Tena koe e te Minita

REVIEW OF THE RESOURCE MANAGEMENT ACT 1991 AND OTHER CONSULTATIONS

E te rauiti, e te raunui, koutou i whai whakaaro atu ki te puutake o teenei Puutere moote Puutaiao teenaa koutou teenaa hoki tatou.

Thank you for the opportunity to make comments on the review of the Resource Management Act (RMA) and the more targeted consultations on freshwater and urban development. It was, when introduced, a statute that all had great hopes of achieving integrated management of the environment in a culturally aware and cooperative decision-making space. That of course hasn't happened: the environment as a whole has become increasingly degraded, our water bodies in particular are increasingly polluted our groundwaters stolen for overseas profit and we, the Mana whenua of this land have continued to be disenfranchised by the non-delivery of the co-governance that was encapsulated in section 36B of the RMA.

Ngaa Rauru Kiitahi

To ensure that in 50 years time the environment and cultural heritage that mokopuna will know is not just in the memories of their kaumatua and kuia, our Puutaiao Management Plan is deliberate in its intent to express that the people of Ngaa Rauru Kiitahi still maintain mana motuhake, rangatiratanga and Ngaa Raurutanga over all its taonga and therefore continue to assume its kaitiakitanga role.

Ngaa Rauru Kiitahi has a strong association with its mountains, rivers, coastline and flora and fauna. Our environment is a part of who we are. We seek to protect and preserve our spiritual, cultural and historic connection to the environment. As kaitiaki we are responsible for the mauri of our natural and physical resources. Our kaitiaki responsibility for resources extends from the Paatea River to the Matemate-aa-onga ranges down to the Whanganui River and back up the coastline to the mouth of the Paatea river. Today, Ngaa Rauru Kiitahi manages its kaitiakitanga role through Te Kaahui o Rauru (TKOR).

The elements of taioa (the environment) cannot be separated, they are interlinked together with us. Activities cannot be separated or analyzed in a component manner. Accordingly, we make the following representative submissions and comments.

Wai-Awa

→ Preservation of the mauri of all water bodies.

The preservation of the mauri (lifeforce) of all water is an imperative for Iwi, it is fundamental to all life forms. This
includes the ethos of:
• Restoring and protecting the health and well-being of all Awa and Wai for present and future generations;
• Restoring and protecting the relationship of Iwi and their water bodies;
• Protecting and enabling Iwi and Hapuu to exercise our mana whakahaere in accordance with long established tikanga and kawa to ensure the wellbeing of the river;
• not mixing of waters from different sources;
• prohibiting the discharge of any waste, whether treated or not to any water body;
• improving degraded water bodies applying maatauranga maaori methods, as it has been proven that western science methods do not achieve this restoration (eg the Apology of the Crown to management the Waikato River); and
• Enabling Iwi and hapuu to monitor the environment using maatauranga maaori methods of their choice.

→ Supra National Policy Statement
There is a need for a supra national policy statement that applies the principles of Protection and Restoration of the well-being of all water bodies, including ground water.
The precedent for this is already established with the “Vision and Strategy for the Waikato River”. This supra national policy statement is required to prevail over other national policy statements under:
section 11(4) Waikato – Tainui Raupatū Claims (Waikato River) Settlement Act 2010,
section 12(1) Ngati Tūwharetoa, Raukawa Te Aroha River Iwi Waikato River Act 2010,
section 8(2) Nga Wai a Maniapoto River Act 2012.
According to the principles of natural justice and because it is necessary to ensure that all water bodies are restored and protected for the wellbeing of present and future generations a paramount National Policy Statement on the restoration and protection of all water bodies is required, irrespective of any treaty settlement as was the case in the two latter acts of parliament cited above. Such an NPS must have a priority over other NPSs that are or are proposed to be developed, which is consistent with the already established NPS cited above. Subject to confirmation amongst Iwi and Hapuu the topic areas should cover such matters as:

The Vision:
 a) Paramount protection and enhancement of all water bodies;
b) Restoration and protection of the relationship that Iwi have with their Awa, Wai and Wainuku, according to their tikanga and kawa, including their economic, social, cultural and spiritual relationships;
c) The integrated, holistic and coordinated approach to management of the natural, physical, cultural and historic resources of their water bodies;
d) The adoption of a precautionary approach towards decisions that may result in significant adverse effects on the water bodies, and in particular those effects that threaten serious or irreversible damage to the water bodies;
e) The recognition and avoidance of cumulative adverse effects, and potential cumulative adverse effects, of activities undertaken both on the water bodies and within its catchments;
f) That all water bodies under the present resource management system of management are degraded and should be prohibited from being required to absorb further degradation as a result of human activities;
g) The protection and enhancement of significant sites, fisheries, flora and fauna;
h) Recognition that the importance of all water bodies for Aotearoa’s: social, cultural, environmental and economic well-beings is subject to the restoration and protection of the health and wellbeing of all water bodies;
i) The restoration of water quality within all water bodies so that it is safe for people to swim in and take food from over its entire length;
j) Improved access to all rivers to better enable sporting, recreational, and cultural opportunities where appropriate;
k) The application to the above of both maatauranga Maaori and latest available scientific methods;

Strategies:
i) Ensuring the highest level of recognition is given to the restoration and protection of all water bodies in Aotearoa;
ii) Establishing the health of each water body by utilising Maatauranga Maaori and latest available scientific methods;
iii) Develop targets for improving the health and wellbeing of all water bodies by utilising Maatauranga Maaori and latest available scientific methods;
iv) Develop and implement a programme of action to achieve the targets for improving the health and wellbeing of all waterbodies;
v) Develop and share local, national and international expertise, including indigenous expertise, on rivers and activities within their catchments that may be applied to the restoration and protection of the health and wellbeing of all water bodies;
vii) Recognise and protect waahi tapu and sites of significance to Iwi and hapuu to promote their cultural, spiritual and historic relationship with their water bodies;
vii) Recognise and protect appropriate sites associated with water bodies that are of significance to the local and regional community;
viii) Encourage and foster a ‘whole of river’ approach to the restoration and protection of all water bodies, including the development, recognition and promotion of best practice methods for restoring and protecting the health and wellbeing each water body;
ix) Stakeholders with an interest in advancing, restoring and protecting the health and wellbeing of the Awa;
x) Ensure that cumulative adverse effects of activities on the water bodies are appropriately managed in statutory planning documents either at the time of their review or earlier by way of plan change development.

→ Co-governance of all decision-making activities for both plan preparation and resource consents. Amend the RMA to require:
There are now legislative examples of co-management and co-governance models for three catchments in the motu. We request that co-governance be extended to all Iwi and hapuu in all catchments within the country. This request is made irrespective of treaty settlements as shown in the: Te Awa Tupua Act 2017, the Ngati Tūwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 and the Ngati Maniapoto Act 2012 all of which recognise the importance of their Awa to those River Iwi. These statutes are also Acts which update the relationship that Iwi have with the Crown. This should be rolled out nation-wide.

→ Improvement of inclusion of Tikanga Maaori provisions.
Regional and District Plans, give token recognition of Tangata whenua values, tikanga and kawa. There are usually stand-alone chapters which play tokenism to these values, none of that tikanga and kawa flows through into the objectives, policies and methods that implement these plans. There is no inclusion of Maatauranga Maaori in regional and district Plans.
Deep concern is held over the first – come - first - served allocation of water takes. In respect of ground water abstraction, the depletion of a ground water source that cannot be replenished is a significant adverse effect on:
- the mauri of that ground water,
- the ability of the groundwater aquifer to recharge,
the reduced ability for it to flow to surface water bodies to refresh and recharge that water body, and the reduced ability of groundwater to provide a life source of aquatic flora and fauna. There is even more concern about efficacy and ethics of water bottling proposals for export. Therefore, Iwi should be included in any decision-making of all water takes and abstractions in a co-governance manner.

Accordingly, we request that RMA be amended to require all regional water plans to:

- Better and more comprehensively identify and integrate issues objectives and policies of Iwi and Hapuu with other provisions of these plans.
- Incorporate maatauranga maaori methods for restoration.
- Provide Iwi with a 10% water allocation of any water body including ground water for their use for cultural purposes.
- Reduce water take permits to 5 or 10 years as 35 year permits are too long a time frame within which to change management regimes or reduce abstraction volumes where an adverse effect is identified.
- Make all water abstraction applications Discretionary Activities and publicly notify for all water abstraction activities other than for domestic and minimal stock takes. That where it cannot be demonstrated that the water resource can recharge to pre-abstraction levels that the precautionary approach be applied and that such consents be declined.

Whenua

The RMA has become an unwieldy beast. It needs to differentiate between what activities cause a less than minor effect on the environment, and the larger scale proposals. Participation in the EPA process is even more daunting that at district or regional level.

- Amend the RMA to require:
  - RMA should be split or more clearly make a separation made between applications which generate minor and less than minor effects (such as side yard deck infringements, height to boundary etc) so that they are not considered in the same context as applications for major activities or activities that have more than minor effects on the environment.
  - Removal of the controlled activity status as it is generally not useful or sufficiently different from restricted discretionary activities.
  - Co-governance on decision-making on plan preparations and all resource consents.
  - Strengthen provisions for taking and actively providing for Iwi recognized Management Plans to have regulatory force in terms of resource consents and plans.
  - More robust and early engagement with Iwi and Hapuu about contents of proposed district and regional plans.
  - Inclusion of maatauranga Maaori in decision-making especially conditions of consent relating to water bodies, earthworks, waahi tapu and waahi tupuna and sites of significance,
  - Iwi and Hapuu to be enabled to more actively engage in resource management functions eg education, scholarships for tertiary study including in the application and approaches of Maatauranga Maaori in the context of sustainable management.
  - That Iwi organizations are automatically considered as an affected party for any land disturbance consents.
  - Require urban growth to reduce its footprint on the whenua by requiring growth to be up not out (see further comment below).
  - Make stronger provisions for the protection of highly productive soils to save these for our future generations to grow food.
- Ranginui (Air)
Amend the RMA to require:
- Where any discharge of particulates to air and subsequently to land or water or the coastal marine area exceeds the permitted rules and performance standards that such activities become Discretionary Activities, or Non-Complying Activities not controlled activities.
- Require a best practicable option for mediating and remedying any discharges to air.
- Require short term consent 5 year for the discharge to air to ensure that the newest best practicable option is applied to each discharge at renewal.

Specific Modifications to the Resource Management Act:
- Section 2
  Co-decision-making:
  - Amend Sections: 2 Interpretation of “Consent Authority” to read as follows:
    means a joint co-decision-making committee of Resource Management Act 1991 decision makers, that are delegated the decision-making authority by regional councils, territorial authorities, or local authorities that is both a regional council and a territorial authority, whose permission is required to carry out an activity for which a resource consent is required under this Act.
  - Amend Section 2 by inserting the definition of co-decision-making to read as follows:
    Co-decision-making committee means a committee comprised of equal numbers of Resource Management Act 1991 decision makers selected by the relevant council from at large, and equal numbers of Resource Management Act 1991 decision makers approved of by the relevant iwi or hapuu.
  - Sections 100A, 102, 103, 104, on decision making, be amended accordingly.
  - Include a definition of “Maatauranga Maaori” as follows:
    Maatauranga Maaori means the application of Maori knowledge or wisdom, tikanga and kawa which vary from Iwi and Hapuu to Hapuu.

The RMA would be much improved if a number of previous government amendments were revised and deficiencies be inserted. Such reversals and re-inclusions include but are not limited to:
- Deletion of section 36A No duty under this Act to consult about resource consent applications and notices of requirement. Applicants and Requiring Authorities should be required to consult with Iwi or Hapuu, and adjacent land owners, prior to lodging their resource consents. This is particularly so in the context of large-scale earthworks, and any water take, abstraction or discharge to water bodies or air which are of paramount importance to Tangata whenua.
- Insert a section on the requirement of all applicants and councils to undertake consultation with Iwi and hapuu and that it done on a reasonable time frame and cost recovery basis.
- Introduce a section on consultation principles along the lines of section 82 of the Local Government Act 2002 – with appropriate modifications as suggested below:
  Consultation Principles:
  (1) That any applicant or requiring authority or local council prior to the lodgment on an application of a resource consent, or commencement of a drafting of a plan change or plan review consults with the actual and potential affected parties including Iwi and Hapuu.
  (2) That consultation is in accordance with the following principles:
  (a) that persons including iwi and hapuu who will or may be affected by, or have an interest in, the matter be provided with reasonable access to all relevant information in a manner and format that is appropriate to the
preferences and needs of those persons:

(b) that persons including iwi and hapuu who will or may be affected by, or have an interest in, the decision or matter should be encouraged to present their views to the Applicant and requiring authority to enable an exchange of views modifications and agreements to be recorded as part of the documentation supporting the resource consent application, notice of requirement or plan change:

(c) that the local authority provides clear information concerning the purpose of the consultation and the scope of the decisions to be taken following the consideration of views presented:

(d) that irrespective of the record of consultation, persons including iwi and hapuu who wish to have their views on the decision or matter considered by the local authority should be provided by the local authority with a reasonable opportunity to present those views to the local authority in a manner and format that is appropriate to the preferences and needs of those persons:

(e) that the local authority should be received by the local authority with an open mind and should be given by the local authority, in making a decision, due consideration:

(f) that persons who present views to the local authority should have access to a clear record or description of relevant decisions made by the local authority and explanatory material relating to the decisions, which may include, for example, reports relating to the matter that were considered before the decisions were made.

(2) A local authority must ensure that it has in place processes for consulting with Iwi and Hapuu in accordance with subsection (1).

That Section 77A Power to make rules to apply to classes of activities and specify conditions be amended as follows:

Section 77(2)(f) be amended to expressly prohibit some activities as follows:

“(2) An activity may be a—

a) permitted activity; or

b) controlled activity; or

c) restricted discretionary activity; or

d) discretionary activity; or

e) a non-complying activity; or

(f) a prohibited activity, including

i) the discharge of any effluent and any treated effluent to any water body, without discharge to land;

ii) the discharge of toxic, cancer causing, bio accumulating substances to land and water bodies;

iii) Genetically modified organisms;

iv) Prospecting, exploration or mining of any coastal marine area.

Protection of Versatile Soils.
The loss of versatile soils to coverage intensive urban development is an anathema to Maori. The loss of so much land prized for growing food for the well-being of our uri is such an unsustainable land use practice it defies every tenet of the purpose and principles of the RMA including section 5(2)(a), (b) and (c). Accordingly, an uncompromising urban boundary which excludes versatile soils from urban development must be re-established as a responsibility of Regional Councils, and for District Plans to implement these urban limits.

o Insert in Section 2 a definition of Metropolitan urban limit which:

a) The outer limits of which must be defined, and

b) Must exclude land that is versatile soils which have not been developed for urban activities as at December 2019.

c) All land on versatile soils which has been zone for residential development, or future indicate residential
development be rezoned to Rural Production Zone in the relevant district plans.

Climate Change
Climate change is an issue of such seriousness that the RMA needs to be strengthened to reflect this as matter that is deeply considered with the assessment of effects on the environment arising from any activity that generates a discharge to air.

- Amend Section 104E and elsewhere as follows:

104E Applications relating to discharge of greenhouse gases
When considering an application for a discharge permit or coastal permit to do something that would otherwise contravene section 15 or section 15B relating to the discharge into air of greenhouse gases, a consent authority must not have regard to the effects of such a discharge on climate change, except including to the extent that the use and development of renewable energy enables a reduction in the discharge into air of greenhouse gases, either—
(a) in absolute terms; or
(b) relative to the use and development of non-renewable energy.

- Insert the need to consider climate change in section 104(1) as follows

104 Consideration of applications
(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—
(a) any actual and potential effects on the environment of allowing the activity; and
(aa) effects in respect of climate change.

Cumulative Adverse effects
The provisions relating to Cumulative adverse effects need to be strengthened. Current district and regional practices or approaches to the consideration of applications and their effects on the environment is on a singular bases. In practice very little assessment, if any, is given to cumulative effects on the environment. It is very much a first - come - first - served basis, rather than a wholistic strategic approach to assessment. Granted that some regional councils apply the cumulative approach in terms of water allocation within a catchment or aquifer, little other use of resources does so, and particularly not in terms of land uses. A small scale non-complying proposal might be sustainable but more of the same does not necessarily have the same less than minor effect.

We appreciate the time and efforts that the Ministry’s staff have taken in outlining the consultations throughout the motu.
We appreciate the consideration given to our submissions above.

Personal
Acting Kaiwhakahaere