

Insights and Commentary from Dentons

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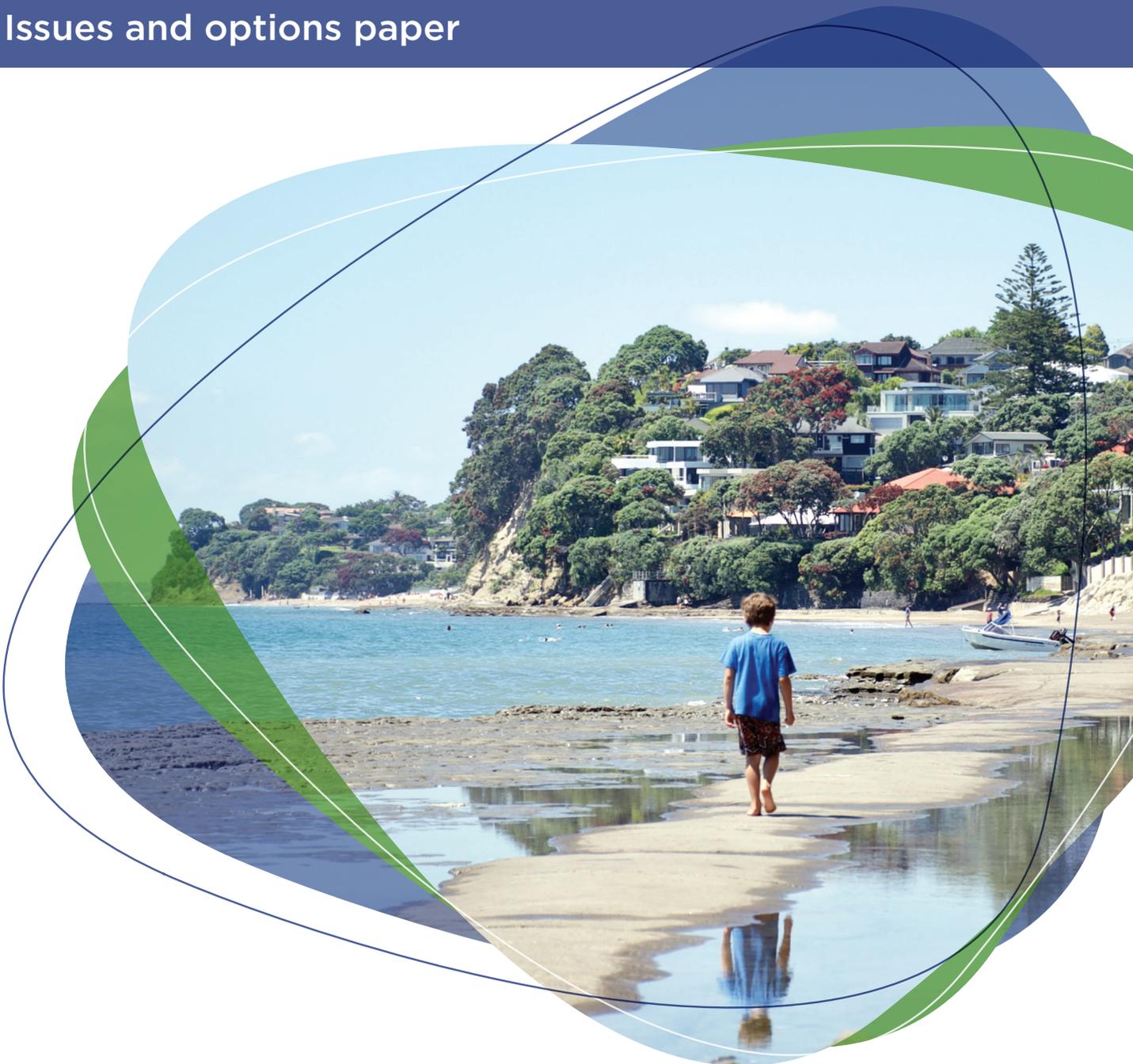
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Transforming the
resource management system:

OPPORTUNITIES FOR CHANGE

Issues and options paper



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Resource Management Review Panel

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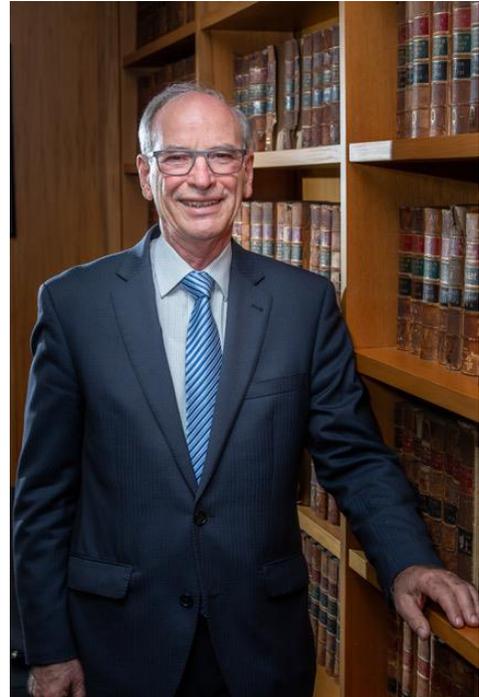
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Kupu Whakataki

Korihi ake ngā manu
Tākiri mai i te ata
Ka ao, ka ao, ka awatea
Tihei mauri ora
Tēnā koutou katoa

I am pleased to present this issues and options paper for the comprehensive review of the resource management system.

Much has changed in Aotearoa New Zealand in the period of nearly 30 years since the Resource Management Act was introduced in 1991. Serious challenges have emerged in our ability to respond quickly to urban development pressures and to house our people in liveable communities. And we are facing a significant new threat in dealing with climate change. The natural environment has also suffered with deteriorating freshwater quality in our streams and rivers and diminishing biodiversity amongst many concerns.



Our understanding of the implications of our unique relationship between the Crown and Māori through the Treaty of Waitangi has developed with many settlements of Treaty claims being achieved. But much remains to be done to ensure that the principle of partnership inherent in the Treaty moves towards an everyday reality.

Successive governments have amended the Resource Management Act many times since its enactment and ad hoc measures have been adopted in an attempt to address the issues we are now confronting. The time is ripe to undertake a comprehensive review of the Resource Management Act and other significant legislation comprising the resource management system.

The Resource Management Review Panel has been established to undertake that task. The overall aim is to improve environmental outcomes and enable better and timely development in urban areas and elsewhere within environmental limits. It is an exciting and ambitious assignment and an opportunity to undertake a thorough examination of the resource management system. This may well result in recommendations for far-reaching reform designed to achieve our ultimate goal of enabling all New Zealanders to thrive in a healthy environment both now and for generations to come.

The Review Panel has already begun to engage with stakeholders, iwi/Māori and members of the public in preparing this paper. This engagement will continue over the coming months as we work to develop a preferred approach to reform.

This paper identifies the main issues to be addressed in the reform process and offers possible ways in which they might be addressed. It also poses a series of questions for interested parties to consider and respond to. We have endeavoured to adopt a neutral approach to the issues raised and are very much open to any constructive suggestions for reform.

We invite comments on this paper no later than Monday 3 February 2020.

Hon Tony Randerson QC

Chair, Resource Management Review Panel



Dean Kimpton, Raewyn Peart MNZM, Hon Tony Randerson QC, Rachel Brooking,
Kevin Prime ONZM, Amelia Linzey
Resource Management Review Panel

Ka Mua, Ka Muri

1. The Government has given us the significant task of undertaking a comprehensive review of the resource management system. This is an opportunity to design a system that delivers better outcomes for the environment, people and the economy.
2. The Resource Management Act 1991 (RMA) revolutionised land use planning and environmental management in New Zealand. It was a product of rising environmental awareness in New Zealand and abroad, and recognised the need to integrate an array of separate legislation addressing land use, water, air and soil, among other things. It forged a new legislative response to Te Tiriti o Waitangi/the Treaty of Waitangi (the Treaty). It was also part of a move towards wider deregulation of the New Zealand economy, and adopted an ‘effects-based’ approach that sought to narrow the role of planning in the interest of economic efficiency.
3. Much has changed since the early 1990s when the RMA was introduced. As the risks of climate change and environmental decline have become more immediate, new thinking has emerged about how to address the challenge of environmental sustainability. This emphasises the need to recognise the complex interactions between economic, social and environmental systems, the need to plan for unexpected events and environmental tipping points, and the need to work within clear environmental limits.
4. As a country, we have made progress addressing historic grievances through Treaty Settlements, and begun to better recognise te ao Māori in wider law and society. Treaty settlements have, in certain cases, established new approaches and shared governance and decision making regarding natural resources. There are now 70 pieces of settlement, collective redress or hapū/iwi specific legislation with 76 groups (comprising a mix range of iwi, hapū and various collectives). It is timely to consider how the resource management system responds to this new landscape.
5. Finally, there is increased focus on working towards long-term cross-sector outcomes to address both issues of intergenerational equity and wellbeing. An important part of this is ensuring the resource management system delivers necessary development capacity for housing and enables urban land markets to operate effectively within environmental limits.
6. To be successful, we need to design a resource management system that responds to our distinct environmental, social and cultural context. This includes New Zealand’s physical characteristics and unique biodiversity, the Treaty and the relationship between iwi/Māori and the Crown, and the significant ways we all value and connect with the environment.
7. We approach this review of New Zealand’s resource management system with these footsteps from our past in view.

To be successful, we need to design a resource management system that responds to our distinct environmental, social and cultural context



A. Te Horopaki o te Arotakenga

The opportunity for reform of the resource management system

8. The government has agreed to undertake a comprehensive review of the resource management system. The review aims “to improve environmental outcomes and enable better and timely urban and other development within environmental limits”. The Cabinet papers setting out the scope and process for the review and the terms of reference for the panel are available on the Ministry for the Environment website: www.mfe.govt.nz.
9. As per the terms of reference, the review has a dual focus: improving outcomes for the natural environment and improving urban and other development outcomes. The underlying causes of poor outcomes are wide ranging: the legislation, the ways it has been implemented and how the institutions are arranged. In seeking to improve these outcomes, the review will need to ensure provisions for central and local government decision-making, iwi/Māori and broader public involvement are fit for purpose.
10. The review is expected to resolve debate on key issues, including the possibility of separating statutory provision for land use planning from environmental protection of air, water, soil

and biodiversity. It will consider a wide range of options, including whether important principles in the Resource Management Act 1991 (RMA) should be in a separate piece of legislation and apply more broadly across the resource management system. It will begin enabling a new role for spatial planning.

This review is intended to reset the policy framework across the resource management system as a whole.

11. This review will focus primarily on the RMA itself, but also includes the interface of the RMA with the Local Government Act 2002 (LGA), the Land Transport Management Act 2003 (LTMA) and the Climate Change Response Act 2002 (CCRA). It will also consider the potential impact of and alignment of proposals for reform with other relevant legislation (including but not limited to the Building Act 2004, Fisheries Act 1996 and Conservation Act 1987).
12. Institutional reform is not a driver of the review. However, in making recommendations, the review will consider which entities are best placed to perform resource management functions.

Other work underway in government

13. The Government has a broad programme of reform underway to improve the resource management system and address climate change, freshwater quality, housing, infrastructure and other priorities.
14. This review is intended to reset the policy framework across the resource management system as a whole. It will develop a new framework that will align with existing work and may supersede it where appropriate.

Purpose of this issues and options paper

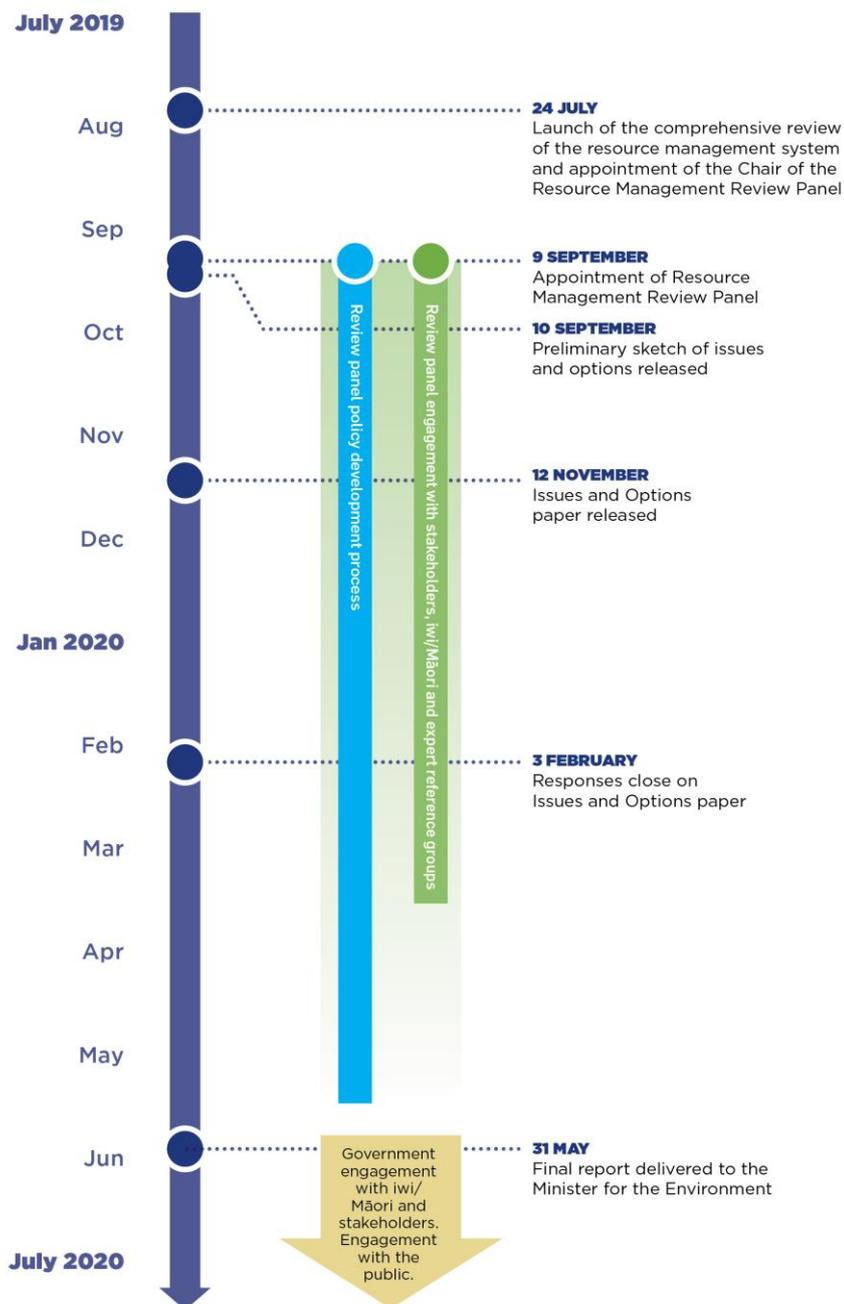
15. This paper starts a conversation about issues to be considered and addressed by the review and some initial thoughts on possible options. It seeks comments from stakeholders and iwi/Māori to inform the development of the panel's proposals for reform.
16. The Review Panel will continue to engage with stakeholders and iwi/Māori over the course of the review. It will also work with expert reference groups on certain important topics of interest: the natural and rural environment, urban and built environment and te ao Māori.
17. The primary review deliverable is a final report due with the Minister for the Environment at the end of May 2020. There will be further engagement with stakeholders, iwi/Māori and the public on the development of the Government's proposals for reform following the release of the final report, as shown in the timeline that follows.

18. Much work on reform of the resource management system has been carried out in recent years. Cabinet has asked the Review Panel to consider this work as part of its review.¹ This paper draws on this previous work where relevant.
19. This paper identifies a number of possible options for reform. It is neutral with regard to the options discussed. These should be thought of as indicative of the sorts of reform measures that are being considered, rather than the full range of possible options or fully developed proposals. Preferred options will be developed over the coming months.
20. The paper includes a series of questions at the end of each section. These questions are then summarised in section c at the end of the document.
21. Comments on this paper are welcomed no later than Monday 3 February 2020.

¹ This includes the New Zealand Productivity Commission's 2017 Better Urban Planning report, the OECD's 2017 Environmental Performance Review, reports by the Waitangi Tribunal, Kahui Wai Māori and Local Government New Zealand. It also includes previous work by the Ministry for the Environment and work by stakeholders, in particular the Resource Reform New Zealand coalition: Infrastructure New Zealand, Business New Zealand, Property Council New Zealand, Employers and Manufacturers Association (Northern) and Environmental Defence Society.

Resource Management Review Panel process

Timeline



Challenges facing the resource management system

New Zealand's natural environment is under significant pressure

22. New Zealand's natural environment is unique and special. Not only does it provide us with a place to live, learn, work and socialise, it is part of our identity.
23. Our environment is under significant pressure²:
 - **Climate change:** Climate change is occurring at an unprecedented rate. In New Zealand, the impacts of climate change (increasing sea levels, droughts, floods, fires) are already affecting where people live and how we use our environment.
 - **Biodiversity:** Our native plants, animals, and ecosystems are under threat. Almost 4,000 of our native species are threatened with or at risk of extinction. In our marine environment, 90% of seabirds, 80% of shorebirds, and 26% of indigenous marine mammals are classified as threatened with or at risk of extinction.
 - **Wider environmental decline:** Changes to the vegetation on our land are degrading the soil and water. We are continuing to see significant loss of native vegetation and wetlands and the reduction of benefits they provide (eg, flood and erosion control, water quality, carbon storage). Our heavy reliance on surface and groundwater for drinking, domestic, and industrial uses, and irrigation is threatening the habitat of our freshwater species, increasing the concentration of pollutants and ultimately affecting our ability to use it. The way we use our land is also putting pressure on our coastal marine area with sediment and plastics impacting marine habitats and species.
24. Degradation of our natural environment is reducing ecosystem resilience to system shocks that can radically alter the flow of ecosystem services, affecting associated livelihoods and the wellbeing of communities.

Urban areas are struggling to keep pace with population growth

25. New Zealand is becoming increasingly urbanised. Between 2008 and 2018 our population increased by 14.7%. Ninety-nine per cent of population growth is in urban areas. Growth is expected to continue, with the highest rates in Tauranga, Auckland, and Hamilton.³

² See Ministry for the Environment & Stats NZ, *New Zealand's Environmental Reporting Series: Environment Aotearoa* 2019, Wellington, 2019. Available from www.mfe.govt.nz and www.stats.govt.nz.

³ See New Zealand Productivity Commission, *Better urban planning: Final report*, 2017.

26. People are drawn to cities because they offer the benefits of more job choices, social and cultural interaction, and higher quality, more diverse amenities and services. However, our cities are under pressure with rising urban land prices and some of the highest housing costs relative to income in the developed world. Poorly managed urban growth has also led to increasing homelessness, worsening traffic congestion, increased environmental pollution, lack of transport choice and flattening productivity growth.

The system needs to deliver necessary development capacity for housing and enable urban land markets to operate effectively within environmental limits.

27. The social impact of ever increasing housing costs has been significant, in particular for the most vulnerable New Zealanders. For example, work by the Ministry of Social Development shows that housing costs for low income New Zealanders have doubled as a proportion of their income since the 1980s, leading to increased income inequality.⁴ There has also been falling rates of homeownership and increased household debt.⁵ According to the Reserve Bank, New Zealand's level of household debt is one of the most significant risks to our financial stability.⁶

28. There have been many drivers for this but some councils, particularly in high growth areas, are struggling to provide sufficient development capacity for housing in regulatory plans and supply enough infrastructure to support urban growth.

Rapid changes in rural land use have increased pressure on ecosystems

29. In addition to the pressure in urban areas, rapid changes in rural land use have increased stress on ecosystems. Between 2002 and 2016 there was a 42% increase in the proportion of farmland used for dairy, and a decrease in the area in sheep and beef. There was also continued intensification of land use and a shift to higher stocking rates.⁷

30. In farming areas, water pollution affects almost all rivers and many aquifers – affecting the mauri of the water, human health and our ability to swim and enjoy our water for recreation. Land-based industries are critical to New Zealand's current and future prosperity, and to addressing global challenges like food supply, biodiversity loss and climate change.

⁴ Ministry of Social Development, *Household incomes in New Zealand: Trends in indicators of inequality and hardship, 1982 to 2017*, Wellington, 2018.

⁵ Johnson, Alan, Philippa Howden-Chapman and Shamubeel Equb, *A Stocktake of Stocktake New Zealand's Housing*, 2018.

⁶ Reserve Bank of New Zealand, *Financial Stability Report*, May 2019.

⁷ Ministry for the Environment & Stats NZ, *Our Land*, 2018.

A transition is needed to achieve sustainable land use, and ensure cumulative environmental effects are sustainable across generations.

Reasons why the system has not responded effectively

Lack of clear environmental protections

31. While a major improvement on the previous system, the RMA has not sufficiently protected the natural environment. The purpose of the RMA set the ambitious objective of sustainable management of natural and physical resources. However, it suffered from a lack of clarity about how it should be applied – taking over two decades for the courts to settle through the King Salmon case.⁸ As a consequence of this lack of clarity, as well as insufficient provision of national direction and implementation challenges in local government, clear environmental limits were not set in plans. Lack of clear environmental protections has made management of cumulative environmental effects particularly challenging.

While a major improvement on the previous system, the RMA has not sufficiently protected the natural environment.

Lack of recognition of the benefits of urban development

32. It is well established that the RMA has not achieved good outcomes for our urban areas or built environment. A shortage of housing in New Zealand, and the perception that RMA processes are overly cumbersome and provide insufficient certainty for major infrastructure, has seen a long series of official inquiries that have identified shortcomings in the performance of the RMA.⁹
33. Some argue that insufficient recognition in the purpose and principles of the RMA of the positive benefits of housing, infrastructure and other development has hampered planning for development. The lack of content about these issues left decision-makers with little guidance on how to plan for development in urban and other areas. Infrastructure funding constraints have encouraged rationing of available land for development in an effort to manage infrastructure cost burdens.

⁸ Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited [2014] NZSC 38.

⁹ Examples include the Minister for the Environment's Urban Technical Advisory Group in 2010 and the Productivity Commission's Better Urban Planning inquiry in 2017.

A focus on managing the effects of resource use rather than planning to achieve outcomes

34. The RMA has been criticised for having too narrow a focus on managing the negative effects of resource use, rather than providing direction on desired environmental and development outcomes or goals.¹⁰ The RMA is a framework law that enables rather than directs. It does not explicitly set out outcomes to be achieved, other than the high level goal of sustainable management. Some argue that this has made forward planning difficult. The RMA's focus on environmental effects can also mean the positive benefits of development and a long-term perspective are under-emphasised, despite these being core aspects of "sustainable management".

Decisions made through the resource management system have favoured existing users and uses.

A bias towards the status quo

35. Decisions made through the resource management system have favoured existing users and uses, and as a result have inadequately provided for future generations, as well as poorer communities and iwi/Māori. Problems that have exacerbated this bias include:

- an emphasis of the RMA on avoiding or remedying adverse effects
- the protection of use rights, for example in relation to land use planning and the right to take water
- processes (eg, legal appeals) that favour the well-resourced
- the application of 'permitted baselines' in resource consent processes.

36. Furthermore, until recently there has been insufficient recognition of the importance of proactive and strategic planning in the system. Over the last decade, some councils have developed strategic plans and joint spatial plans for their regions, districts and communities to help fill this gap.¹¹ Central government has encouraged this form of planning by requiring Auckland to prepare a spatial plan, future development strategies through the National Policy Statement for Urban Development Capacity, and spatial planning partnerships under the Urban Growth Agenda. However, the lack of legal weight and disconnection with RMA plans means that the full benefits of strategic planning are not being realised throughout the system.

¹⁰ For example, see Environmental Defence Society, *Reform of the Resource Management System: Synthesis report*, 2018.

¹¹ Many of these plans are done on a voluntary basis under councils' general powers in the LGA.

Lack of effective integration across the resource management system

37. The RMA set out to achieve integrated management of natural and physical resources. It drew together statutory decision making frameworks for management of land, freshwater, soil, air, noise and the coastal marine area, among other things. Despite this, some argue that New Zealand's resource management remains insufficiently integrated.¹²
38. Plans and decision-making under the RMA, LGA and LTMA all affect one another, but there is poor alignment between land use and infrastructure plans, processes (including public participation) and funding. This results in inefficiencies, delays and additional costs. Furthermore, multiple plans and processes can make it difficult for the public and iwi/Māori to participate effectively. In addition, the resource management system has been weak at managing effects across domains, such as the land and the sea, and cumulative environmental effects.

Excessive complexity, uncertainty and cost across the resource management system

39. Overall, the resource management system is unnecessarily complex. This complexity is a product both of the RMA itself, and its interface with requirements across the LGA, LTMA, the Building Act 2004, and wider legislation.
40. Considerable variation across the country creates uncertainty for resource users. Processes are complex, litigious, and costly, and frequently disproportionate to the decision being sought or the risk or impact of the proposal. Matters that should be addressed in plans are left to the resource consenting process to resolve, generating unnecessary uncertainty. There have been successive legislative amendments targeting aspects of the RMA, and a proliferation of new arrangements to work around it, such as the proposed Kāinga Ora Homes and Communities planning powers, and Special Housing Areas. While the amendments sought to address deficiencies in the system, these workarounds have resulted in further misalignment between legislation.

¹² For example, see Infrastructure New Zealand, *Integrated Governance, Planning and Delivery: A proposal for local government and planning law reform in New Zealand*, 2015.

Lack of adequate national direction

41. Many commentators argue that the main problem with the RMA has simply been a lack of national direction.¹³ Under the RMA it was envisaged that central government would set national environmental bottom lines and policies through national policy statements (NPS) and national environmental standards (NES). However, for many years these powers were not exercised. Caroline Miller has described this as a failure of the government “to participate in the co-operative mandate that the RMA created”.¹⁴ It has been argued that the absence of national guidelines and policies has left local authorities and the Environment Court “to take bite-sized pieces rather than adopt a high level vision”.¹⁵

The planning system has struggled to respond to challenges as they have arrived – in particular the housing crisis, intensification of rural land use and risk of climate change.

42. While national direction was slow to be developed for many years, since 2013 there has been a considerable increase in the number of national direction instruments. National Planning Standards were also gazetted in April 2019, and will set the structure of plans, and some content, including definitions.

43. Notwithstanding this increase in national instruments, taken as a whole the suite of national direction is not yet cohesive. A lack of strategic direction across the national direction programme has flow-on effects for council implementation and the management of interactions between instruments. This in turn compromises the ability of individual instruments to have their intended impact.

Insufficient recognition of the Treaty and lack of support for Māori participation

44. The Treaty is an important part of New Zealand’s unique constitutional arrangements. Better recognising the Treaty in resource management decision-making was a driver behind the introduction of the RMA. The Minister for the Environment at the time of the resource management policy development process, Sir Geoffrey Palmer, noted “the new law will be both practical and just. The principles of the Treaty form an important component for the decisions made in this review. The new Resource Management Planning Act will provide for

¹³ Others have argued that even where there has been national direction or even standards, the rate at which councils have implemented these directives has been slow and inconsistent.

¹⁴ Miller, C., *Implementing Sustainability: The New Zealand Experience*, Oxon: Routledge, 2011.

¹⁵ Schofield, R., *Alternative perspectives: The future for planning in New Zealand - A discussion for the profession*, commissioned by the New Zealand Planning Institute, Auckland, 2007.

more involvement of iwi authorities in resource management, and for the protection of Māori cultural and spiritual values associated with the environment”.¹⁶ The RMA contains several provisions that are specific to Māori, including in its purpose and principles, and its consultation requirements. At the time of the passing of the RMA, many Māori were optimistic that they would have a larger and more meaningful role in resource management issues.

45. In some areas, Māori participation in the resource management system has improved over the past two decades. The number of councils engaged with Māori, such as through formal consultation, relationship agreements and iwi management plans has increased. However, since 1991, no RMA functions have been transferred to iwi authorities under section 33 of the RMA. Nor have any iwi authorities been approved as a Heritage Protection Authority under section 188. There has been limited use of provisions for joint management arrangements under section 36B. Both capability and capacity issues within councils and iwi authorities and legislative barriers have limited use of these provisions.¹⁷
46. The Honourable Justice Joe Williams has argued that outside the Treaty settlement process, the RMA is the most sophisticated attempt in New Zealand law to bring together both western and Māori concepts in the way envisaged by the Treaty. However, he also points out that the RMA is “not pulling its weight”. Treaty settlements have been more successful in providing for Māori to become partners in decision-making about resources. According to Justice Williams, this is “a significant admission of failure in the RMA itself, since the mechanisms to achieve similar outcomes have existed in that Act for more than 20 years without being deployed”.¹⁸

Weak and slow policy and planning

47. Plans are regulatory instruments and should be clearly and unambiguously expressed. Some plans have been poorly drafted and many have not effectively managed cumulative environmental effects. There are also poorly designed and unnecessarily complex rules that have caused problems in urban areas. The proliferation of planning documents under the RMA has added complexity and cost, as both applicants and administrators must trawl through a multitude of policies to discern relevant direction. There is also a lack of integration and alignment of RMA policies and plans.¹⁹

¹⁶ Ministry for the Environment, *People, Environment, and Decision Making: the Government's Proposals for Resource Management Law Reform*, Wellington, 1988.

¹⁷ Waitangi Tribunal, *The Stage 2 Report on the national Freshwater and Geothermal Resources Claims* (Wai 2358 report), 2019.

¹⁸ Justice Joseph Williams, *The Harkness Henry Lecture: Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law*, Waikato Law Review, Vol 21, 2013.

¹⁹ See New Zealand Productivity Commission, *Better Urban Planning*, 2017.

48. Plan making under the RMA has also been too slow, partly due to the multiple avenues to relitigate decisions. This means that the planning system has struggled to respond to challenges as they have arrived – in particular the housing crisis, intensification of rural land use and risk of climate change. In practice, an elected council will have difficulty changing a plan within their elected three year term.

Weak compliance, monitoring and enforcement

49. Weak compliance, monitoring and enforcement (CME) across the resource management system has undermined rules in plans that protect the environment. Problems with CME are rooted in both statutory provisions and institutional arrangements.
50. Penalties for non-compliance are weak in comparison with other commonwealth nations. The cost recovery mechanisms of the Act are poor, especially in relation to permitted activity monitoring and the investigation of unauthorised activities. Many offences have significant elements of commercial gain, but recovery tools, such as civil forfeiture orders, are only rarely used in RMA offending. Penalties imposed by the courts at sentence are often dwarfed by the commercial gain obtained by the offender.
51. The devolution of CME functions to a large number of small local government agencies has also created a fragmented system. Many local agencies lack the economy of scale to properly resource CME and there is evidence from time to time of bias and conflicts of interest in implementation. Exacerbating this fragmentation is a long history of weak oversight and guidance from central government.
52. The fragmented system and limited economies of scale of our councils have held agencies back from investing in new technologies and tools. Information management across the sector is highly variable, and there are poor mechanisms for sharing data and intelligence between regulators about offences and offenders. Few councils have invested in new technologies such as remote sensing, latent devices, drones for inspections, or automated reporting tools.

Capability and capacity challenges in central and local government

53. While there are some clear problems with the legislation, a significant contributor to the problems with the RMA has been insufficient capacity and capability in central and local government to fulfil the roles expected of them.²⁰
54. Insufficient resourcing is considered one of the reasons for central government's failure to implement national direction. Capacity and capability limitations within local authorities is frequently cited as a root cause of delay, uncertainty and cost. Under-resourcing has particularly affected the ability of councils to undertake necessary research and monitoring.

²⁰ See New Zealand Productivity Commission, *Better Urban Planning*, 2017, p.400.

Weak accountability for outcomes and lack of effective monitoring and oversight

55. Some argue that weak accountability arrangements and conflicts of interest have also contributed to the failure to properly implement the RMA. For example, the Environmental Defence Society (EDS) notes “agency capture of (particularly local) government by vested interests has reduced the power of the RMA to appropriately manage effects on the environment”.²¹ Others argue there is insufficient control and oversight of resource management functions by locally elected decision-makers.
56. There is widespread agreement that there is insufficient monitoring and collection of data and information on the state of the environment, on environmental pressures at the local and national levels, and on the performance of the resource management system itself.²²
57. Given both central government and local government have struggled to deliver a well-functioning system over many years, some argue that there has been insufficient oversight of the system to hold both to account for delivering good environmental and urban outcomes.

²¹ Environmental Defence Society, *Evaluating the environmental outcomes of the RMA*, 2016.

²² For example see Ministry for the Environment & Stats NZ, *New Zealand’s Environmental Reporting Series: Environment Aotearoa* 2019, Wellington, 2019; New Zealand Parliamentary Commissioner for the Environment, *Focusing Aotearoa New Zealand’s environmental reporting system*, 2019; New Zealand Productivity Commission, *Better Urban Planning*, 2017; Organisation for Economic Cooperation and Development, *Environmental Performance Review – New Zealand*, 2017.



B. Whaiwhakaaro

58. A generation has now passed since the Resource Management Act 1991 (RMA) was developed and new environmental challenges have emerged, in particular for freshwater, urban development and climate change. This review is an opportunity to build on innovative thinking internationally and in New Zealand in developing new approaches to resource management.
59. This section discusses issues and initial thoughts on possible options for reform of the resource management system. The options included are not comprehensive of all those that will be considered, nor are they fully developed proposals. Rather they should be thought of as indicative of the types of reform ideas that are being considered by the review. We welcome comment on these options as we develop and refine our proposals for reform.

Issue 1: Legislative architecture

Overview

60. The problems identified with the RMA and its implementation suggest that reconsidering the legislative architecture of the resource management system is required. This section discusses the scope of the RMA itself, while Issue 4 discusses strategic integration across the resource management system, including the possible development of an overarching strategic integrated planning statute and wider application of important principles in the RMA.
61. The RMA is a broad framework for the management of natural and physical resources. Some argue that integration of statutory frameworks for land use planning and environmental protection under the RMA has led to poor outcomes for both the built and the natural environment. For example, in its recent inquiry into urban planning, the Productivity Commission notes that the built and natural environments have different characteristics and require distinct management approaches.²³ According to the Commission, “the natural environment needs a clear focus on setting standards that must be met, while the built environment requires assessments that recognise the benefits of development and allow change”.²⁴
62. Others argue that the integrated approach taken in the RMA was not the cause of poor outcomes for our urban areas or the natural environment. Rather, they point to implementation problems, such as insufficient provision of national direction by central government. They also argue that a move away from integration would suffer from the difficulty of distinguishing between what should be dealt with in an environmental management and land use planning framework respectively.²⁵
63. Notwithstanding their analysis that the approach taken to the built and natural environments in the RMA had been unclear, the Productivity Commission recommended maintaining an integrated statute, albeit with the addition of separate principles to guide planning in the built environment. This was informed by legal advice from Dr Kenneth Palmer who argued while there has been lack of clarity in the approaches taken to regulation of the built and natural environment, “it is difficult to see any compelling or justifiable case for turning the clock back pre the RMA and reverting to the former separate regulatory statutes”.²⁶
64. On the other hand, Infrastructure New Zealand and others have argued that greater clarity could be achieved through separate statutory provision for environmental protection and

²³ New Zealand Productivity Commission, *Better Urban Planning*, 2017, p.5.

²⁴ New Zealand Productivity Commission, *Better Urban Planning*, 2017, p.5.

²⁵ For example, see Sir Geoffrey Palmer and Dr Roger Blakeley’s submission on the New Zealand Productivity Commission’s *Better Urban Planning* inquiry, Draft Report, 2016.

²⁶ Palmer, K., *New Zealand Productivity Commission: Legal issues in the New Zealand planning system*, 2017.

planning for land use and development. This would flow through to different institutional roles and processes to carry out these distinct functions.²⁷

Whaiwhakaaro

65. Options for reform of the legislative architecture of the RMA are intertwined with the matters discussed in Issues 2, 3 and 4. That said, some possible options to consider include:
- a. Retain the RMA as an integrated statute with enhanced principles for land use and environmental management
 - b. Split the RMA into an environmental management statute and a land use planning statute

ISSUE 1: LEGISLATIVE ARCHITECTURE - QUESTION

1. Should there be separate legislation dealing with environmental management and land use planning for development, or is the current integrated approach preferable?

Issue 2: Purpose and principles of the Resource Management Act 1991

Overview

66. The purpose of the RMA is to promote the sustainable management of natural and physical resources. The principles of the Act are set out in sections 6, 7 and 8 as matters of national importance, other matters and the Treaty of Waitangi respectively (the Treaty of Waitangi is discussed in a later section). Differing levels of weight are given to these sections.

New Zealand's natural environment is now significantly more degraded than it was when the RMA was developed in 1991.

²⁷ Infrastructure New Zealand, *Integrated Planning, Governance and Delivery*, 2015.

67. As noted above, the RMA has provided insufficient protection for the natural environment. While the ability of policies and plans to set firm environmental limits has been strengthened following the King Salmon decision of the Supreme Court, the Environmental Defence Society (EDS) argues “our laws may need to be more active and directive in terms of when, by whom, and under what normative umbrella we impose bottom lines”.²⁸ New Zealand’s natural environment is now significantly more degraded than it was when the RMA was developed in 1991. In this context, the concept of “sustainable management” is also thought to lack sufficient focus on improving, restoring or enhancing environmental quality.²⁹

There is an opportunity to build on new thinking with regard to how te ao Māori – the Māori world – might be reflected in resource management in New Zealand.

68. A second criticism of the RMA’s purpose and principles is that they provide insufficient recognition of and strategic focus for necessary housing and infrastructure development. The lack of direction for development in the RMA has led some to argue that it is primarily a reactive framework concerned with managing the adverse impacts of development, and has insufficient focus on the positive outcomes that can be derived from planning for resource use.³⁰

69. A review of the RMA’s purpose and principles is an opportunity to build on innovative thinking internationally and provide for relevant new resource management concepts, such as resilience, ecosystem based management and environmental limits. One example of a new approach is the United Kingdom’s Environment Bill 2019-20.³¹ The Bill requires long-term targets for environmental improvement to be established, including specific standards and timeframes. The Bill also provides for a “net gain” in biodiversity to be a condition of planning permission. Another is the Welsh Well-being of Future Generations Act 2015 that requires Welsh Ministers to set milestones and show progress towards achieving seven wellbeing goals.³²

70. There is also an opportunity to build on new thinking with regard to how te ao Māori – the Māori world – might be reflected in resource management in New Zealand. The Ministry for the Environment has worked together with the Iwi Leaders Group and Kahui Wai Māori in

²⁸ Environmental Defence Society, *Reform of the Resource Management System: Working Paper 3*, 2018, p.63.

²⁹ Environmental Defence Society, *Reform of the Resource Management System: Working paper 3*, 2018, p.74.

³⁰ For example, see the Minister for the Environment’s Urban Technical Advisory Group report, 2011.

³¹ The United Kingdom’s Environment Bill 2019-20 is available here: <https://services.parliament.uk/Bills/2019-20/environment.html>.

³² See discussion in Environmental Defence Society, *Reform of the Resource Management System: Synthesis report*, 2018.

recent years to embed Te Mana o te Wai within the legal framework for managing freshwater resources.³³ Included within this is a hierarchy of management obligations:

- i. The first obligation is to protect the health and mauri of nature.
 - ii. The second obligation is to ensure that the essential needs of people are met. This includes ensuring safe access to drinking water, and allowing for customary uses.
 - iii. The third obligation is to enable other consumptive use, provided such use does not adversely impact the mauri of nature.
71. The Waitangi Tribunal, Kahui Wai Māori and others have recommended that the concept of Te Mana o te Wai should be recognised in Part 2 of the RMA.
72. Some also consider that the purpose and principles of the RMA should have broader influence and be used to guide decision making under other resource management statutes.³⁴ Options for how this might be developed are discussed in Issue 4 on strategic integration across the resource management system.

Whaiwhakaaro

73. Options for reform of the purpose and principles of the RMA are intertwined with the matters discussed in Issues 1, 3 and 4. That said, some possible options to consider include:
- a. Retain or change the sustainable management purpose under s5(1)
 - b. Retain or change the definition under s5(2), for example by adding a positive obligation to maintain and enhance the environment
 - c. Reframe ss. 5, 6, 7 to more clearly provide for outcomes-based planning
 - d. Strengthen ss. 5, 6 and 7 to more explicitly require environmental limits and/or targets to be set
 - e. Recognise the need to ensure there is sufficient development capacity to meet existing and future demands including for affordable housing
 - f. Recognise other urban planning objectives
 - g. Develop a separate statement of principles for the built environment
 - h. Recognise Te Mana o te Wai, or its underlying principles in Part 2
 - i. Require national direction on identified topics or methodologies
 - j. Provide for new concepts to address climate change (discussed later)

³³ The Ministry for the Environment is currently consulting on provision for Te Mana o te Wai in the National Policy Statement on Freshwater Management.

³⁴ Environmental Defence Society, *Reform of the Resource Management System: Synthesis Report*, 2018.

ISSUE 2: PURPOSE AND PRINCIPLES OF THE RMA - QUESTIONS

2. What changes should be made to Part 2 of the RMA?

For example:

3. Does s5 require any modification?
4. Should ss. 6 and 7 be amended?
5. Should the relationship or ‘hierarchy’ of the matters in ss. 6 and 7 be changed?
6. Should there be separate statements of principles for environmental values and development issues (and in particular housing and urban development) and, if so, how are these to be reconciled?
7. Are changes required to better reflect te ao Māori?
8. What other changes are needed to the purpose and principles in Part 2 of the RMA?

Issue 3: Recognising Te Tiriti o Waitangi /the Treaty of Waitangi and te ao Māori

Overview

74. The RMA contains several provisions that are specific to Māori and the Treaty. Section 6(e) requires decision-makers to recognise and provide for “the relationship of Māori and their culture and traditions within their ancestral lands, water, sites, wāhi tapu, and other tāonga”. Section 7(a) requires decision-makers to have particular regard to kaitiakitanga. Section 8 requires decision-makers to take into account the principles of the Treaty of Waitangi. The RMA also provides for transfer of functions and joint management arrangements, iwi management plans, Mana Whakahono ā Rohe agreements, and for consultation with Māori, among other things.³⁵

³⁵ Relevant RMA provisions include: opportunities for transfer of functions (s 33); joint management arrangements (s 36B); recognition of tikanga Māori and te reo Māori at hearings (s 39); consultation provisions in relation to national environmental standards (NES), national policy statements (NPS), regional policy statements (RPS), regional plans (RP), and district plans (Part 5 and Schedule 1); provision for iwi management plans (Part 5); Mana Whakahono ā Rohe provisions (Subpart 2 of Part 5); provisions relating to water conservation orders and heritage orders (Parts 8-9).

75. As discussed, while the RMA was designed to provide for better recognition and protection of Māori interests in resource management, some consider that it has not fulfilled this promise. The Waitangi Tribunal notes “it is disappointing that the RMA has almost completely failed to deliver partnership outcomes in the ordinary course of business when the mechanisms to do so have long existed”.³⁶ The Tribunal also argues that Māori interests tend to be “balanced out” in the hierarchy of matters that decision-makers must consider in the RMA, and that lack of resourcing for Māori participation in processes has limited use of available tools.³⁷
76. There have been reported difficulties in consultation processes in some places, particularly where there are multiple iwi, many hapū and overlapping rohe. This can cause delay, expense and frustration for councils, Māori and applicants. This suggests the meaning of iwi authority and hapū in the RMA and consultation processes with those groups may need clarifying.
77. Other environmental legislation, such as the Conservation Act 1987, give greater weight to the principles of the Treaty.³⁸ More recently developed legislation is also more explicit about what the Crown’s responsibility to give effect to the principles of the Treaty in a particular context entails.³⁹
78. Treaty settlements over the last 25 years have developed new approaches and arrangements for management of resources and enabled some iwi to engage more fully in the resource management system. Often with complementary benefits for councils and the wider community. Treaty settlement agreements will be upheld by this review.
79. There is also an opportunity to build on what has been achieved through recent Treaty settlements in developing new approaches and improved partnership arrangements more generally. Some important examples of Treaty settlements that reflect iwi understandings of their relationship to place are those relating to Te Urewera, Te Awa Tupua/Whanganui River, Te Waiū-o-te Ika/Whangaehu River and the Waikato and Waipā Rivers. Some of these provide statutory recognition of tikanga and kawa for iwi. Others establish legal personhood for the environment in those places, with corresponding rights, duties, and responsibilities. Recognition of legal personhood is aligned with tikanga and te ao Māori, as maunga, awa and whenua are seen as part of one’s family. The principles of the Treaty are reflected in a management approach that incorporates representation by iwi and the Crown.

Treaty settlements over the last 25 years have developed new approaches and arrangements for management of resources.

³⁶ Waitangi Tribunal, *Wai 262 Inquiry: Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, 2011.

³⁷ Waitangi Tribunal, *The Stage 2 Report on the national Freshwater and Geothermal Resources Claims (Wai 2358 report)*, 2019.

³⁸ This was discussed recently in *Ngāi Tai Ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122.

³⁹ For example, see section 12 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

80. A number of other bodies have also been developed outside Treaty settlement processes to monitor council performance in meeting Treaty requirements, promote issues of significance to Māori, and build capability and capacity in the resource management system. An important aspect of this is use of mātauranga Māori. Examples include the Independent Māori Statutory Board in Auckland, and the Environmental Protection Authority's (EPA) statutory Māori advisory committee, Ngā Kaihautū Tikanga Taiao.

Whaiwhakaaro

81. Options for reform of provision for the Treaty and Māori interests and engagement in the RMA overlap with many of the other issues discussed in the paper. Some possible options to consider are set out below. Other options are discussed in other sections of the paper.
- a. Strengthen the reference to the Treaty in s8
 - b. Remove barriers to the uptake of opportunities for joint management arrangements in s36B and transfer of powers in s33
 - c. Make provision for new approaches and partnership arrangements in the management of resources, drawing on the experience of Treaty settlements
 - d. Clarify meaning of iwi authorities and hapū
 - e. Provide funding mechanisms to support Māori participation
 - f. Provide for regular auditing of council performance in meeting Treaty requirements
 - g. Provide for other bodies to promote issues of significance to Māori and develop capability and capacity, building on the examples of the Independent Māori Statutory Board in Auckland, and the Environmental Protection Authority's (EPA) statutory Māori advisory committee, Ngā Kaihautū Tikanga Taiao

ISSUE 3: RECOGNISING TE TIRITI O WAITANGI /THE TREATY OF WAITANGI AND TE AO MĀORI - QUESTIONS

9. Are changes required to s8, including the hierarchy with regard to ss. 6 and 7?
10. Are other changes needed to address Māori interests and engagement when decisions are made under the RMA?

Issue 4: Strategic integration across the resource management system

Overview

82. As noted above, there is poor alignment of land use and infrastructure plans and processes (including public participation) with the required funding mechanisms to support change. In addition, there is poor management of cumulative environmental impacts across domains. Better coordination between central and local government is also needed.

There is currently no consistent framework for spatial planning in New Zealand.

83. Greater alignment and integration could be achieved by agreeing some common principles that might apply broadly across the resource management system. One way to give effect to these principles might be through strategic and integrated planning, commonly referred to as “spatial planning”.

84. Many stakeholders and commentators have put forward options for how “spatial planning” might be incorporated into a reformed resource management system.⁴⁰ Spatial planning would encompass consideration of economic, environmental, social and cultural wellbeing. It would also need a long-term time horizon, and a focus on integration of environmental protection, land and natural resource use and infrastructure decision-making, including funding and financing. It could provide an opportunity for Māori to participate in strategic decision-making about resource management issues.

85. There is currently no consistent framework for spatial planning in New Zealand. Some councils are making progress developing integrated and long-term spatial plans without a legislative framework, but there are barriers to achieving their full potential, including:

- insufficient legislative mandate and weight, including formal links between spatial plans and regulatory resource management and funding plans
- fragmented governance and decision-making arrangements (within and between local authorities) and insufficient central government involvement
- infrastructure funding constraints and insufficient supporting tools (eg, infrastructure funding and financing tools) and poor understanding of the costs and benefits of growth
- poor incentives for local authorities to join forces to coordinate, provide for, and fund infrastructure in order to efficiently respond to growth and change

⁴⁰ Examples include: New Zealand Productivity Commission, *Better Urban Planning*, 2017; Local Government New Zealand, *A 'blue skies' discussion about New Zealand's resource management system*, 2015; Infrastructure New Zealand, *Integrated Planning, Governance and Delivery*, 2015.

- insufficient capability and capacity in central and local government to develop and implement spatial plans.
86. If a framework for spatial planning is developed, consideration needs to be given to how current provision for designations might be aligned with or work alongside spatial plans.

Whaiwhakaaro

87. Options to provide for strategic integration across the resource management system overlap with the options discussed in Issues 1, 2 and 3, among others. Possible options to consider include:
- a. Create an overarching strategic integrated planning statute, which sits above the RMA and other relevant legislation (including the the Local Government Act 2002 (LGA) and the Land Transport Management Act 2003 (LTMA)). This might “elevate” aspects of Part 2 of the RMA, and other important principles
 - b. Provide for spatial planning within the RMA with statutory linkages to other relevant legislation
 - c. Provide for spatial planning within the LGA with statutory linkages to the RMA and other relevant legislation
 - d. Provide for spatial planning at a regional level only (or also at a national level)
 - e. Require spatial plans for all regions, only for major urban centres, or provide triggers in legislation when spatial plans would be required
 - f. Focus spatial planning on housing and urban growth only, or expand its scope to include other matters such as environmental protection and restoration, climate change mitigation and adaptation, rural land use change and resource management in the coastal marine area
 - g. Give spatial plans strong legal weight over plans under the RMA, LGA and LTMA (or weak legal weight)
 - h. Provide for spatial plans to be led by local authorities, or jointly developed by a collaborative process involving central and local government and Māori
 - i. Provide for other ways of aligning land use and infrastructure planning processes under the RMA, and for addressing cumulative environmental effects
 - j. Consider how designations might be aligned with spatial plans at the national or regional level

ISSUE 4: STRATEGIC INTEGRATION ACROSS THE RESOURCE MANAGEMENT SYSTEM - QUESTIONS

11. How could land use planning processes under the RMA be better aligned with processes under the LGA and LTMA?
12. What role should spatial planning have in achieving better integrated planning at a national and regional level?
13. What role could spatial planning have in achieving improved environmental outcomes?
14. What strategic function should spatial plans have and should they be legally binding?
15. How should spatial plans be integrated with land use plans under the RMA?



Issue 5: Addressing climate change and natural hazards

Overview

88. Addressing climate change and natural hazards are important goals. The Climate Change Response Act (CCRA) is the main framework for reducing greenhouse gas emissions (mitigation), and assessing and responding to risks from a changing climate (adaptation). The Act will set greenhouse gas reduction targets and require future governments to continue these efforts. It will also require the setting of emissions budgets and the development of a national adaptation plan. This raises an important question as to how the RMA might be aligned with the CCRA to contribute to the national effort to address climate change.
89. The RMA currently has a limited role in climate change mitigation. In 2004, the Government removed direct control of greenhouse gas emissions by regional councils.⁴¹ It was thought climate change mitigation was better addressed nationally, and through the introduction of a price on emissions. A price on emissions is now in place through the New Zealand Emissions Trading Scheme (NZ ETS), albeit with some limitations.

⁴¹ Sections 70A and 104E prohibit local authorities from considering the effects of greenhouse gas emissions on climate change in plans and consents.

90. The 2004 amendments did require councils to consider the benefits of efficient energy use and renewable energy in decisions. They also left room for the introduction of a national environmental standard (NES) in future to allow for direct control of the discharge of greenhouse gases, although no such standard has been introduced.⁴²

The RMA currently has a limited role in climate change mitigation.

91. Some argue that the RMA should be used more broadly as a tool to address climate change mitigation. While an effective emissions price is likely to be the best way to reduce emissions across the economy in a fair and efficient way, regulation under the RMA may serve as a useful complement to this approach. For example, the Productivity Commission points out that “a single emissions price cannot... reflect the varying range of co-benefits and co-harms associated with different land uses” and additional incentives or regulation to secure benefits or avoid harms are required.⁴³ Others believe that plan rules and/or consents for activities which emit substantial quantities of greenhouse gases should consider the climate change effects in order to prevent additional damage or to agree a time limited transition.
92. Options might include creating a more permissive regulatory approach for certain activities that are necessary to facilitate a transition to a low emissions economy, such as forestry and renewable energy development. It might also include use of spatial planning to influence the way urban areas develop, decrease the need for carbon-intensive transportation and improve energy efficiency in the long-term. Finally, there may also be a case to use regulation under the RMA to control particular emissions-intensive activities in cases where an emissions price is unlikely to be effective.
93. The 2004 amendments did require councils to consider the effects of climate change (adaptation) in their resource management decisions. The New Zealand Coastal Policy Statement 2010 included requirements to plan for coastal hazards. The RMA was also amended in 2017 to provide a stronger framework for management of natural hazards. Nevertheless, some argue that councils need stronger, clearer direction on how and when to adapt to climate change and address natural hazards, and more technical support and information to support risk assessment in decision-making. In particular, there is no well-established policy framework or funding mechanisms for communities to avoid, accommodate, defend and retreat from high risk areas over time.⁴⁴

42 Under s 70B (relating to district plans) and s 104F (relating to resource consents) an NES standard can be promulgated.

43 New Zealand Productivity Commission, *Low Emissions Economy report*, 2018, p.284.

44 Jonathan Boston and Judy Lawrence, *Funding Climate Change Adaptation: The case for a new policy framework*, Policy Quarterly, volume 14, Issue 2, May 2018.

Whaiwhakaaro

94. Options to address climate change and natural hazards are contingent on decisions made with regard to other aspects of the review. That said, some possible options to consider include:

Mitigation

- a. Maintain the current focus on the NZ ETS as the main policy tool to address climate change mitigation
- b. Add reference to climate change mitigation to Part 2 of the RMA
- c. Develop national direction to encourage the types of activities needed to facilitate New Zealand's transition to a low carbon economy. This includes renewable energy, carbon capture and storage, uptake of low emissions technologies and efficient urban form
- d. Use "spatial planning" for land use and infrastructure as a tool for addressing climate change mitigation
- e. Develop an NES with controls on greenhouse gas emissions under the RMA. This might be targeted at particular emissions-intensive activities for which emissions pricing is unlikely to be effective
- f. Require the Minister for the Environment to develop or amend national direction under the RMA in response to the carbon budgets determined by the CCRA

Adaptation and natural hazards

- a. Develop national direction to provide clearer planning restrictions for development in high risk areas
- b. Use spatial planning processes to identify future adaptation responses (in the context of the national adaptation plan) that connect with regulation, infrastructure provision and adaptation funding
- c. Improve implementation of risk assessment
- d. Clarify what changes might be needed to existing use rights in the context of managed retreat
- e. Introduce new planning tools such as "dynamic adaptive planning pathways" and other measures⁴⁵
- f. Require the Minister for the Environment to develop or amend national direction under the RMA in response to the national adaptation plan developed under the CCRA

⁴⁵ Ministry for the Environment, *Preparing for Coastal Change: A Summary of Coastal Hazards and Climate Change Guidance for Local Government*, 2017.

ISSUE 5: ADDRESSING CLIMATE CHANGE AND NATURAL HAZARDS - QUESTIONS

16. Should the RMA be used as a tool to address climate change mitigation, and if so, how?
17. What changes to the RMA are required to address climate change adaptation and natural hazards?
18. How should the RMA be amended to align with the Climate Change Response Act 2002?

Issue 6: National direction

Overview

95. The RMA devolves day-to-day decision-making about resource use to local authorities. Central government can set national policies and environmental standards on issues of national significance, to guide how local authorities manage specific resources to achieve the purpose of the Act. Under the RMA, these policies and standards are collectively called ‘national direction’. They include: NPS, NES, and National Planning Standards. The Minister for the Environment is also empowered to recommend making regulations.
96. As discussed above, many argue that the main problem with the RMA has simply been a lack of national direction. This has led to unnecessary duplication of effort across the country. The instruments that have been developed have also been criticised for being insufficiently directive and slow to effect change. In particular, NPS have been criticised for being high level documents that do not relate easily to the everyday work of planners. Partly as a result, local plans have not delivered “sustainable management”. A particular gap in national direction identified by the Productivity Commission is how councils should put provisions relating to the Treaty into practice.⁴⁶
97. While much effort is underway to develop new national direction on a range of issues, more could be done to ensure central government’s national direction programme as a whole is targeted at the right issues, aligned and coordinated, effective, efficiently developed, and easy for councils to implement.
98. The Productivity Commission recommended central government deliver a core suite of national instruments to ensure that guidance is provided on the full range of matters in which

While much effort is underway to develop new national direction on a range of issues, more could be done to ensure central government’s national direction programme as a whole is targeted at the right issues, aligned and coordinated, effective, efficiently developed, and easy for councils to implement.

⁴⁶ New Zealand Productivity Commission, *Better Urban Planning*, 2017, p. 13.

central government has an interest.⁴⁷ This core suite of national direction might be required by legislation, as is the case currently with the New Zealand Coastal Policy Statement. There might also be a requirement for regular review of this material, to ensure it remains well-aligned and up to date. Alternatively, EDS has suggested a harmonised set of national policy statements be delivered through a single Government Policy Statement.⁴⁸ This might better enable strategic direction across the programme as a whole, and prove easier for councils to translate into lower level planning instruments.

99. Some issues identified with the consistency of local plans have begun to be addressed through the recent introduction of National Planning Standards. These require plans to be prepared using a prescribed structure and format, mapping and definitions framework. So far, the planning standards have not prescribed the content of plans. However, given the current development of a broader range of national direction, more thought could also be given to the use of the planning standards as a tool for delivery of national direction.

Whaiwhakaaro

100. Options to improve national direction are contingent on decisions made with regard to other aspects of the review. That said, some options to consider include:

- a. Make greater use of more directive instruments that are faster to effect change, such as NES and regulations
- b. Require a mandatory suite of national direction, including provision for regular review
- c. Require a mandatory national policy statement on the Treaty
- d. Deliver aspects of national direction through a single combined instrument such as a Government Policy Statement
- e. Further develop the national planning standards to support the implementation of national direction

ISSUE 6: NATIONAL DIRECTION - QUESTION

19. What role should more mandatory national direction have in setting environmental standards, protection of the environment more generally, and in managing urban development?

⁴⁷ New Zealand Productivity Commission, *Better Urban Planning*, 2017, p.266.

⁴⁸ Environmental Defence Society, *Reform of the Resource Management System: The Next Generation Synthesis Report*, 2018, p.8.

Issue 7: Policy and planning framework

Overview

101. The RMA establishes a hierarchy of policy statements and plans which seek to give substance to the sustainable management purpose of the Act with increasing particularity both as to substantive content and locality. Regional and local plans serve different roles in the system. The content of plans reflects both the functions of regional and territorial authorities and the specified requirements for regional policy statements, regional plans (including regional coastal plans), and district plans.
102. The quality of plans is variable and they are often poorly integrated with other plans. Recent reviews of the resource management system have found insufficient protections for the natural environment, and unnecessary (and poorly targeted) land use regulation in urban areas.⁴⁹ One reason for this has been difficulty implementing the ‘effects-based’ approach intended by the RMA. There has also been poor application of cost benefit analysis as part of the regulatory process, as required under the current section 32/32AA evaluation report process. The rationale for the specific topics to be covered by different plans at different levels of local government is not always easy to understand. Finally, and as noted earlier, plan effectiveness monitoring by local authorities has been limited.
103. Processes for plan-making tend to be complex, slow and litigious, which means regulation has not responded to changes in the environment. While the Environment Court is thought to provide a useful check and balance for decision-making by local authorities, this only occurs when a party appeals matters to the Court.
104. A number of options have been put forward for improving plans and plan-making processes. As discussed above, introducing spatial planning at a regional level across the RMA, LGA and LTMA might assist with better integrated resource management. It would also provide an opportunity to rationalise some aspects of regional and local planning, as high-level policy matters would be decided jointly through spatial planning processes. In addition, better integrated planning might also be achieved by requiring local authorities to work together to produce combined plans, as proposed previously.⁵⁰ This would also reduce the number of plans, making the system easier to navigate, and could address the institutional challenges faced by many small councils undertaking the plan making function in isolation and with

The quality of plans is variable and they are often poorly integrated with other plans.

⁴⁹ For example, see the Organisation for Economic Cooperation and Development, *Environmental Performance Review – New Zealand*, 2017.

⁵⁰ Ministry for the Environment, *Improving our resource management system: A discussion document*, 2013, p. 42.

limited resources. Greater status could also be given to iwi management plans, to better provide for the voice of Māori, as recommended by the Waitangi Tribunal.⁵¹

105. To provide some independent oversight of local plans and achieve a regulatory system that more quickly responds to changes in the environment, the Productivity Commission, local government sector groups and commentators have all called for variations of a single stage plan making process, similar to those used recently in Auckland and Christchurch. This would provide for a more robust first hearing, including use of independent commissioners, as an alternative to the current Schedule 1 process, and appeals to the Environment Court.⁵² The Schedule 1 process itself could also be made more flexible by requiring processes to be modified depending on the significance of the issues to be dealt with. Greater oversight of the quality of local plans might also be achieved through a role for central government in approving plans prior to notification and/or the plans becoming operative. This might be focused on ensuring implementation of national direction.
106. An important issue to consider is how a shift to an ‘outcomes’ rather than an ‘effects-based’ planning system might be reflected in plans. This has the potential to provide more certainty about development that is and is not permitted, reducing the current strong focus on decision-making through resource consent processes. However, this might also entail a more prescriptive and less flexible approach. A second related issue to consider is the role of requests for changes to plans (commonly known as private plan change requests), and the impact of these on both certainty and flexibility of plans.

Whaiwhakaaro

107. Options to improve the policy and planning framework are contingent on decisions made with regard to other aspects of the review. That said, some possible options to consider include:
- a. Require regional spatial plans with effect across the RMA, LGA, and LTMA
 - b. Require combined plans for a region
 - c. Reconsider the functions of regional and district councils under the RMA and the effect they have on the content of plans
 - d. Provide for an ‘outcomes’ based approach to the content of plans

⁵¹ Waitangi Tribunal, *The Stage 2 Report on the national Freshwater and Geothermal Resources Claims* (Wai 2358 report), 2019.

⁵² There have been a number of models proposed. For example, Judge Skelton proposed an Independent Hearing Panel with a mix of Environment Court and local authority appointees, with a single hearing on merits, the panel making a final decision with points of law appeals only; the Auckland Unitary Plan used an Independent Hearing Panel reporting to the Auckland Council, with limited appeals and points of law.

- e. Provide for a more flexible plan-making process (greater ability to choose steps and timeframes) so that minor plan changes can be progressed using a streamlined process
- f. Adopt a “single stage” plan making process or retain the Schedule 1 process with or without modification
- g. If a “single stage” process is developed, require:
 - i. the decision-making body to reach a final decision, or the decision-making body to make recommendations to the initiating council
 - ii. plan changes to be determined by the Environment Court, with appeal rights limited to questions of law only to the High Court, or plan changes to be determined by an Independent Hearings Panel, with appeal rights limited to questions of law, either to the Environment Court, or to the High Court
 - iii. further rights of appeal to the Court of Appeal and Supreme Court with leave or special leave of the appellate court
- h. If an Independent Hearings Panel model is used, require:
 - i. the members to be appointed by the Minister for the Environment
 - ii. the members to be appointed jointly by central and local government, with iwi participation
- i. Require draft plans to be approved by a Minister or central government authority prior to notification, and/or prior to finalisation
- j. Give greater status to iwi management plans in Part 5 of the RMA
- k. Establish a central mechanism to provide assistance to councils with plan-making
- l. Expand or restrict the ability to apply for a private plan change

ISSUE 7: POLICY AND PLANNING FRAMEWORK - QUESTIONS

- 20. How could the content of plans be improved?
- 21. How can certainty be improved, while ensuring responsiveness?
- 22. How could planning processes at the regional and district level be improved to deliver more efficient and effective outcomes while preserving adequate opportunity for public participation?
- 23. What level of oversight should there be over plans and how should it be provided?



Issue 8: Consents/approvals

Overview

108. The main form of permit established under the RMA is a resource consent. Obtaining a resource consent to undertake an activity is the end product of a hierarchy of planning measures, taking the form of a permission (with conditions) that is enforceable. A land use consent is required if an activity infringes a standard, regulation, condition, or rule in a plan. Consents relating to river and lake beds, water use, discharges and the coastal marine area are required by default unless an activity is permitted by a plan or a regulation. Consent processes are often thought to be a choke point in the system; however many of the problems associated with consenting are in fact systemic problems.

109. There are around 40,000 resource consent applications each year, the majority of which are for land use or subdivision.⁵³ Almost all are decided by local authority officers under

⁵³ Data from the Ministry for the Environment's National Monitoring System, 2017/18 shows: Approximately 80% of consents are for land use or subdivision; 96% of consents are non-notified; 95% are decided by local authority officers under delegated authority (the rest are decided by independent commissioners, elected representatives, or the Environment Court); less than 0.5% of resource consents are appealed to the Environment Court, and 75% of these are resolved by mediation; 99.7% of consents are granted; the average cost of a non-notified resource

delegated authority. The vast majority of consents are non-notified (meaning there are no rights to make a submission or appeal) and almost all are granted. Although conditions are often imposed, there is uneven monitoring of compliance with them or enforcement of breaches. This begs the question as to the utility of many consents.

110. Reforms over the last 15 years have focused on improving the efficiency and reducing the cost of resource consents. However, they have also led to an increasingly complex system. One aspect of this is the numerous processing ‘tracks’ available for resource consents, including a number of distinct processes for similar issues.⁵⁴ Another is the number of possible activity classes.⁵⁵
111. Notification decisions have also become increasingly complex, time consuming and contentious. Prior to 2009, there was a statutory presumption in favour of notification – reflecting the general policy of the RMA that the consent process is to be public and participatory. This presumption was removed by the Resource Management (Simplifying and Streamlining) Amendment Act 2009. The notification provisions were substantially altered again in 2017. The key changes were some limitations on public and limited notification, primarily for housing-related resource consents. A council must have sufficient and reliable information before determining not to notify a resource consent application otherwise it runs the risk of committing an error of law that may make the decision on the application vulnerable to judicial review.
112. Some argue that the focus of recent reform on improving process efficiency has come at the expense of quality decision-making, while others argue that the focus on efficiency has come at the expense of access to justice.⁵⁶ A future system will need to strike the right balance between process efficiency and public participation. Some argue that policy might reconcile these tensions by better differentiating between significant activities that warrant broad public engagement, and minor activities that may not. It will also need to reduce complexity and cost in consenting processes, while ensuring appropriate scrutiny of activities with environmental impacts.

A future system will need to strike the right balance between process efficiency and public participation.

consent in 2017/18 was \$3,928; for a limited notified consent it was \$8,288; and for a publicly notified consent it was \$25,756.

54 For example, nationally significant proposals, and direct referral processes, are two pathways available for large scale, complex or potentially contentious applications.

55 The activity classes are permitted, controlled, restricted discretionary, discretionary, non-complying, and prohibited.

56 For example, see Newhook, Kirkpatrick & Hassan, *Issues with Access to Justice in the Environment Court of New Zealand*. In Resource Management Law Association of New Zealand, *Resource Management Theory & Practice*, 2017, p. 52.

113. A range of other matters also warrant consideration such as the process for designations, review and variation of consents and conditions, and the role of certificates of compliance.

Whaiwhakaaro

114. Options to improve consents and other approvals are contingent on decisions made with regard to other aspects of the review. That said, some possible options to consider include:
- a. Simplify the categories of activities (controlled, restricted discretionary, etc) and processing tracks (nationally significant proposals, direct referrals, etc)
 - b. Reduce the complexity of minor consent processes by only requiring certain applications to conduct a full assessment of environmental effects
 - c. Establish a separate permitting process and dispute resolution pathway for residential activities with localised/minor effects (building on the current process for marginal or temporary non-compliance or boundary activities⁵⁷)
 - d. More clearly specify permitted development rights for residential activities
 - e. Simplify notification decisions by:
 - iii. notifying all activities, but removing automatic requirements for hearings and appeals, or
 - iv. requiring that plans specify the activities that must be notified, or
 - v. more clearly defining who is an “affected party” or when “special circumstances” that require notification would apply
 - f. Maintain a separate consent pathway for nationally significant proposals
 - g. Improve transparency by requiring all applications and consents issued to be electronically available to the public
 - h. Facilitate lower cost consent processes by mandating online systems

ISSUE 8: CONSENTS/APPROVALS - QUESTIONS

24. How could consent processes at the national, regional and district levels be improved to deliver more efficient and effective outcomes while preserving appropriate opportunities for public participation?
25. How might consent processes be better tailored to the scale of environmental risk and impact?

⁵⁷ The Resource Legislation Amendment Act 2017 introduced new processes to deem certain proposed marginal or boundary activities to be permitted. Boundary activities require written approval of the relevant neighbour(s). Marginal or temporary activities are activities where the consent authority has decided there is a marginal or temporary rule breach.

- 26. Are changes required for other matters such as the process for designations?
- 27. Are changes required for other matters such the review and variation of consents and conditions?
- 28. Are changes required for other matters such as the role of certificates of compliance?

Issue 9: Economic instruments

Overview

115. An important aspect of the “effects-based” approach to environmental management introduced by the RMA was the intended greater use of economic instruments. These can provide an alternative means to improve environmental quality, incentives to use resources more efficiently and funds for environmental remediation. Economic instruments currently provided for under the RMA include financial contributions, administrative charges, bonds and resource rentals for sand, shingle, geothermal energy and coastal space.⁵⁸
116. In the years since the RMA was enacted, some progress has been made by central government in the development of economic instruments for environmental management. Two important examples are climate emissions pricing under the CCRA and the introduction of the waste disposal levy under the Waste Minimisation Act 2008. Some progress has also been made in the development of local economic instruments, most notably a nitrogen cap and trade system designed to improve water quality in the Lake Taupō catchment. This was developed as a partnership between central and local government and iwi.
117. Despite this progress, economic instruments remain underused in New Zealand, in particular for managing the diffuse pollution of waterways from agriculture. The OECD’s Environmental Performance Reviews of New Zealand in 1996, 2007 and 2017 have all called for expanded use of economic instruments, as did the final report of the Tax Working Group in 2019.

Whaiwhakaaro

118. Some possible options to consider to improve the use of economic instruments include:
- a. Broaden and strengthen provisions for financial contributions
 - b. Require mandatory charges for use of public resources, such as coastal space
 - c. Develop national direction and guidance on use of economic instruments
 - d. Offer councils a broader range of economic tools to support the resource management system such as emissions taxes, tradable emissions permits, transferable development rights, tools for environmental offsetting, and congestion charges

⁵⁸ See s 409, s 36, s 108A, s 112, s 64A.

- e. Allow or require councils to use revenue from economic instruments to protect, restore and maintain natural resources
- f. Enable easy short and longer term transfers of consents to facilitate markets for resources

ISSUE 9: ECONOMIC INSTRUMENTS - QUESTIONS

- 29. What role should economic instruments and other incentives have in achieving the identified outcomes of the resource management system?
- 30. Is the RMA the appropriate legislative vehicle for economic instruments?

Issue 10: Allocation

Overview

- 119. The RMA plays an important role in allocating access to use some resources. Two significant areas in which this occurs are permissions to take, and discharge to, freshwater and to occupy coastal marine space.⁵⁹
- 120. The RMA currently provides a mechanism for allocation through resource consents and permits. This review will consider whether this mechanism is fit for purpose. In relation to freshwater, we are aware that the Government is separately considering Māori rights and interests in freshwater allocation, including the findings of the Waitangi Tribunal in Wai 2358. Consideration of those issues is out of the scope of this review, but the expectation is that the freshwater work programme proceeds in tandem, so that the Government can be informed about how any allocation mechanism might function within a reformed resource management system, as well as issues relating to Māori rights and interests.
- 121. Allocation under the RMA has generally been on a “first in first served” basis, with an expectation by users that access rights will extend over long periods and be renewed. This approach pre-dates the RMA, and grew out of a situation where there was little resource scarcity. As we have approached environmental limits, it has led to issues with environmental quality, economic efficiency, and fairness. Extending access to a resource for long periods has limited the ability of the management system to respond to new environmental pressures. As resources have become scarcer and limits more stringent, new users have been

Allocation under the RMA has generally been on a “first in first served” basis, with an expectation by users that access rights will extend over long periods and be renewed.

⁵⁹ Other resources “allocated” by the RMA include the assimilative capacity of the environment more generally, navigation rights on the surface of rivers, lakes and in the sea, and river and coastal marine area materials (eg, gravel and sand).

excluded. The “first in first served” approach has not been an effective mechanism to achieve highest value use of resources. In some cases, Māori have been particularly disadvantaged, such as where they own under-developed land and cannot access water to improve production capacity.

122. Many complex issues need to be worked through to develop policy for allocation, and this detailed work needs to be approached differently for different types of resources. The Government is developing freshwater allocation policy through its Essential Freshwater work programme. Likewise, it has work underway to improve management of coastal marine space for aquaculture.
123. Given increasing resource scarcity and a necessary focus on managing within environmental limits, a question remains as to whether the RMA should provide a more specific framework to guide plan making about resource allocation issues at a general level. This might provide more clarity and consistency in respect of allocation decision making by local government. In exploring development of this framework, it will be important to consider the ability of Treaty partners to resolve rights and interests in allocation of resources where applicable. We are keen to hear views on the general resource allocation framework and any principles that should be considered in relation to allocation mechanisms.

Whaiwhakaaro

124. Some possible options to consider to improve the allocation framework include:
 - a. Retain or modify the first in first served principle
 - b. Provide for new resource allocation methods and criteria to be developed nationally or locally
 - c. Consider the role of specific tools in resource allocation such as spatial planning, transferable rights, tendering or auctioning
 - d. Modify the duration of consents
 - e. Change the basis upon which the holder of a consent may obtain a renewal
 - f. Give greater (or more restricted) power to the consent authority to vary or cancel a consent

ISSUE 10: ALLOCATION - QUESTIONS

31. Should the RMA provide principles to guide local decision-making about allocation of resources?
32. Should there be a distinction in the approach taken to allocation of the right to take resources, the right to discharge to resources, and the right to occupy public space?
33. Should allocation of resources such as water and coastal marine space be dealt with under the RMA or elsewhere as is the case with minerals and fisheries, leaving the RMA to address regulatory issues?

Issue 11: System monitoring and oversight

Overview

125. Many parties, including Government, regulators, businesses, iwi/Māori and the general public, need confidence and assurance that the country's resources are being effectively and sustainably managed. As discussed, there is insufficient monitoring and collection of data and information on the state of the environment and on the performance of the resource management system. This poor evidence base, and lack of use of the data that does exist, affects both the ability to understand what is occurring in the environment to make robust decisions, and to improve the performance of the system. Capability and resource constraints are again cited as among the reasons for this shortcoming.⁶⁰ Issues identified include:

- monitoring focuses on operational matters rather than system outcomes
- monitoring of environmental and urban outcomes has been inadequate
- lack of capability, data and systems to effectively monitor outcomes
- lack of a culturally-appropriate measurement system, and involvement of Māori in monitoring
- inadequate linkage of environmental reporting data to planning responses.

There is widespread agreement that there is insufficient monitoring and collection of data and information on the state of the environment, on environmental pressures at the local and national levels, and on the performance of the resource management system.

Whaiwhakaaro

126. Options for improving system oversight and monitoring overlap with other institutional design issues discussed in Issues 12 and 13. Some possible options to consider include:
- a. Greater oversight and monitoring by central government (for example, the Ministry for the Environment, the Environmental Protection Authority or a new agency)
 - b. Strengthen independent oversight and review (for example, by extending the role of the Parliamentary Commissioner for the Environment to include an audit function)

⁶⁰ For example see Ministry for the Environment & Stats NZ, *New Zealand's Environmental Reporting Series: Environment Aotearoa* 2019, Wellington, 2019; New Zealand Parliamentary Commissioner for the Environment, *Focusing Aotearoa New Zealand's environmental reporting system*, 2019; New Zealand Productivity Commission, *Better Urban Planning*, 2017; Organisation for Economic Cooperation and Development, *Environmental Performance Review – New Zealand*, 2017.

- c. Require a policy response from central/local government in response to outcomes identified by environmental reporting
- d. Develop an outcomes monitoring system that is culturally appropriate and recognises mātauranga Māori

ISSUE 11: SYSTEM MONITORING AND OVERSIGHT - QUESTIONS

- 34. What changes are needed to improve monitoring of the resource management system, including data collection, management and use?
- 35. Who should have institutional oversight of these functions?

Issue 12: Compliance, monitoring and enforcement

Overview

127. Compliance, monitoring and enforcement (CME) is essential to the resource management system. Investments made in law-making, plan-making and consent processes are undermined if the rules and conditions imposed through decision-making are not upheld.

128. Recent work by the Ministry for the Environment, local government, stakeholders and academics has identified a number of issues with current CME functions.⁶¹ Resources and tools for CME operations are highly variable across the country. Enforcement is expensive and outcomes may be uncertain. In some regions and many districts, CME resourcing is too low. In most councils, consent conditions are not monitored.

129. The devolution of CME functions to a large number of small local government agencies has created a fragmented system, with operational and jurisdictional overlaps. Lack of economy of scale has also limited local authorities' capacity to properly resource CME functions. In

Investments made in law-making, plan-making and consent processes are undermined if the rules and conditions imposed through decision-making are not upheld.

⁶¹ Ministry for the Environment, *Compliance, monitoring and enforcement by local authorities under the Resource Management Act 1991*, 2016; New Zealand Productivity Commission, *Toward Better Local Regulation*, 2013; Dr Marie Doole (nee Brown), *Ecological compensation: an evaluation of regulatory compliance in New Zealand; Compensating for Ecological Harm: the state of play in New Zealand*, and; *Last Line of Defence*. Brown, M.A. 2017. *Last Line of Defence*. Auckland: Environmental Defence Society Incorporated. Brown, M. A., Stephens, R.T., Peart, R., Fedder, B. 2015. *Vanishing Nature: facing New Zealand's biodiversity crisis*. Auckland: Environmental Defence Society Incorporated. Compliance and Enforcement Special Interest Group, 2019. *Regional Sector Strategic Compliance Framework 2019-2024*.

some cases, there is a lack of independence in decisions to prosecute. There has been weak oversight and guidance from central government, although the EPA has recently been given an expanded role in CME.

130. When enforcement action occurs, the penalties imposed are sometimes an insufficient deterrent when compared to the financial advantage of not following rules and conditions.
131. Some issues with CME are also the result of problems identified with other aspects of the resource management system. For example, consent conditions are sometimes poorly drafted and difficult to enforce.

Whaiwhakaaro

132. Options for improving CME overlap with other institutional design issues discussed in Issues 12 and 13, among others. Some possible options to consider include:
 - a. Progress institutional changes for delivery of CME functions:
 - i. retain devolved system with stronger support, guidance, and performance monitoring from central government
 - ii. provide for central and/or regional oversight/delivery of enforcement functions
 - iii. provide for escalation of enforcement matters to a central agency, such as the EPA
 - b. Provide for strengthened statutory powers and penalties, including for where non-compliance has resulted in or been motivated by commercial gain
 - c. Provide for improved cost recovery of CME functions (including permitted activity monitoring and investigation of unauthorised activities)
 - d. Consider the role of restorative justice in enforcement processes
 - e. Establish improved data gathering and reporting processes

ISSUE 12: COMPLIANCE, MONITORING AND ENFORCEMENT - QUESTIONS

36. What changes are needed to compliance, monitoring and enforcement functions under the RMA to improve efficiency and effectiveness?
37. Who should have institutional responsibility for delivery and oversight of these functions?
38. Who should bear the cost of carrying out compliance services?



Issue 13: Institutional roles and responsibilities

Overview

133. Major institutional reform is not a focus of this review; however some change may be needed to ensure functions are allocated to delivery institutions with the right incentives and capability. Many of the identified problems with the RMA have simply been due to insufficient capacity and capability in central and local government to fulfil the roles expected of them. Previous sections have discussed failings in national direction, regional and local planning, system oversight and compliance, monitoring and enforcement, among other things.

Major institutional reform is not a focus of this review; however some change may be needed to ensure functions are allocated to delivery institutions with the right incentives and capability.

134. Many institutions operate in the current resource management system, including:

- **Central government:** The primary actor with the widest scope of policy responsibility is the Minister for the Environment, supported by the Ministry for the Environment. Other central government actors play significant roles, in particular the Ministers/Departments

of Conservation and Housing and Urban Development, the EPA and the Parliamentary Commissioner for the Environment.⁶²

- *Local level:* At the local level, 78 councils (both regional and city/district in different circumstances) have primary responsibility for implementing resource management policy through the formulation of district and regional plans and operation of resource consenting systems. Other actors in the system include council controlled organisations and development agencies, iwi and hapū, heritage protection authorities and regional public health authorities.
- *Decision review institutions:* The system also contains a number of decision review institutions, in particular the Environment Court (with appeal on matters of law to the High Court), independent hearings panels, and Boards of Inquiry.

135. Some institutions have been recently established, such as the New Zealand Infrastructure Commission, the Climate Change Commission, Kāinga Ora – Homes and Communities, and a new drinking water regulator. A number of other institutions have been proposed by recent reviews, including a new agency to appoint and provide administrative support to Independent Hearings Panels⁶³, a Land and Water Commission to oversee freshwater policy⁶⁴, and a National Māori Advisory Board on Planning and the Treaty.⁶⁵

136. An important aspect of this review is to ensure that functions in the resource management system are allocated to the right institutions. Those functions can be categorised into the following generic groupings:

- Strategic planning for environmental outcomes and sustainable development
- Protecting and promoting Māori interests
- Regulatory plan-making and consent processes
- Provision of economic instruments
- Funding of infrastructure and other public goods
- Establishing and allocating rights to use public resources
- Resolving disputes
- Review/appeal of decisions

62 Other central level actors operating within the system include the Ministry of Transport and the New Zealand Transport Agency, Kāinga Ora – Homes and Communities, the Ministry of Education, other requiring authorities that deliver essential public services, other Ministers and government departments, and Crown research institutes.

63 New Zealand Productivity Commission, *Better Urban Planning*, 2017.

64 Land and Water Forum, *Advice on improving water quality: preventing degradation and addressing sediment and nitrogen* May 2018; Waitangi Tribunal, *The Stage 2 Report on the national Freshwater and Geothermal Resources Claims (Wai 2358 report)*, 2019.

65 New Zealand Productivity Commission, *Better Urban Planning*, 2017.

- Regulatory compliance, monitoring and enforcement
- Overall system oversight and monitoring

137. Allocation of these functions should be approached in a principled way. Some guiding criteria that can assist in this regard are as follows:

- **Subsidiarity:** Ensuring roles and responsibilities are assigned in relation to issue, scale and complexity, who is affected, and the capability and capacity to effectively deliver roles and responsibilities
- **Treaty:** Ensuring the principles of the Treaty and relationship between the Crown and Māori is given due recognition
- **Accountability:** Direct accountability to the public is generally appropriate when decisions involve determining public values
- **Independence:** Independence from political decision-making is needed to provide a check and balance for some decisions, and to provide technical input and evidence
- **Accessibility and participation:** To ensure decision makers are well informed about impacts
- **Mandate and focus:** To ensure various roles and tasks do not cause conflicting organisational incentives, for example policy – regulatory – enforcement – funding – dispute resolution.
- **Reducing complexity:** Ensuring processes and functions are efficient and only as complicated as they need to be.

Whaiwhakaaro

138. Options for institutional arrangements are contingent on decisions made with regard to the functions of the resource management system discussed throughout this paper. That said, some possible options to consider include:

- a. Central government agencies playing a greater hands-on role in the system (for example, through a greater operational role for the Ministry for the Environment, or an expanded role for the EPA)
- b. Pooling planning resources of central and local government to enhance capacity and capability
- c. Providing for combined decision-making by regional councils and territorial authorities
- d. Establishing a new agency to appoint and provide administrative support to Independent Hearing Panels
- e. Providing for an expanded role for Judges and Commissioners of the Environment Court in other decision-making bodies such as Boards of Inquiry and Independent Hearing Panels
- f. Providing for independent oversight of the system through:

- i. a greater role for the Parliamentary Commissioner for the Environment or the Environmental Protection Authority
 - ii. establishing a Water Commission or broader Resource Management Commission
 - iii. establishing a National Māori Advisory Board on Planning and the Treaty
- g. Creation of accountability mechanisms within larger councils, to enable them to better exercise democratic oversight of planning departments and council controlled organisations

ISSUE 13: INSTITUTIONAL ROLES AND RESPONSIBILITIES - QUESTIONS

- 39. Although significant change to institutions is outside the terms of reference for this review, are changes needed to the functions and roles or responsibilities of institutions and bodies exercising authority under the system and, if so, what changes?
- 40. How could existing institutions and bodies be rationalised or improved?
- 41. Are any new institutions or bodies required and if so what functions should they have?

Issue 14: Reducing complexity across the system

Overview

139. Overall, the RMA and the wider resource management system is unnecessarily complex. Lack of clarity in the purpose of the system has hampered delivery of good environmental and urban outcomes. Decision-making processes and practices are time consuming and costly. Broad-based merits appeals in the Environment Court have added cost and caused delay. Constant tinkering with the system has added complexity and generated uncertainty. The Act itself is now close to twice its original length and more difficult to interpret.

Lack of clarity in the purpose of the system has hampered delivery of good environmental and urban outcomes.

Whaiwhakaaro

140. Reducing complexity requires a systemic approach. The best way to reduce complexity in the current system is to develop a coherent package of reform from the options discussed in this paper. That said, there may also be particular aspects of current provisions that generate complexity that have not been discussed. We would welcome comments about these particular matters.

ISSUE 14: REDUCING COMPLEXITY ACROSS THE SYSTEM - QUESTIONS

42. What other changes should be made to the RMA to reduce undue complexity, improve accessibility and increase efficiency and effectiveness?
43. How can we remove unnecessary detail from the RMA?
44. Are any changes required to address issues in the interface of the RMA and other legislation beyond the LGA, LTMA?

C. Whakarāpopoto o ngā Pātai

Issue	Questions
Issue: 1	<p>Legislative architecture</p> <ol style="list-style-type: none"> Should there be separate legislation dealing with environmental management and land use planning, or is the current integrated approach preferable?
Issue: 2	<p>Purpose and principles of the Resource Management Act 1991</p> <ol style="list-style-type: none"> What changes should be made to Part 2 of the RMA? <p>For example:</p> <ol style="list-style-type: none"> Does s5 require any modification? Should ss. 6 and 7 be amended? Should the relationship or ‘hierarchy’ of the matters in section 6 and 7 be changed? Should there be separate statements of principles for environmental values and development issues (and in particular housing and urban development) and, if so, how are these to be reconciled? Are changes required to better reflect te ao Māori What other changes are needed to the purpose and principles in Part 2 of the RMA?
Issue: 3	<p>Recognising Te Tiriti o Waitangi / the Treaty of Waitangi and te ao Māori</p> <ol style="list-style-type: none"> Are changes required to s8, including the hierarchy with regard to ss. 6 and 7? Are other changes needed to address Māori interests and engagement when decisions are made under the RMA?
Issue: 4	<p>Strategic integration across the resource management system</p> <ol style="list-style-type: none"> How could land use planning processes under the RMA be better aligned with processes under the LGA and LTMA? What role should spatial planning have in achieving better integrated planning at a national and regional level? What role could spatial planning have in achieving improved environmental outcomes? What strategic function should spatial plans have and should they be legally binding? How should spatial plans be integrated with land use plans under the RMA?
Issue: 5	<p>Addressing climate change and natural hazards</p> <ol style="list-style-type: none"> Should the RMA be used as a tool to address climate change mitigation, and if so, how? What changes to the RMA are required to address climate change adaptation and natural hazards? How should the RMA be amended to align with the Climate Change Response Act 2002?
Issue: 6	<p>National direction</p> <ol style="list-style-type: none"> What role should more mandatory national direction have in setting environmental standards, protection of the environment generally, and in managing urban development?
Issue: 7	<p>Policy and planning framework</p> <ol style="list-style-type: none"> How could the content of plans be improved? How can certainty be improved, while ensuring responsiveness? How could planning processes at the regional and district level be improved to deliver more efficient and effective outcomes while preserving adequate opportunity for public participation?

Issue	Questions
	23. What level of oversight should there be over plans and how should it be provided?
Issue: 8	<p>Consents/approvals</p> <p>24. How could consent processes at the national, regional and district levels be improved to deliver more efficient and effective outcomes while preserving appropriate opportunities for public participation?</p> <p>25. How might consent processes be better tailored to the scale of environmental risk and impact?</p> <p>26. Are changes required for other matters such as the process for designations?</p> <p>27. Are changes required for other matters such as the review and variation of consents and conditions?</p> <p>28. Are changes required for other matters such as the role of certificates of compliance?</p>
Issue: 9	<p>Economic instruments</p> <p>29. What role should economic instruments and other incentives have in achieving the identified outcomes of the resource management system?</p> <p>30. Is the RMA the appropriate legislative vehicle for economic instruments?</p>
Issue: 10	<p>Allocation</p> <p>31. Should the RMA provide principles to guide local decision making about allocation of resources?</p> <p>32. Should there be a distinction in the approach taken to allocation of the right to take resources, the right to discharge to resources, and the right to occupy public space?</p> <p>33. Should allocation of resources use such as water and coastal marine space be dealt with under the RMA or elsewhere as is the case with minerals and fisheries, leaving the RMA for regulatory issues?</p>
Issue: 11	<p>System monitoring and oversight</p> <p>34. What changes are needed to improve monitoring of the resource management system, including data collection, management and use?</p> <p>35. Who should have institutional oversight of these functions?</p>
Issue: 12	<p>Compliance, monitoring and enforcement</p> <p>36. What changes are needed to compliance, monitoring and enforcement functions under the RMA to improve efficiency and effectiveness?</p> <p>37. Who should have institutional responsibility for delivery and oversight of these functions?</p> <p>38. Who should bear the cost of carrying out compliance services?</p>
Issue: 13	<p>Institutional roles and responsibilities</p> <p>39. Although significant change to institutions is outside the terms of reference for this review, are changes needed to the functions and roles or responsibilities of institutions and bodies exercising authority under the system and, if so, what changes?</p> <p>40. How could existing institutions and bodies be rationalised or improved?</p> <p>41. Are any new institutions or bodies required and what functions should they have?</p>
Issue: 14	<p>Reducing complexity</p> <p>42. What other changes should be made to the RMA to reduce undue complexity, improve accessibility and increase efficiency and effectiveness?</p> <p>43. How can we remove unnecessary detail from the RMA?</p> <p>44. Are any changes required to address issues in the interface of the RMA and other legislation beyond the LGA, LTMA?</p>