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REPORT OF THE RESOURCE MANAGEMENT ACT REVIEW WORKING PARTY

1. 'THINK PIECE' McSHANE REPORT RR 8015

The working party met on 9 June to consider its recommendations to the Council on the McShane report on the RMA. On 9 June the working party met a delegation of concerned developers let by Mr Hugh Pavletich and Mr Mike Garland.

The deputation was broadly supportive of Mr McShane's approach and made the following arguments. Many of Mr McShane's arguments concerned 'bad practice' as much as bad legislation; that the combination of the two had produced a climate of over-regulation in which compliance costs for businesses and individuals had escalated. The solution to this was to be found in limiting the amount of information councils could keep on requiring from applicants, in limiting the more subjective elements of the Resource Management Act, such as amenity values, by introducing competition into the processing of resource consents, and by placing a greater reliance on the market to determine whether applications should proceed.

The deputation was thanked for its input.

The working party then met to formulate its recommendations under 12 headings:

Purposes of the Act	Information and Innovation
Amenities and Neighbourhood	Further Information
Heritage	Standing of Submitters
Subdivision	Contestability
Compensation	Plan Complexity
Process, Costs and Practices	Education and Training

The working party recommends that the following be the submission of the Council. These have been formulated in the form "the Council believes ..." for ease of transmission as a submission to the Minister of the Environment.

1. PURPOSE OF THE ACT

The Council believes that the reference to economic matters in clause 5 of the Act "to enable people and communities to provide for their economic, social and cultural well-being" should remain. Most development has some adverse environmental effect. It is the economic benefit of allowing communities to provide housing, employment and the like which enables the go ahead for proposals to be given.

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2. **HERITAGE**

The Council believes there is little benefit in separating heritage from the RMA. In many cases, this would simply lead to a proposal being subjected to two processes rather than one. However where preservation provides for the "public good" at some private cost, there should be the possibility of appropriate compensation assessed on a case by case basis.

3. **AMENITIES/NEIGHBOURHOOD**

The Council was concerned that the McShane report tended to draw most of its examples of the abuse of subjective judgements on aesthetics, pleasantness and coherence came from rural or semi-rural areas. Amenity values are central to much urban planning. The closer people lived together, the more important such matters as design, set-backs and provision of outdoor living areas were. Amenity was also a key issue where residential areas adjoined industrial or agricultural areas where such things as set-backs to reduce the impact of chemical sprays or industrial noise were very significant. The Council also believes that 'Amenity' was important for industrial areas and airports so that they should be protected from continuous complaints from residents in too close proximity. The Council further noted that the Act promoted community participation and very little consideration had been given by McShane to the aspirations of neighbourhood associations and Community Boards. After all the Act was to enable people and **communities**.

4. **SUBDIVISIONS**

These clearly needed to remain in the Resource Management Act. Control of density is in the view of the Council the single most important element in maintaining amenity values. In the public mind, and in the Act (section 85) it was impossible to separate title to land and the right to make use of it. Removal of control of subdivision from the Act would remove control of almost every element of the development process.

5. **COMPENSATION**

The Act does not provide for compensation for those affected by a rule in the plan, provided there is still a 'reasonable use' allowed. In general the Council thought this was appropriate in that when a rezoning from say rural to residential takes place, owners do not pay 'betterment' to the Council. The Council does believe however that compensation could be looked at for such matters as costs involved in preserving heritage buildings or protecting trees, and in some cases, such as Conservation zones, the payment of compensation might be a better solution than changing the use, and the community should be allowed to choose that alternative.

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6. **FURTHER INFORMATION**

While constant requests for further information caused delays and costs to applicants, the Council believes that the provision of full information was vital for people to know whether to submit. In many cases the solution lay in the applicant's hands, since full information was vital for people to know whether to make submissions on. In many cases the solution lay in the applicant's hands, since full information could be supplied in the first instance. However, some delays were unconscionable and a limit of say five working days could be set within which requests for further information would need to be made.

7. **CONTESTABILITY**

The Council believes that it needs to keep control of the issue of resource consents. The Council was concerned that contestability in issuing resource consents might come close to people choosing a judge of their own choice. However, some contestability in writing reports or assessments might be possible, provided the Council maintained control of the quality of those involved. There would be a downside to adopting such a process in that the organisation would lose a lot of "expertise" which might eventually reduce the quality of decisionmaking.

8. **PROCESS AND COSTS**

The Council believes that there will always be a conflict between efficiency and participation. Length of time and costs were a concern, but many ways of reducing them could reduce the democratic element in the process. Processes could be improved by better education of practitioners in both the public and private sector. Costs could be eased by the provision of legal aid for community groups, particularly in appeals to the Environment Court.

9. **STANDING OF SUBMITTERS**

The Council recognised that abuse of the planning process has occurred by the so-called 'professional submitter'. There was difficulty in determining 'interest' under the Town and Country Planning Act, but the Council believes that parties should have to be affected in some way to be a valid submitter. 'Interest' might be defined somewhat differently in resource consent applications and plan changes.

10. **PLAN COMPLEXITY**

One of the concerns of the McShane report was the increasing complexity of city and district plans. In the view of the Council, this is an inevitable consequence of effects based planning. It is far more complex to define the list of effect that are to be encouraged or avoided than to list permitted and non-complying activities. The availability of plans on CD Rom and the Internet may assist.

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11. **EDUCATION OF PLANNERS**

The Council shared the concerns of the deputation that a number of institutions offering courses in planning offered limited legal background and concentrated much more on the natural and the built environment. The Council is also concerned at the limited opportunities for training generally for those wishing to pursue a career in planning.

12. Mr McShane is concerned that where applicants are proposing to use innovative technology, the necessity of a full public hearing may deter them from pursuing their intention because technical and economic information may become available for competitors to use both in New Zealand and overseas. However the Council notes that section 42(1)b allows the Council to avoid public disclosure where this would unreasonably prejudice the commercial interest of the person who supplied the information.

13. **PLAN CHANGES**

The Council believes that the public does not always distinguish private plan change applications from those for a resource consent. In that changes to a plan allow a variety of uses – resulting say from rezoning, and the applicant may state as environmental consequences only those that result from his particular intentions, the Council believes it not unreasonable that for a period of say five years, the statement of environmental consequences should be binding on the applicant or subsequent owner of the land, and that no development should be permitted in this period which exceeds the environmental impacts stated.

Recommendation: That the Council submit sections 1-13 of the report as its submission to the Minister of the Environment on the McShane 'Think Piece' report.

CONSIDERED THIS 24TH DAY OF JUNE 1998

MAYOR