

BRIEFING PAPER TO THE INCOMING MINISTER FOR THE ENVIRONMENT

1. Property Council's preferred approach to the modernisation of the Resource Management Act 1991 ("the RMA 1991") starts from the perspective that an effects-based approach to the management of land and resources provides a sound basis for community planning. However, Property Council has identified a range of problems with the RMA 1991, which require resolution through a law change to provide for greater certainty and the delivery of planning outcomes that enable sustainable resource management in New Zealand.

Property Council recommendation: representation at proceedings

2. The RMA 1991 needs to be modernised to clarify representation at proceedings and the entitlement of parties. Property Council recommends that any person who may become a party to proceedings should be required to give notice to the Environment Court and to all parties within 15 working days after the notice of appeal is lodged. This proposed appeals period is consistent with the period for lodging proceedings with the Court. The RMA 1991 needs to set a clear benchmark for appeal entitlements, including no rights for 'late-comers' to lodge appeals.

Property Council recommendation: adverse costs

3. The ability for an individual or individuals to avoid any risk of adverse costs awarded by the Environment Court represents a loophole in the RMA 1991 that needs to be closed. Objectors can currently enter into proceedings and expose an applicant to significant costs, while they face no risk of financial exposure as a result of forming an incorporated society. Property Council submits that any individual or organisation that is prepared to become a party to proceedings in the Court.
4. A possible solution to address the risk of vexatious objections would be to give the Court the authority to require all parties represented at proceedings to provide security for costs. This

requirement would 'level the playing field' between parties by apportioning the potential for costs to both the applicant and reckless objectors.

Property Council recommendation: notification rules and trade competition objections

5. The rules pertaining to notifications need to be refined to set a fair criterion for who should and should not be notified. The foundation of the RMA 1991 is that a person who "may be affected" should be notified. Property Council considers that this principle needs to instead be based on the test of whether a person "may be significantly adversely affected".
6. A similar refinement is required in relation to the rules that apply to a trade competition objection. Here the RMA 1991 needs to codify a tight criterion for objectors who may significantly adversely affected by a development. Property Council considers that the RMA 1991 should place the onus on the objector to demonstrate a particular expertise relevant to the activity (principally addressed in the application). This requirement would mean that unless the objector conforms to the benchmark, he or she will be deemed to have failed to fulfill the trade competition objections status requirement.

Property Council recommendation: ownership and the control of land and water

7. Property Council recommends that the RMA 1991 should codify the prohibition on the Environment Court processing appeals when the applicant does not own the land. A lack of ownership of land or water space is currently causing a tie-up of resources, time and money, which in turn fetters the Environment Court's ability to deliver timely adjudication in relation to applications and appeals.
8. This approach should also apply in relation to coastal ministerial vetoes. To ensure that the Environment Court's time is utilised effectively, the Minister of Conservation should issue a decision whether to endorse or oppose an application prior to consideration of appeals.

Property Council recommendation: Environmental Protection Agency

9. Property Council supports in principle the establishment of an Environmental Protection Agency. Environmental regulation is a specialist policy and operational area, which demands a consistent level of resources and expertise. It is impractical to expertise a consistent level of

environmental stewardship via the local government sector, given that the level of resources can vary widely from one regional council to the next.

10. What a proposed Environmental Protection Agency must do is base its determinations of sound and scientific evidence, which is devoid of ideological dogma (essential in order to gain a strong degree of participation by interested or affected parties). An Environmental Protection Agency can then develop National Policy Statements, which provide direction and clarity for regional and territorial authorities. This outcome is preferable to the development of divergent standards for each local authority (which would represent a significant cost as well as creating fragmentation across communities).

Property Council recommendation: local government reform

11. While Auckland awaits the findings of the Royal Commission chaired by Hon Peter Salmon QC, Property Council considers that any findings that arise, which led to a regional government model that is both in proximity and accountable to its community will represent a significant improvement. Although the Government and Parliament will no doubt grapple with the findings, the Commission's work is not yet done.
12. Property Council recommends that the resources and knowledge gathered by the Royal Commission should (at the conclusion of its analysis of Auckland) then be reallocated to undertake work in other regions of New Zealand. A unitary system of regional/local governance has the potential to work efficiently, and should be emulated across the country. The unitary approach, which may arise as a recommendation from the Royal Commission, could provide a one-stop-shop approach, which is one of the original objectives of the RMA 1991.

Property Council recommendation: development contribution appeal rights

13. Local authorities that have adopted the Local Government Act 2002 ("the LGA 2002") development contribution scheme continue to break the law and ignore the directions issued by the High Court (which has specified that each application should be individually assessed). The abuse of the contributions provisions of the LGA 2002 are inspired in part by the absence of a merit-based appeal provision, which effectively provides legal sanctuary for authorities that might otherwise expect to face an appeal.

14. An elegant solution to this abuse of power on the part of local authorities would be to amend the LGA 2002 to provide for a legal appeals provision, which enables to applicant who receives a levy invoice to appeal a local authority's assessment to the Environment Court (analogous to the appeals provision that applies to financial contributions). There is no criticism of the correctness of decisions being made by the Environment Court, which is well positioned to make judicious determinations of appeals. Property Council considers that a merit-based appeal of a development contribution to the Environment Court is significantly more affordable and practical than an appeal to the High Court on points of law.