Greater Wellington Regional Council Submission:

Resource Management and

Electricity Legislation Amendment Bill

Part 1

1. Background

Thank you for the opportunity to make a submission on the Resource Management and Electricity Legislation Amendment Bill (the "Bill"). Many proposals in the Bill are supported and will lead to improvements in the way the Resource Management Act 1991 ("RMA") is implemented. Our submission is in two parts. Part One sets out some key issues for the Greater Wellington Regional Council. Part Two provides a clause by clause assessment of the Bill with our recommendations and comments.

2. Key issues

2.1 New powers for the Minister for the Environment

We are concerned that the significantly increased powers of the Minister for the Environment are unnecessary and will replace local decision making. We recognise that greater involvement by the Minister in the RMA may be justified and appropriate. However, almost all the new powers included in the Bill can be accommodated by existing provisions of the Act, albeit through processes that may involve greater public participation and impartial court based decisions.

We submit that the power for the Minister to direct actions by local authorities in relation to any of their functions should be deleted. This power is broad, unconstrained and heavy handed because reasons need not be given, criteria for such directions are not set out and there is no formal opportunity for a local authority to respond. In addition, significant costs could be imposed on local authorities.

It is not clear why or when this power might be needed. The Minister can already seek an enforcement order from the Environment Court to ensure that a local authority exercises its functions adequately. This process enables a properly constituted and experienced Court to make an impartial decision and is a safeguard against the abuse of executive power. It must also be noted that the Minister already has the power under section 25 of the RMA to appoint a Commissioner (but only after the local authority has a reasonable opportunity to satisfy the Minister that it has not failed to exercise its functions).

The Minister is also given powers to require information from local authorities, to direct preparation or change of plans and to choose alternative processes for preparing national policy statements than the RMA provides. We believe that the proposed changes give too many opportunities for shortcuts and provide inadequate community consultation. We submit that the following matters need to be provided for:

- reasons linked to a definition of the "national interest" and/or criteria for national significance listed in section 140;
- recovery of costs; and
- consideration of alternative approaches.

2.2 No duty for local authorities or applicants to consult

The Bill codifies that it is not necessary for local authorities and applicants to consult on resource consent applications. We support the aim of making consent processes more efficient but we believe that this change could have the reverse effect. The processes for consultation that we promote have been developed over time and are now used and expected by all parties. Lack of consultation will cause overall delays in the consent process and local authorities will be seen as responsible for failing to provide the opportunities for participation that people now expect.

We also note that consultation at the time of preparing regional plans cannot anticipate all site specific issues that require a case by case response. Where a case by case response is appropriate, it is likely that the Council will continue to consult. Other concerns about these provisions in the Bill that relate specifically to iwi are identified in Part 2 of this submission.

2.3 Regional council role in urban form and infrastructure

The amendment includes new functions for regional councils in 30(1) for:

- the promotion of sustainable urban form;
- the promotion of the timely and effective provision of infrastructure; and
- the promotion of the provision of infrastructure with land use policies.

In principle, Greater Wellington supports these functions and the move towards improved integration of transport, land use and infrastructure. This is particularly important in regions like Wellington that contain a large metropolitan area comprising several cities and districts.

Greater Wellington does not support the proposed definition of "urban form", which appears to focus on the shape of a place and how it looks. We are concerned that there is too much of a focus on human aspects or activities with no consideration of the influence of natural systems and how physical constraints might affect urban form. Greater Wellington feels that it would be more appropriate to take a wider, more integrated and strategic view, and suggests that "promotion of sustainable urban development" would be a more effective way of expressing our role.

Greater Wellington already has relevant provisions in its Regional Policy Statement. The Transportation and Built Environment chapter has several references to, and objectives and policies for, promoting a more integrated approach to urban development. There are specific provisions for promoting sustainable urban form and the planning for/provision of infrastructure. The provisions in the Regional Policy Statement assume that we have a role for a strategic over-view on these matters, and there was no opposition from territorial authorities or infrastructure agencies. Indeed, some of the stronger, more directive policies on infrastructure management came as a result of comments from agencies with

responsibility for infrastructure provision, insisting that infrastructure provision should be given some strategic guidance by way of policy direction in the Regional Policy Statement.

Our current involvement with the territorial authorities in the Regional Growth Strategy anticipates that there will be some sort of resulting framework about "what should go where". This would presumably include which areas are most strategically appropriate for urban development and the form of development (higher density along transport corridors/near transport nodes etc). It will be appropriate that outcomes of the Regional Growth Strategy receive endorsement in appropriate statutory documents, including the Regional Policy Statement.

2.4 Contaminated land

Changes are needed to the definition of "contaminated land" in the Bill. The definition requires regional councils to assess and determine whether land is contaminated. Regional councils generally refer to national and international guidelines to help them make assessments about the level of hazard presented by land contamination. They cannot generally make these decisions alone. Any local authority or person who establishes that land is "contaminated land" will need to be able to show how that decision was made. If necessary, they must be able to satisfy the Court that their decision has merit.

Also, the definition doesn't need to distinguish between land that has naturally high arsenic levels and land that has had arsenic discharged onto it. If someone wants to build a kindergarten on land with naturally toxic levels of arsenic in the soils, the territorial authority should take this into account when it assesses the application. Presumably the outcome would be to decline the application rather than remediate the land. An appropriate definition is included in Part 2 of the submission.

The amendment proposed in the Bill will not help address whether existing land uses on contaminated land are inappropriate or unsafe. Nor will it prevent new situations from occurring. Existing contaminated land needs to be addressed and processes put in place so that new situations don't happen.

The Bill proposes a new function in section 30 of the RMA for regional councils for "the location, monitoring, investigation and remediation of contaminated land." Other section 30 functions relate to controlling land and other resources to give effect to the Act, not to monitoring, which is already spelled out as a duty in section 35. It is not necessary or appropriate to make these section 35 duties into functions under section 30. In particular, remediation of contaminated land should remain the responsibility of the landowner, not regional councils.

Controlling land uses for residential and other purposes is the responsibility of territorial authorities. When territorial authorities assess proposed changes in land use, they have regard to the effects of the land use change on the environment (including people), and seek advice from regional councils as necessary. With flood prone land for example, regional councils prepare flood hazard maps and make submissions on district plans and consent applications if the proposed change would put people or buildings at risk from floods. With contaminated land, the history of information sharing is rather shorter, and perhaps less comprehensive.

Some regional councils maintain databases about 'contaminated sites' and provide that information to the territorial authority when requested. For subdivision or land use consent applications, which are assessed and granted or declined by territorial authorities, this practice is only useful if the regional council or territorial authority has up-to-date information about the site history and any contamination. Obviously, it does not address situations where the change in land use has already been approved but is now deemed to be unsafe.

Under section 106 of the RMA, territorial authorities may refuse to grant subdivisions if "the land in respect of which a consent is sought, or any structure on the land, is or is likely to be subject to material damage by erosion, falling debris, subsidence, slippage, or inundation from any source". It would seem sensible to extend this provision to the granting of subdivision consents on contaminated land.

Problems of uncertainty and duplication of territorial authority/regional council roles are best resolved in Regional Policy Statements. The contaminated land issue reinforces the need for the amendment proposed in the Bill requiring territorial authorities "to give effect" to the contents of a Regional Policy Statement.

Another solution may be to prepare a National Policy Statement to achieve a national approach to contaminated land management rather than promulgating changes to the RMA.

2.5 Enhanced role for regional policy statements

The Bill includes an enhanced role for regional policy statements when regional and district plans are prepared. At present regional and district plans must "not be inconsistent with" regional policy statements. The proposed changes will require regional plans and district plans "to give effect to" regional policy statements. This change is supported.

The purpose of regional policy statements includes "providing … policies and methods to achieve integrated management of the natural and physical resources of the whole region". Integrated management of land, air and water by local authorities is one area where the RMA has not performed well, and the regard given to regional policy statements is variable when regional and district plans are prepared. Adequate consultation and proper consideration of territorial authority interests will be essential if the new provision is enacted.

Direction in regional policy statements about responsibility for dual functions held by regional councils and territorial authorities is often overlooked because the RMA does not require effect to be given to these directions at the present time. Land use effects on water, natural hazards, hazardous substances and contaminated land are examples. Sustainable management of these matters can "fall through the gaps" or be duplicated.

A transitional provision should be included for the plans to "give effect to" regional policy statements. Existing regional policy statements were prepared under the statutory framework that plans "must not be inconsistent with a Regional Policy Statement". Therefore, it is not appropriate that changes to plans or plans developed between now and a regional policy statement review have to give effect to existing regional policy statement provisions.

2.6 Declarations on notification decisions

The Bill allows declarations to be taken to the Environment Court on whether an application for a resource consent should or should not have been notified. At present only a small percentage of resource consents are notified and Greater Wellington has procedures which guide decisions on whether or not to notify. We are concerned about the delays and costs that are likely to arise from this clause, as notification decisions will always be controversial and subject to debate. If the concern relates to the individual decisions that local authorities are making, then the government should undertake or require specific monitoring or audit of this aspect of the RMA. It is unlikely that the proposed change will have any effect on the quality of notification decisions made at local authority level.

The scope and process available to the Environment Court when considering a declaration on a notification decision is unclear. Does the Environment Court have any power to give effect to the declaration? This would be necessary as it is likely that a consent will already be exercised by the time a declaration is made.

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Part 2

Bill Ref	RMA Ref	Subject	Response	Recommendation	Comments
5	2(1)	Definition of contaminated land	Oppose	Modify the definition of contaminated land as follows: "Contaminated land means land to which both the following apply: (a) a hazardous substance is present in, on or under the land; and (b) the presence of the hazardous substance, poses, or has the potential to pose, an immediate or long term risk to human health or the environment."	See the discussion of "Contaminated land" in Part 1.
5	2(1)	Definition of urban form	Oppose	Delete the definition of "urban form"	See the recommendation and comments on clause 9(3) of the Bill (section 30(1)(gb) of Act) in Part 2 of the submission.

Bill Ref	RMA Ref	Subject	Response	Recommendation	Comments
6	24A	Power of Minister for the Environment to require information from local authority	Oppose	Modify section 24A so that: 1 The Minister shall provide reasons for requiring information linked to a definition of the "national interest" and/or criteria for national significance listed in section 140 2 Local authorities can recover costs for material and staff time of greater than 2 hours 3 Any requirement for information relates to information currently held by the local authority.	Responding to a request for information from the Minister could take a lot of time and resources. Without any explanation by the Minister of the reasons why the information is required it could be difficult to target what the Minister wants or needs. Both the Minister and local authorities would benefit from requests that can be responded to efficiently. It also needs to be made clear that the information required by the Minister relates only to information that the local authority currently holds otherwise it may not be possible to provide the information. Local authorities should be able to charge for materials and staff time of greater than 2 hours to respond to a request.
6	24B	Power of Minister for the Environment to direct action by local authority	Oppose	1 Delete section 24B.	See the discussion of "New powers for the Minister for the Environment" in Part 1.
7	25A	Minister may direct preparation or change of Plan	Oppose	Modify section 25A so that the Minister's powers to direct preparation or change of a plan include: 1 Reasons for the direction linked to a definition of the "national interest" and/or criteria for national significance listed in section 140 2 Consideration of the alternative of a national policy statement.	The Minister can direct preparation or change to a plan without giving reasons and no criteria are set out when such an action might be taken. It is appropriate that the Minister provide suitable reasons why a plan should be prepared, including consideration of the alternative that an appropriate outcome could be achieved through a national policy statement.

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9(1)	30(1)(fa)	New regional council function for contaminated land	Support in part	Delete subsection 30(1)(fa). Include the following function in 30(1)(c): "(vi) the prevention or mitigation of the adverse effects of any hazardous substance present in, on or under contaminated land." Include the following new function in 31(1)(b): "(ii) the prevention or mitigation of the adverse effects of any hazardous substance present in, on or under contaminated land." Add a new subsection to section 62 (1)(i) as follows: "(iv) to prevent or mitigate the adverse effects of any hazardous substance present in, on or under contaminated land." Adding the following to section 106 after (1)(a): "(b) the land is contaminated land."	See the discussion of "Contaminated Land" in Part 1.

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9(2)	30(1)(fa)	New regional council function for resource allocation	Support	Modify 30(1)(fa) as follows" "The allocation of natural resources referred to in section 14 or 15 and may include allocation among categories of activities."	In most circumstances in the greater Wellington region, allocation of natural resources can occur without allocating among categories of activities. For example, water from a catchment may be taken entirely for spray irrigation of horticultural crops by several users. The function in the Bill appears to insist on allocation among different categories of users, whereas it should provide for allocation that treats all categories of users in the same way, and include the ability to allocate among different categories of users if a council decides it is appropriate to do so..
9(3)	30(1)(gb) 30(1)(gc) 30(1)(gc)	New regional council functions for urban form and infra structure	Support in part	Modify 30(1)(gb) as follows "the promotion of sustainable regional development."	See the discussion "Regional Council role in urban form and infrastructure" in Part 1.
14(2)	36(1)	Administrative charges	Support	Modify 31(1)(ca) as follows "the review is carried out under section 128(1)(a)."	It is not appropriate to include the phrase "and the charge is payable as a consent condition because the ability to review existing consents that do not have conditions would be excluded. Other than this reservation, the new provision is supported because it gives consent authorities the ability to charge for reviews of consents under 128 (1)(a) and (c), which is consistent with other charging provisions in the Act.

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15	36A(1)	Duties of local authorities and applicants	Oppose	Delete section 36A	See the discussion "No duty for local authorities and applicants to consult" in Part 1. Our concerns relating to application of these provisions to iwi in 36A(1)(b)(ii) are identified below. When regional plans were prepared and Iwi were consulted to meet clause 3 of the First Schedule, iwi responded under the impression that consultation would also occur on specific consent proposals. Urgency for iwi to make sure that the plans would meet all their expectations over consultation may not have existed at the time. For this reason, if enacted, these clauses should only apply after current operative plans are reviewed. If such a transitional arrangement were put in place, Iwi could enter the next round of plan preparation fully aware of the implications that plans have for their interests. A further concern about the proposed provision in 36A(1)(b)(ii) is the uncertainty about how the new provision would be applied. There will be differences between the contents of operative plans and draft plans when consultation occurred with iwi under clause 3 of the First Schedule. For example a rule may be included in a plan as a result of a submission made after clause 3, First Schedule consultation occurred. . Clause 3 of the First Schedule is the beginning of a process of consultation that occurs during the statutory process. Consultation is completed when the plan becomes operative. Consultation during the statutory process includes the ability for people to make submissions, further submissions and be heard at hearings. It is inappropriate to use the test of what was consulted over at the beginning of the statutory process rather than at the end. The test should be whether there is an operative plan that relates to the application.
16	39A	Accreditation	Support	Enact	Accreditation of people conducting hearing will add to the robustness of the process.
17	39B	Accreditation	Support	Enact	Accreditation of people conducting hearing will add to the robustness of the process.

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18	39(5)	Provisions in relation to hearings	Support	Enact	Provides powers for more robust hearing processes when they are needed.
20, 21	43A(1)	Additional powers to implement national standards and the relationship between national environmental standards and rules or consents	Oppose	Substitute subsection 43A(1)(b) with "allow an activity subject to the rules in any relevant regional or district plan, or any relevant proposed regional or district plan." Retain section 43B relating to the relationship between standards and rules	The ability for regional and district plans to apply higher than national standards should be retained without needing to include it in a national standard. This ability will ensure that the circumstances of the region can be provided for. If regional rules cannot be stricter, then the NES has to be more conservative to cope with all the sensitive areas in the country. The ability to apply more stringent standards than national standards is acknowledged in the amendment in clause 10 of the Amendment Bill.
24	46A	Minister chooses process	Oppose	Delete section 46A	The process in sections 47 to 52 sets out the minimum or "bottom line" for national policy statements. It should not be compromised by a power that could reduce local participation. The ability to for the Minister to decide on a different process also creates uncertainty over how any national policy statement will be prepared.
25	53	Changes to review or revocation of national policy statements	Oppose	Retain the current provisions relating to changes or revocation of national policy statements	The process in sections 47 to 52 sets out the minimum or "bottom line" for national policy statements. It should not be compromised by a power that could reduce local participation. The ability to for the Minister to decide on a different process also creates uncertainty over how any national policy statement will be prepared.

Bill Ref	RMA Ref	Subject	Response	Recommendation	Comments
26	55	Local authority recognition of national policy statements	Support	Enact	The amendment provides certainty about what local authorities are required to put in their plans and the process that applies in response to national policy statements
27	57(1)	Preparation of New Zealand Coastal Policy statement	Oppose	Retain the current provisions relating to preparation of New Zealand coastal policy statements	The process in sections 47 to 52 sets out the minimum or "bottom line" for national policy statements. It should not be compromised by a power that could reduce local participation.
30	67(1), 67(2)	Contents of regional plans	Support in part	Modify section 67 to ensure objectives are either in a Regional Policy Statement or are included in regional plans. Require changes to Section 32 to ensure the evaluation starts with an identification of issues for the Region/District.	Provided the development of policies and rules has gone through an analysis of recognising issues and objectives to provide a framework for the development of the policies and rules, then the proposed change that you only must state policies and rules is supported. This is supported because it would result in much more succinct Plans. Objectives are however, important for measuring progress through State of the Environment Reporting, therefore, it is important that they are stated somewhere. This could be the RPS, but if not, they should be included in a Plan. Plans should be developed through a robust issue identification process and this could be included in Section 32 rather than section 67. 32(3) An evaluation must examine – (a) the significant resource management issues

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30	67(3)(a) 67(3)(b)	Contents of regional plans that effect must be given to	Support	Enact	
30	67(3)(c)	Contents of regional plans	Support	Modify section 67(3)(c) to ensure that this provisions only applies to Regional Policy Statements prepared after this amendment comes into effect.	See the discussion of "Enhanced role for policy statements" in Part 1.
30	67(5)	Contents of regional plans that allocate resources	Support		
33	75	Contents of district plans	Support	See the recommendations for clause 30 in relation to sections 67(1), 67(2) and 67(3) and substitute district plans for regional plans.	The comments that apply to the contents of regional plans in clause 30 of the Amendment Bill in relation to sections 67(1), 67(2) and 67(3) also apply to district plans.
36, 37	92, 92A	Response to request or notification	Support	Enact	The new powers will assist councils obtain information needed to assess consent applications.
38	94A	Forming opinion as to whether adverse effects are minor or more than minor	Support	Enact	
39	94D	When public notice and service requirements may be varied	Support	Enact	The new provision clarifies when plans can vary requirements in the Act for public notice and service.

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40(1)	96(3)	Making of submissions	Support	Enact	The ability for people to assist the submission process by providing information without being in support or opposition to a proposal is beneficial. This approach should also be included in submissions on policy statements and plans in the First Schedule of the Act.
40(2)	96(5)	Making of submissions	Support	Enact	The ability for people to make submissions electronically will assist the process. This approach should also be included in submissions on policy statements and plans in the First Schedule of the Act.
42	99	Pre-hearing meetings	Support	Clarify that the reference to "hearing" in 99(3) is to a hearing that follows a pre-hearing meeting, not the pre-hearing meeting itself. Delete 99(3)(a)(iii), (iv), and (v). Delete "the consent authority and" from 99(3)(b)	The reference in the provision to hearing is confusing about whether it is the pre-hearing meeting or the hearing that follows. The provisions in this clause of the amendment are supported with the following exceptions. Subsection 99(3)(a)(iii) would unnecessarily restrict what can be said at the hearing and bring a level of formality to pre-hearing meetings that would be undesirable. Subsections 99(3)(a)(iv) and (v) relate to matters for a hearing rather than being outcomes or part of a pre-hearing meeting.
43	103A, 103B	Further information or agreement, responses to request or notification	Support	Enact	The new powers for councils to request information will assist the resource consent process.

Bill Ref	RMA Ref	Subject	Response	Recommendation	Comments
44	104A	Determination of applications for controlled activities	Support	Enact	
46	124A, 124C	Application by existing consent holders	Support	Enact	
48	129(1)(d)	Notice of review	Support	Enact	
49	133A	Minor corrections of resource consents	Oppose	Delete ", within 15 days of the grant,"	The ability to correct a minor mistake or defect in a consent should not be time bound.
50	136	Transferability of water permits	Support	Enact	
51	137	Transferability of discharge permits	Support	Enact	
74	290	Powers of Environment Court	Support	Enact	
82(3)	310(i)	Scope and effect of declaration	Oppose	Delete subsection 31(i)	See the discussion of "Declarations on notification decisions" in Part 1.
85	330	Emergency works and power to take preventative or remedial action	Support	Enact	
86	330A	Resource consents for emergency works	Support	Enact	

Bill Ref	RMA Ref	Subject	Response	Recommendation	Comments
87(6)	357(6)	Objections to certain decisions	Oppose	Retain the existing provision	Changing "as soon as practical" to within 20 working days will be unworkable in some situations. At greater Wellington this decision is delegated to the Environment Committee which meets every 6 weeks, on average, and the timeframe could not be met.
89(2)	Fourth Schedule	Removal of clause 1h	Oppose	Retain clause 1h	The retention of this clause is important to greater Wellington for the reasons identified in our response to clause 15. Greater Wellington is often not an affected party to an application. However, we can have interest due to policies in the Regional Policy Statement, Flood Management Plans, etc. It is appropriate for an applicant to consult with us prior to lodging an application where we have highlighted policy interest. In these situations we can clarify what matters should be looked at in an application to give effect to the policy. This is particularly relevant in situations where the application is then considered non-notified and we have no further opportunity to provide comment.