objectives of a couple of the specific amendments are to:

a. avoid the occurrence of mischievous action aimed at preventing activities from happening based on their claimed impact on climate change. The Climate Change Response Act 2008 puts in place a regime whereby in the public interest, businesses are required to internalise the cost of their emissions. Given this, the Act should not be used as a vehicle to prevent emitting activities unless the Government has otherwise determined that the activity is not in the public interest (such as in, for example, a National Policy Statement). In the absence of such a statement, the Act should be refocused (as proposed) on to issues associated with adaptation; and

b. as can be seen from the comments above, the consideration of property rights is fundamental to the successful implementation of the Act and needs to be included in the purpose statement. Including the consideration of property rights in section seven follows the TAGs formulation. Its inclusion here seems almost as if it were an-after thought ("make sure you use concise language, and oh by the way, think about property rights").

While we agree with the view espoused by the TAG, which is:

> "We consider that apart from s.85, the RMA is devoid of reference to the fundamental principle of private property rights" ….,[11]

we do not consider that the TAG has sufficiently extended its thinking on the issue of property-rights. Indeed, while on the one hand the TAG proposes to include a reference to property rights in section seven, ostensibly to enable people and communities to be free to manage the use, development and protection of natural and physical resources:

> " …. without the constraint of unnecessary, ineptly drawn or ill-targeted regulations" …..,[12]

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[11] TAG report, *ibid*, section 3.3.4, page 51.

[12] TAG report, *op cit*, section 4.5.5, page 90.

on the other hand, it freely admits in the context of a litany of examples of over-regulation in the Acts plans on page 52 of its report, that:

> "We would not expect the introduction of our proposed s.7(e) to prevent all future examples of such poor practice/abuse of the system."[13]

This acknowledgement cuts to the very heart of the failure not to consider its proposed changes in sections six and seven in the context of an amended section five.

3.9 An explanation of the proposed deletion of section 6(1)(l), the risk and impacts of natural hazards, is set out in a separate section on page 17 below.

Clarifying and Extending Central Government Powers

3.10 BusinessNZ supports the proposed changes set out in the discussion document. In BusinessNZ's view, these changes, which are an extension of powers that already exist in the Act, simply reflect the:

a. fact that the Act as originally intended, sought to regulate sustainable management of the environment in the public interest; and

b. recognition that the Crown is best placed to determine where the boundary between the public and private interest lies (as it has already done in other areas such as fisheries management, air quality and carbon emissions).

3.11 A part of the failure of the 'overall broad judgement' approach has been the dereliction, by the government, of its duty in favour of its regulatory agent and the courts to determine what is in the public interest. The proposals set out in this section go some small way towards rectifying this.

3.12 In particular, BusinessNZ considers that these new proposals should go some way towards helping address the evident principal-agent problem that exists between the Crown and local authorities by providing local authorities with a clearer outline of the Crown's expectations. Such changes should not be perceived as some sort of power-grab by central government, rather a desire on the part of the government to more clearly specify the terms of the arrangement by which it delegates its regulatory powers. Done correctly, and with care, the outcome should be overall welfare enhancing.

3.13 In terms of a specific comment about improving the use and effectiveness of National Policy Statements and National

[13] TAG Report, *op cit*, section 3.3.4, page 53.

Environmental Standards, BusinessNZ supports the proposals set out. However, consistent with BusinessNZ's view about regulating only when clearly in the public interest, it is important that both of these tools are focused on those issues which are unambiguously in the public interest, and where there is a clear mismatch between marginal social costs and benefits and marginal private costs and benefits.

The New Proposed 10 day Consenting Time Limit

3.14 This proposal is the closest that the package gets to acknowledging that the boundaries or scope of the Act have become so stretched, that it is no longer meaningful to claim that the Act is operating only in the public interest. As noted above, it is extremely difficult, in BusinessNZ's view, to claim that preventing a residential property situated between two existing businesses from housing a business, imposing a fence height, requiring certain residential rooms to be placed in defined places, or imposing substantial costs on to a business to erect a verandah or storage shed, is in the public interest for the sustainable management of the environment. The 10-day consenting time limit proposal is a somewhat timid attempt to return to a focus on the sustainable management of the environment in the public interest.

3.15 But officials' inability to go back to first principles and test whether this proposal is consistent with best practice regulation of the environment in the public interest, and therefore better or worse than not being caught within the Act at all, is somewhat surprising.

3.16 Instead, whatever the question, this analytical inability seems to predestine the answer to be a new consenting process of some description. At last count, this will mean more than half a dozen current or proposed distinct processes for various types of application.[14] When presenting to the Local Government and Environment Select Committee on its Resource Management Reform Bill, BusinessNZ noted the strong possibility of process confusion and/or fatigue.

3.17 While BusinessNZ considers that the proposal for a shorter consenting timeframe seems instinctively appealing, it is not without its risks, with the three most obvious ones being the risk of:

a. local authorities delivering bad decisions sooner. This risk is heightened even further when considered in combination with the removal of *de novo* appeal rights (for more on this risk, see the following section);

[14] These being the bespoke Auckland and Canterbury processes, and processes for projects of national significance, projects of regional significance, medium-sized projects, notified and non-notified projects, and now a new ten day process along with a new proposed Crown-body consenting process.

b. the retention, by local authorities of residual legal risk associated with the consenting process with all of the attendant, undesirable (but completely understandable) bureaucratic behaviour (and cost) associated with these incentives; and

c. the on-going inability of local authorities to focus on those matters of strategic environmental importance, and therefore to grow their capability to address those matters of importance.

3.18 In other words, BusinessNZ considers that simply mandating a shorter consenting time is not the right solution.

3.19 Instead, BusinessNZ considers that it fails to ask two obvious fundamental questions, these being:

a. how is the regulation of the activities to which this shortened process would apply in the public interest for the sustainable management of the environment? The discussion document does, after all, acknowledge that the activities to which this process would apply are the most straight-forward, and by definition, also likely to have only minor impact on the environment; and

b. why should local authorities have any role whatsoever in this private transaction? It is hard for BusinessNZ to conceive how inserting a local authority into the midst of what should be a private conversation between business and/or residential neighbours is likely to be the most efficient transaction or in the public interest for the sustainable management of the environment.

3.20 However, to answer these questions, officials must first acknowledge that the scope of the Act has become over-extended to the point where it now encompasses private transactions that have no material impact on the environment.

Limiting Appeal Rights (or the Risk of getting Bad Decisions Sooner)

3.21 A number of the proposals outlined in the discussion document entail the constricting of appeal rights (for example, proposals 3.2.3 and 3.3.6). In the absence of a significant realignment between what is regulated in the public and private interest (as proposed by BusinessNZ above), and the ability to grow and develop local authority capability, BusinessNZ has substantial concerns about this proposal to limit appeal rights from *de novo* to merit by way of rehearing.

3.22 The almost exclusive focus on the planning and consenting process improvements, without addressing the fundamental underlying issues associated with the blurred boundaries between public and private interests, and the attendant agency problem, simply heightens the risk of getting bad decisions sooner. This risk heightens the need to have strong rather than diminished appeal rights.

3.23 BusinessNZ acknowledges the desire to incentivise communities, individuals and businesses to participate in the early stages of the plan development process. However, the relationship between whether or not one participates in the plan development process and the right (or not) to have a re-hearing is not linear. Neither perfect information (nor foresight) can be assumed as circumstances, and therefore motives as to early participation or not, are not static, but constantly evolving.

3.24 There is also a strongly held view that merit appeal/review rights are essential in societies that fully respect fundamental rights. They can be seen as a safeguard or safety valve.

3.25 There are a number of important reasons for continuing to promote merit appeal rights, not only in respect to processes under the Act but in respect to many other legislative and regulatory powers across a whole range of Acts of Parliament.

3.26 The reasons for supporting merit appeal rights are outlined below but are not necessarily listed in any order of importance. Every reason is important in its own right.

a. the prospect of scrutiny (appeals) will likely encourage primary decision-makers to make better and more careful decisions in the first place (in other words, it is likely to assist in the alignment of objectives between principal and agent);

b. appeal decisions can often lead to better and higher quality outcomes given a 'fresh look' at the issues;[15]

c. some regulators have very wide powers that leave them, in effect, the rule makers. It is simply wrong that they should act as final judge and jury on the application of their own rules;

d. the risks of excessive individual influence on decisions are reduced by the right to take a decision to an outside body;

e. there is more confidence in the integrity of the law, and support for it, when there is at least one full right of appeal;

f. the parties crystallise the key issues better on their second run through a case;

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[15] An excellent report by Russell McVeagh – "A better approach to improving the RMA process" (dated 21 March 2012) clearly outlines the benefits for being able to take appeals to the Environment Court in respect to a number of cases:

> "The quality of outcome achieved through the appeal process at the Environment Court level was clearly superior to the outcome at the local authority level…[and]… clearly demonstrates the benefit of a thorough and robust appeal process for setting policy frameworks over highly significant resources to ensure future social and economic wellbeing."

g. the more elevated view of the appellate court makes it easier to extract principles of general application, and decisions are more likely to be stated in terms which allow people to predict how the law will work in future; and

h. appeal rights provide protection for property rights and thus create the conditions for investor confidence and economic growth.

3.27 These are all important issues. Inferior decisions generate uncertainty. Poor decisions force businesses into expensive second best 'work-arounds' to cope with the risk of uncertainty or arbitrary interventions. Poor precedents threaten investment and economic growth even though people may not be able to measure or even recognise the source of such costs. The difference between high quality predictable decisions and low quality ad-hoc decisions can be enormous for a small economy like New Zealand's.

3.28 The right to merit reviews is currently available in New Zealand from the decisions of many tribunals, authorities and other decision-making bodies. Any restriction on appeal rights is relatively recent. Amendments to the Commerce Act 1986 (in 2001) brought with them increased restriction on appeal rights.

3.29 Phase 1 of the Act's reform, which occurred in 2009, initially proposed to restrict appeals on local authority plans to points of law unless an appellant successfully applied for leave from the Environment Court to appeal on the merits. The grounds for seeking leave to appeal a plan on merits were restricted to issues such as impacts on property rights.

3.30 Having heard from many parties opposed to this concept, the Select Committee recommended deleting the relevant clauses stating:

> "On balance, we are not satisfied that the proposals, in their current form, will work as intended and deliver fairness and natural justice…"

3.31 More recently, restrictions on appeal rights have been promoted by the Auckland Council for its new unitary plan.

3.32 Internationally, however, the role of merit appeal rights is firmly understood and is promoted strongly by the Organisation for Economic Co-operation and Development (the 'OECD') in their various documents relating to improving the quality of regulatory decision-making.

3.33 The *OECD Guiding Principles for Regulatory Quality and Performance* (2005) call on those charged with regulatory reform to:

> "Ensure that administrative procedures for applying regulations and regulatory decisions are transparent, non-discriminatory, contain an appeal process against individual actions, and do not unduly delay

> business decisions; ensure that efficient appeals procedures are in place."[16]

3.34 In many jurisdictions, rights of appeal against the discretionary decisions of government planning agencies have been established to allow those affected by planning decisions to have the decisions reviewed.

3.35 Merit-based appeals against government planning decisions are not universal, but it is understood they exist in many common law countries including England and Wales, Canada (Ontario), Hong Kong, Australia, and of course, New Zealand.

3.36 The Commonwealth of Australia's Administrative Review Council in a report stated:

> The Council prefers a broad approach to the identification of merit reviewable decisions. If an administrative decision is likely to have an effect on the interests of any person, in the absence of good reason, that decision should ordinarily be open to be reviewed on the merits.
>
> If a more restrictive approach is adopted, there is a risk of denying an opportunity for review to someone whose interests have been adversely affected by the decision. Further, there is a risk of losing the broader and beneficial effects that merit review is intended to have on the overall quality of government decision-making.
>
> The Council's approach is intended to be sufficiently broad to include decisions that affect intellectual and spiritual interests, and not merely, property, financial or physical interests." [17]

3.37 Given the place of merit appeals (reviews) in New Zealand's current legal framework, and the international support provided through credible international organisations such as the OECD, any moves to restrict appeal rights should be seriously considered before pre-emptive action is taken. The importance of this conclusion is heightened by the prospect of the greater use of collaborative processes under the Act.

A New Crown-established Board or Entity to Process Consents

3.38 As noted above, BusinessNZ is broadly supportive of the idea of a greater ability for government (as principal) to direct projects that are deemed to be significant for strategic reasons (such as housing). However, BusinessNZ has doubts as to the need for, or the efficacy of yet another new consenting process, or worse still, a new entity.

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[16] Section Three, page five.

[17] Commonwealth of Australia, Administrative Review Council – "What decisions should be subject to merit review?", dated 7 April 2011, page 3,

3.39 Fundamentally, BusinessNZ is unclear why a new process or entity is required. In other words, BusinessNZ is unsure what a new process or entity could achieve that one of the many existing or proposed consenting processes and entities (such as the Environmental Protection Agency) could not already deliver.

3.40 It is possible the objective is to increase competitive pressure on local authorities. If this is the case, BusinessNZ considers that quasi-competitive benefits can be delivered by the different processes already (or in the case of the Resource Management Reform Bill, about to be put) in place.

3.41 Nor is it likely that the establishment of a new entity will address the series of fundamental problems raised in this submission. For example, a new entity is unlikely to resolve the:

a. problem of regulatory taking, or the on-going leakage of property rights. It is simply likely to see the pattern of regulatory taking transferred to the new entity. This needs a more fundamental change to section five as noted above;

b. incentives, and behaviours associated with the retention of residual legal risks associated with consenting decisions; and

c. agency problem. Regardless of a new entity, the extreme difficulty of writing complete contracts and aligning the interests of the agent with the principal will remain. In fact the introduction of a new entity could exacerbate the agency problems.[18]

3.42 It is also worthwhile noting that according to the proposal the new board or entity would be reviewed after a set period of time to determine if it was still required. This reinforces the desirability that the agency should be the EPA, and not some other new bespoke agency, given the adverse incentives such an in-built review would create.

3.43 Finally, BusinessNZ considers that many of the benefits achievable can be achieved by ensuring that the Crown's regulatory agents face strong incentives and accountability (via monitoring) to deliver high quality decisions in the public interest. Competition from other local authorities for the location of new businesses will also assist in this regard.

Preventing Land-Banking

3.44 The majority of the proposals under the broad heading of more efficient planning and consenting will deliver improvements in economic activity by assisting applicants to better understand and comply with the

[18] A requirement that local authorities contract out their in-house delivery of consenting services to third parties is also likely to suffer from a similar range of problems.

requirements of the Act. However, this proposal is quite simply incongruous, being so blunt in its potential application.

3.45 Land-banking is presumably a profitable activity because holding costs (including the opportunity costs) are less than the capital gain realised on the land during the period over which it is held. Land-banking could be a legitimate response to a number of drivers all broadly related to determining the appropriate level of city density - for example, the impact of improvements in transport infrastructure, technological improvements that enable new patterns of employment decentralisation, and increasing household incomes.

3.46 It is also possible that public zoning decisions will impact on the decisions of property developers by constraining supply. The Government has recently released a report on Auckland which suggests that available land for development will fall well short of what is required to meet future demand.[19]

3.47 BusinessNZ considers that officials need to more carefully consider why developers land-bank, or in other words, determine more carefully what the underlying economic incentives are that so-called 'land-bankers' face that incentivises them to act in that manner. BusinessNZ thinks it unlikely that a power to prevent land-banking will address these underlying incentives, and as a result such a proposal is more likely than less to deliver unintended outcomes (such as reducing the level of greenfield subdivisions as land-holding becomes more risky).

3.48 Until a clearer case is made concerning the cause of the market failure (as opposed to the symptom), BusinessNZ cannot support any moves to constrain or prevent land-banking in such an unrefined manner.

4.0 'BETTER' MANAGEMENT OF NATURAL HAZARDS

4.1 Proposal 4 entitled 'Better Natural Hazard Management' considers that:

a. natural hazards could be added to the principles of the Act; and

b. the Government proposes to amend section 106 of the Act to ensure all natural hazards can be appropriately considered in both sub-divisions and other land-use consent conditions.

4.2 As a general principle, individuals and businesses should bear the full costs associated with their behaviour (i.e. costs should be internalised) or individuals and businesses will over-consume resources if they can shift costs on to third parties. Management of risk - in this case the risk

[19] Ministry of Business, Innovation and Employment report entitled 'Housing Affordability: Residential Land Available in Auckland', dated 28 February, 2013.

of hazards - is no different in this respect. If individuals are to make rational decisions in respect to hazards, they should ideally bear the associated costs (and benefits). However, it is accepted that just about every activity in life has some externalities (either positive or negative) and it is impossible in most respects to totally internalise costs (and benefits) at least without great cost. The key is to ensure that costs and benefits are internalised to a reasonable degree.

4.3 With greater and more precise information, local authorities will be able to more accurately determine the nature of the risk and whether or not it can be managed by individuals and businesses. In this respect, measures to manage hazards need to the better targeted at those clearly identified instances where the costs and benefits are not internalised.

4.4 Given the above, it is important that individuals and businesses are fully aware of the risks associated with their actions (or non-actions) to ensure that they make informed decisions in respect to the management of risk. This requires sound, scientifically-based, information in order to successfully manage known hazards and to ensure that individuals and businesses do not simply pass on the costs associated with (in hindsight) bad decisions which are ultimately paid for by the wider community (ratepayers generally).

4.5 Notwithstanding the above, proposal 4 would effectively impose further hazard management controls (i.e. more restrictions on how, when and why individuals and businesses can use resources). There is little, if any, identification of the potential costs involved or recognition of the fact that restricting land use will have significant implications on established property rights. Neither is mention made of the desirability of compensating individuals for loss of value associated with the taking of property rights (for more on this issue see section five below), nor any discussion of why local authorities are presumed to be in a better position to manage risk than the private sector.

4.6 Given that markets are generally faster at self-correcting than government intervention, the onus of proof must be on government to prove beyond doubt that the benefits of intervention exceed the costs, including unintended costs associated with regulation (such as cost escalation).

4.7 Without sound information based on known science, there will be a tendency for local authorities to take an unduly cautious approach to the management of hazards which may have unintended consequences, including restricting the ability of individuals and firms to engage in productive activity. This is entirely natural given the incentives facing local authorities, particularly if the liability for adverse outcomes falls back on local authorities as has been the case in respect to a number of activities. A number of examples to date (some of which are outlined below) would suggest that local authorities are

taking a much more precautionary approach to the management of risk and hazards, mainly because of the fact that at the end of the day, if anything goes wrong, individuals and businesses are inclined to point the finger at local authorities for allowing them to undertake certain activities. Hence compensation for loss (or remedial action) tends to get placed on local authorities (ratepayers) rather than on the individuals and businesses making particular decisions.

4.8 It should be noted that regulators generally have strong incentives to minimise their own risk by imposing higher standards than might arguably be justified. Because regulators do not bear the costs associated with their decisions (costs will ultimately be passed on to consumers), they may well over-regulate rather than be aware of, or adequately consider, the cost/quality trade-offs consumers are willing to make. Given that each individual is unique, individuals will generally have different risk profiles, with some willing to pay considerable amounts of money to minimise risk while others will want to invest little in reducing real or perceived risk.

4.9 Proposal 4 implies that consumers and companies should not be allowed to manage risk and that regulation is a more appropriate mechanism for providing certainty of outcome. While it is possible that regulation may provide for greater certainty (though not necessarily of outcome), that certainty is likely to come at a considerable cost, which will ultimately flow through to consumers.

4.10 The economic perspective of risk stresses two ideas:

a. more resources, including time and money, are needed to reduce risk; and

b. people (through their actions) have a desired level of risk that is well short of zero, because of what they must give up in terms of increased cost or of other desirable considerations.

4.11 It is important to understand up-front that there is an optimal amount of resources which should be utilised in reducing risk in respect to natural hazards, just as there is an optimal amount of resources that should be spent on crime prevention, health interventions, etc. The crucial and undeniable fact is that resources are limited and risk cannot be completely eliminated or, if at all, not without great cost. While it may be possible to reduce risk, beyond a certain point the marginal cost of taking action becomes progressively higher, while the potential returns from taking action reduce. Therefore it pays for companies and individuals to invest in risk minimisation strategies only up to the point at which the marginal cost equals the marginal benefit of taking action

4.12 It is not a case of eliminating risk, to do so would be to effectively close down all productive activity.

4.13 Often market-based mechanisms for determining risk will be far more effective than local authority-controlled outcomes and will fairly reflect the actual risk associated with hazards. For example, in a competitive insurance market, individuals and businesses seek competitive quotes in dealing with hazardous situations. In some cases insurers may be unwilling to insure a building at all if the situation is considered too hazardous. This approach naturally incentivises people to assess the costs and benefits of building in areas where natural hazards have been identified.

4.14 There are a number of instances in the hazard management area where local government controls will not only impact on the property rights of existing landowners but will seriously restrict available land for housing development, increasing the cost of available housing and as a result, rental prices. But it doesn't end there, as concerns about housing prices will ultimately be reflected in higher interest rates as the Reserve Bank attempts to ensure that inflation remains within its target band of one to three percent.

4.15 Residents in the Kapiti Coast District Council area are still fighting proposals to place new "hazard lines" (from the Lim report) on about 1800 properties along the coast, sparking fears that the lines will affect valuations and insurance.

4.16 These proposals, if implemented, will not only seriously impact the value of the land in question due to questionable analysis, but will also place restrictions on the ability of affected residents to expand beyond their current property footprint.

4.17 Putting aside the debate as to whether the erosion hazard identified by the Council is within the reasonable bounds of probability, even if the erosion eventuates, the risks will largely be borne by individuals whose residences are on or close to the foreshore. Arguably, the 'risks' of further erosion will affect these individuals in the sense that their property values may decline and/or they will no longer be able to secure insurance, at least not without greater cost. It is hard to see how such an outcome (even if unlikely, according to some sources) would involve adverse effects on external parties of such a magnitude as to justify the Council's draconian response.

4.18 Notwithstanding the above, in order for individuals and businesses to make rational decisions in respect to risk and hazards they need to have sound information in order to assess risk, and how best to manage that risk. Incomplete or sub-standard information is likely to result in sub-optimal decision-making, by individuals, businesses, and insurance companies.

4.19 The nature of insurance is to price insurance according to risk and to pool risk within similar risk categories. In order for insurance markets

to operate effectively, it is important that the nature of any risk is well understood so that it can be priced accordingly.

4.20 There is no reason why local authorities should be unnecessarily concerned about hazard issues in respect to land use provided the externalities associated with any adverse event will be internalised as much as possible (e.g. the parties involved in building on flood plains, erosion areas or whatever are responsible for any adverse impacts associated with their behaviour).

4.21 This general principle has been upheld in a recent decision of the Environment Court where essentially the property-owners wished to build a house on land which could be prone to flooding. The view of the court was that:

> "We have thought carefully about the way in which Mr and Mrs Holt have said they understand and will accept the risk of flooding of their property at 96 Stornoway Street, Karitane. We do not believe they are being foolhardy in proposing to build and live in a house on the property, but have assessed the probabilities rationally. There comes a point where a consent authority should not be paternalistic (at least not under the RMA) but leave people to be responsible for themselves, provided that does not place the moral hazard of things going wrong on other people."[20]

4.22 In this case, a private zoning tool (as opposed to public zoning) of a covenant was used by the Holts as an efficient means to take into account all the costs and benefits in order to maximise their own gain. BusinessNZ considers that the use of covenants in regard to the management of natural hazards should have wider application.

4.23 BusinessNZ considers that the discussion document has provided no solid grounds for increasing regulation in respect to land use and therefore is opposed to the proposal. Given that the costs and benefits of land use are largely internalised to those utilising the land, the case for an increased derogation of private property rights via increased controls is weak, and will, as outlined above, have unintended consequences, particularly adding to land and housing costs which will ultimately be reflected in reduced economic growth, not to mention reduced housing affordability.

4.24 Notwithstanding the above, the importance of having sound information to assess risk and manage hazard is fundamental. With greater and more precise information, local authorities will be able to more accurately determine the nature of the risk and whether or not it can be managed by individuals and businesses.

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[20] Judge Jackson and Commissioner Manning in *Otago Regional Council* v *Dunedin City Council and BS and RG Holt* [2010] NZEnvC 120, page 4.

4.25 Any role of government and local authorities in the management of risk and hazards needs to be clearly targeted at those issues clearly identified where the costs and benefits are not internalised, like a massive tsunami. Many current examples, as outlined above do not meet this test.

4.26. IAG New Zealand Ltd (a member of BusinessNZ's Major Companies Group) does not support the overall recommendation or some of the underlying views expressed in this section on Natural Hazards. To that end, IAG New Zealand Ltd has made a separate submission on the discussion document.

5.0 A COMPENSATION REGIME FOR REGULATORY TAKINGS

5.1 This is the third element of four needed to deliver a comprehensive and well-integrated reform package.

5.2 There is currently no allowance, other than for some specific instances, for the payment of compensation under the Act in recompense for regulatory takings (or a reduction in private property rights in the public interest). This is a substantial flaw in the Act that serves to depress economic activity.[21]

5.3 The persistent and on-going departure from the principles of consent to the diminution of private interests in the name of the public interest, and compensation when this occurs, have resulted in an enduring and deep-seated dissatisfaction among the business community with the implementation of the Act.

5.4 The TAG's conclusion regarding the likely ineffectiveness of its solution with regard to its inability to prevent decisions being taken under the Act that negatively impact on private property rights (quoted above) and its failure to appropriately extend its thinking on the issue of property-rights might be put down to its view of compensation, set out as follows:

> "It is clear that private interests can bear the costs of public regulation, with outstanding natural landscape areas and metropolitan urban limits being high profile RMA examples. Sections 85 and 185 of the RMA recognise, for limited purposes, the concept of a regulatory taking. These sections recognise that a district plan or a designation authorising public works may prevent the reasonable use of an owner's land or estate in land. *We consider this appropriate.*"[22]
>
> [emphasis added]

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[21] If considering this statement in demand and supply terms, a zero price on regulation is always going to mean that the demand for regulations will be high while the voluntary supply of property rights in return will be very low.

[22] TAG report, ibid, section 3.4.4, page 51.

5.5 Put plainly, BusinessNZ does not. Regulatory taking should not be legislatively condoned. Instead, BusinessNZ believes that core to the issue of property rights is the acknowledgement of the right to compensation. As a general presumption, property rights should not be diminished without compensation. This is a long-held view. BusinessNZ considers the presumption of compensation to be a vital economic system check and balance.

5.6 The need to compensate for regulatory takings is hardly a new or novel conclusion in public policy terms. Over recent years the Crown, in the process of determining to regulate private property rights in the public interest, has accompanied that regulation with compensation. This has occurred most notably in the areas of carbon emissions and fisheries management.

5.7 The public policy principle is no different in the case of the Act, though its application may be more complex.[23] BusinessNZ's view is that the principle itself is fairly straight-forward – that is:

> "If the public want something new to be in the public interest and regulated by the Act because they will benefit from it, then the public should pay for it."

5.8 This principle recognises that local democracy and the ability for local communities to make choices relevant to their community is important, just that such choices are not costless.

5.9 Therefore, BusinessNZ considers that the Act's provisions regarding compensation where property is taken, or its use or value is restricted, require strengthening (in the case of section 85, this means the *reversal* of the current presumption that there be no compensation). As it stands this is the only relief, and even in this case, it is an exceedingly high threshold of relief being available only if the provision or proposed provision would render that interest in land incapable of reasonable use.

5.10 We understand that officials consider such a proposal to be too complex or costly to administer or act as a hand-brake on the Crown's ability (and the ability of its regulatory agents) to regulate in the public interest. While valid concerns, none bear the weight of closer scrutiny. For example:

a. the principle, in light of its proposed emphasis on *new* takings, would not apply to existing rules, but only to new ones that come into force after the Act has been amended (indeed, in order to provide additional advanced warning of its application, it could come

[23] Though having been involved in the design and implementation of the compensation regime under the NZETS, this claim is, admittedly, a finely balanced judgement call.

into force at some specified date after the amendment Act has been passed into law);

b. private property rights are not considered as static, but rather they can and do evolve and it is not considered that they would become static with the requirement to pay compensation – compensation is needed as a check and balance on the pace and speed of this evolution – and against the unfettered use by regulatory bodies of their coercive powers;

c. BusinessNZ considers it implausible that the process used (presumably some low cost adjudicative process, or if necessary, the courts) would become clogged up with cases considering claims for compensation, for the following reasons:

   i. BusinessNZ would expect local authorities to take more care when regulating private interests in the public interest and so the necessity for use of such a process could be expected to be low, perhaps based initially on some test cases;
   ii. claims for compensation would need to be based on more than the assertion that land-use has been impaired, but on evidence sufficient to support the claim that the land-use was going to change; and
   iii. the claims process would not be costless, and an assessment would need to be made by both parties about the value of the compensation being sought, the likelihood of gaining (or paying) compensation and the cost of participating in the claims process. Rules such as requiring the losing party to pay the costs of the other would contribute to getting the incentives to claiming compensation (or opposing the claim) right; and

d. many countries with written constitutions that formally protect property rights (such as the United States) are commonly known for their dynamism and flexibility. In general, they do not suffer from a problem of unduly 'frozen' property rights or a deficit of state regulation. Indeed it is generally accepted that the opposite problem, of ill-justified regulatory burdens is the case, with organisations such as the OECD focusing its regulatory work on that issue.

5.11 Finally, BusinessNZ recognises that in some cases, the transaction costs associated with finding the 'winners' and 'losers' associated with the regulatory taking may be disproportionately high. In these cases, the payment of compensation may be impractical. This reinforces the importance of the need to be able rely on sound process (including robust decision making requirements) and appeal rights. This segues neatly into the fourth of the four key elements to a successful reform of the Act.

6.0 GETTING MORE ROBUST DECISIONS: AN ECONOMIC COST-BENEFIT TEST

6.1 How do we establish what is the public interest in the sustainable management of the environment? Ultimately, this is about good regulation making.

6.2 BusinessNZ's approach to regulatory decision-making is fairly straight-forward and can be summarised by the following statement:

> All decisions taken in the public interest - regardless of who takes them - should be welfare enhancing.

6.3 In broad terms (albeit fairly loosely applied in practice[24]), this is the test faced by the Crown when it makes new regulations. In BusinessNZ's view, there appears to be no good reason why the Crown's regulatory agents (local authorities) should not face the same or similar disciplines on the implementation of their regulatory powers. Core to these disciplines are the requirements to complete Regulatory Impact Statements and the need to undertake economic cost-benefit analyses.

6.4 In the context of the Act, this falls to section 32 (the consideration of alternatives, benefits, and costs). However, it is widely recognised that the application of this section as an economic cost-benefit test has been patchy at best, and that it has generally failed as an attempt at ensuring the delivery of outcomes that produce a net public benefit (if, in fact, it was ever intended to do this).

6.5 Expanded requirements for section 32 reports have been proposed in the Resource Management Reform Bill currently before the Local Government and Environment Select Committee. However, BusinessNZ does not believe that the amendments proposed are appropriate to the task as in the context of the new proposed reforms it will fall to the requirements of section 32 to be at the very heart of ensuring high quality planning and consenting decisions in the public interest.

6.6 This is reinforced by the number of public statements made by some groups in light of the release by the Minster for the Environment of the discussion document. These statements had headlines such as "RMA Onslaught Must Stop", "Proposed RMA Changes Deeply Troubling", and "RMA Proposals Promote More Resource Exploitation".

6.7 Statements about needing an appropriate balance of public and private rights, and about the need to make trade-offs between the interests of parties seem to pit the environment and environmental interests

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[24] Hence BusinessNZ's strong support for a comprehensive and meaningful Regulatory Responsibility Act, as opposed to the substantially watered down version currently being considered by the Government.

against the economy and economic interests. This need not be the case.

6.8 Everything society does involves making complex trade-offs, but good decision making processes incorporate all known information about environmental and economic costs and benefits, and broader social and cultural factors, and weighs up an overall decision that achieves an optimal mix. This means attempting to capture all benefits and costs (including the costs of any compensation needed to be paid) regardless of to whom they accrue.

6.9 In this context, section 32 is about making informed decisions in the public interest rather than decisions that put at risk one objective for the attainment of another. Making it more closely mirror the regulatory rigour of the public sector regulatory impact statements and economic cost-benefit analysis will place an important discipline on local authorities to be assured that they are only regulating in the public interest.

6.10 BusinessNZ considers that the provision of improved section 32 reports:

a. will go some way towards helping address the principal-agent problem that exists between elected councillors and their staff – by providing councillors with a richer source of information on which to base their decisions; and

b. should be determinative insofar as proposals to regulate proceed or not. Local authorities should not be allowed to proceed with new proposals regardless of the extent to which they may be considered to be in the public benefit if the evaluation report shows that the proposal demonstrates a net public cost (including the cost of any compensation). This is a necessary check and balance that will ensure that only those proposals that clearly demonstrate a net public benefit proceed and also help drive the development of more sophisticated evaluation reports.

6.11 Therefore, in light of the above, BusinessNZ urges officials to 'double-back' to section 32 as a vital component in the overall reform package architecture.

7.0 IMPROVING ACCOUNTABILITY MEASURES

7.1 Section 3.6.1 outlines a series of measures aimed at ensuring that local authorities are clearer about what they are expected to achieve, how their performance will be measured and what they will be expected to report on.

7.2 While not directly addressed in the points made above in this submission, such initiatives are essential to underpin, or at least

reinforce the desire on BusinessNZ's part that the reforms deliver quality decisions that are focused on the public interest.

7.3 However, a higher set of expectations should be accompanied by a willingness by the government to invest in the future success of its regulatory agents. Therefore, as a corollary to the imposition of more stringent performance measurement and monitoring, BusinessNZ considers that an investment by the government to assist local authorities in both focusing on the appropriate set of environmental priorities (those targeted at the public interest), and on building its capability is justified as a part of the overall reform package.

8.0 SUMMARY

8.1 Unlike some who think that there is no problem with the Act as it currently stands, BusinessNZ and its members consider that the Act has served as a hand-brake on the Government achieving its economic development aspirations and will continue to do so until such time as it is amended to better reflect the ability to achieve both economic growth and environmental protection. Its reform is an essential element in a more vibrant, growing economy.

8.2 However, while comprehensive in terms of its consideration of planning and consenting processes, this is not a comprehensive review of the Act. Rather, it is an attempt at a patchwork of sometimes ill-considered and disparate changes that fail to address the real underlying public policy problems and as such, will fail to deliver on its true potential.

8.3 The constraint placed on the scope of the TAG's work and an apparent over-reliance on the TAG analysis has contributed to this outcome.

8.4 The blurring of the public interest turns the sustainable management of the environment into a complex, and uncertain negotiation where the risk of the loss of property rights is high. This creates a regulatory framework that is unstable and subject to intense lobbying – an effect that has been increasingly observed, despite a large number of amendments to the Act purportedly targeted at resolving these very concerns.

8.5 It is axiomatic that an effects-based piece of resource management legislation will to some extent diminish property rights. But any such diminution needs to be undertaken within a coherent and robust framework. Without this, a blurring of the distinction between the public interest in the sustainable management of the environment and the private interest occurs, resulting in an erosion of property rights, undermining confidence and dampening desire to invest.

8.6 BusinessNZ considers that despite the proposals contained in the discussion document, this trend is likely to continue unabated. This is

inconsistent with the Prime Minister's goal of making New Zealand a magnet for investment.

8.7 To avoid this outcome, greater respect for private property rights, the need to compensate for their diminution and a stronger cost-benefit discipline should provide a more robust set of economic incentives, and lead to a greater willingness for the relevant parties to reach win-win bargaining outcomes based on who holds what bundle of rights. This, in turn, implies a redefinition of the duties and obligations of local authorities, substantially addressing the well-documented agency problem.

8.8 Unlike the proposals set out in the discussion document, BusinessNZ has set out a truly comprehensive package for reform of the Act. It proposes an analytically robust and integrated set of elements that if implemented will effectively and efficiently lift what has become, over time, a legislative blanket that has increasingly served to suppress economic activity. In doing so, it will enable opportunities that are mutually beneficial to both the environment and the economy to proceed.

APPENDIX: ABOUT BUSINESSNZ

Encompassing four regional business organisations (Employers' & Manufacturers' Association (Northern), Business Central, Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), BusinessNZ is New Zealand's largest business advocacy body. Together with its 80 strong Major Companies Group, and the 70-member Affiliated Industries Group, which comprises most of New Zealand's national industry associations, BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, BusinessNZ contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

BusinessNZ's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.