Dear Sir/ Madam

Christchurch City Council comments on the Resource Management System review issues and options paper

Introduction

Christchurch City Council (the Council) thanks the Panel for the opportunity to make comments on the Resource Management System review issues and options paper (Referred to hereafter as the paper).

1. The Council supports a number of the options included in the paper, but not others, and has included other options and issues for consideration. The full comments of the Council, and the reasons for them, are included in the attached document. The comments are largely in the order of the issues and accompanying questions contained in the paper. However, for ease of explanation and to deal with overlaps between the issues this has not always been followed.

2. The more significant points made are as follows:

   i. The purpose of the RMA needs to be more aspirational and to seek more positive and enhanced outcomes.

   ii. Management of the natural environment should remain in the same legislation as that for the built/human environment to achieve more integrated management that maximises overall outcomes.

   iii. A fundamental purpose of the RMA needs to be the resolution of competing natural and built/human values and needs. Part 2 of the RMA needs to include the principle that providing for human wellbeing must occur within natural environmental limits.

   iv. The critical need for more clear national direction that resolves competing values and needs, including setting environmental bottom lines, but allowing for variations that take into account local considerations in appropriate circumstances.

   v. Support for a “national plan” to give direction as to the outcomes intended for Aotearoa/New Zealand Inc.

   vi. New or amended matters of national importance relating to the maintenance and enhancement of biodiversity, high quality urban environments, management of natural...
hazard and climate change risks, Treaty of Waitangi, and provision for housing and business needs, including affordable housing.

vii. Provision for spatial plans that better integrate various planning functions through a single process, including those under the RMA, LGA and LTMA.

viii. Include management of greenhouse gas emissions where not adequately managed through national management mechanisms, e.g. the management of the form of urban growth to decrease emissions.

ix. The need for a wider range of mechanisms to manage natural hazard and climate change risks, extending beyond the RMA, and more national direction.

x. Greater community participation in plan making, potentially including community plans.

xi. A greater range of mechanisms to enable Councils to achieve better urban outcomes.

xii. National oversight by the Parliamentary Commissioner for the Environment oversight of the environmental outcomes of plans.

xiii. National monitoring prioritization and establishment of methodologies for monitoring.

xiv. Potential removing appeals to the Environment Court combined with a more robust first hearing at Council level, potentially including cross-examination.

xv. Opposition to ministerial or central government approval of draft plans or of plans following decisions on submissions.

xvi. Greater provision for Councils to permit activities, without a resource consent, that do not strictly comply with Plan requirements.

xvii. A government appointed body to issue legally binding determinations/declarations on provisions of the Act and National Planning Standards, instead of the Environment Court.

xviii. Any new use or transfer of a previously permitted use of a resource, such as water, should be required to make a new application, and consideration should include the reasonably foreseeable needs of other uses in the region.

xix. Support for alternative, low cost enforcement options, increased penalties, escalation of enforcement to a government agency at the Council’s request, provision for the cancellation of resource consents, and enhanced investigation tools.

xx. Better recognition of heritage values and the management of unused heritage places.

xxi. A mechanism for removing existing use rights, in combination with other mechanisms such as financial compensation and property acquisition, to manage issues such as natural hazard risks.

Thank you for the opportunity to provide this input into the review.
For any clarification on points within this submission please contact s 9(2)(a)

Yours faithfully

s 9(2)(a)

Christchurch City Council
Christchurch City Council comments on the Resource Management System review issues and options paper

The Council welcomes the opportunity to provide input into the review of the resource management system. It supports the need for a review for the reasons set out in the following comments.

The following Council comments on the Resource Management System issues and options paper (the paper) are largely in the order of the issues and accompanying questions contained in the paper. However, for ease of explanation and to deal with overlaps between the issues this has not always been followed.

ISSUE 1: LEGISLATIVE ARCHITECTURE

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

The paper indicates that some argue that the existing integration of land use planning and environmental protection has led to poor outcomes for both. In particular, it mentions the Productivity Commission comment that the built and natural environments have different characteristics and require distinct management approaches and, further, that “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”.

The Council does not agree that the environment can be realistically separated into natural and built environments and considers that attempting to manage supposed natural and built environments separately will result in poor integration and inferior outcomes.

Most environments are not totally built or totally natural (except possibly some few true wilderness areas). Urban development, other built elements, and human activities occur within the natural environment. No matter how urban an area becomes, there are often still natural elements in or near it that need to be considered when development is proposed and on which it may depend. Obvious examples within Christchurch are Riccarton Bush and the Avon and Heathcote Rivers, while at the edge of the City are the natural coastal and Port Hills environments.

It is where natural and built/human elements, activities and values overlap, adjoin, or compete that some of the more significant resource management challenges arise and the integrated management of both elements becomes critical in achieving good outcomes. Trying to deal with issues involving both elements, such as urban growth into predominantly natural environments or risks from natural hazards in urban areas, is likely to be fraught with difficulties if those elements are managed under separate legislation.

In addition, there are potential opportunities in the development of urban areas to increase indigenous biodiversity and habitat in what may have been, for example, a rural environment with limited indigenous biodiversity.

As commented on further under Issue 2, the Council does agree that there is a need to set clear bottom lines with respect to natural elements and values. Although not all natural elements and
values need bottom lines, particularly where those elements or values are not so significant. It also agrees that the benefits of development and change need to be recognised. But all those matters are better dealt with through the same legislation that ensures the integrated management of natural and built/human elements, provided the legislation contains a range of management mechanisms for both types of elements to maximise the overall outcomes.

It is the Council’s view that the fundamental purpose of the resource management system is, and should be, to give direction as to how competing values of, and needs for, resources should be resolved to maximise overall outcomes. Having separate legislation to deal with natural elements of the environment from built and other human elements of the environment inevitably increases the risk that there will not be clear direction on how to resolve the competing values and needs of those different elements of the environment. The consequences of that would be poorer overall outcomes, as well as uncertainty, inconsistent outcomes across the country, and increased costs for the whole community.

The Council agrees that outcomes achieved under the existing RMA system as it currently stands have been less than optimal and have been inconsistent across the country. The Council also considers that there is unnecessary uncertainty and costs in the existing system. But, to a significant extent, it considers that this is the result of what could have, and should have, been done under the existing system, but has not been. Those matters are covered further in the comments under the following issues, particularly in respect of the critical need for more national direction under Issue 2 below.

**ISSUE 2: PURPOSE AND PRINCIPLES OF THE RMA**

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 6: NATIONAL DIRECTION**

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

**Purpose of the RMA and direction on RMA issues**

As stated above, Council’s view is that the fundamental purpose of any resource management system should be to give direction as to the outcomes intended for NZ, or the relevant region or district, and how competing values of, and needs for, resources should be resolved to maximise overall outcomes. Further that this include both natural and human/built elements and values.
The Council supports the current purpose of the RMA, and the RMA documents it provides for, to the extent that it seeks to;

- achieve the integrated management of human and natural elements of the environment in terms of the use of natural and physical resources, and
- that such management be sustainable.

In terms of the latter point, the Council is of the view that the RMA does not adequately identify what sustainable management means. The stated purpose in s.5 of the RMA does contain direction to provide for human wellbeing while avoiding, remediying or mitigating adverse effects on the environment and to safeguard the life supporting capacity of air, water, soil and ecosystems. But it does not include direction as to how these potentially competing uses and values of resources are to be resolved.

An example of such competing uses/values, is that humans need water to drink and grow food. However, that use of water is likely to have some impact on the natural environment, reducing the volume of water in waterbodies and affecting ecosystems, even if each abstraction of water only affects the natural environment to only a small degree. The abstraction of water can get to the point where the biodiversity of the waterway reduces due to the loss of plant or animal species. If one of those species is critically threatened, the effect of water abstraction could result in a species becoming locally or nationally extinct. Section 5 of the RMA does not provide direction on how water should be managed to resolve these competing uses and values.

Other sections in Part 2 of the RMA do identify that aspects/values of the natural and built/human environment must be given extra weight when considering competing uses. For example the protection of the natural character of the coastal environment is a matter of national importance. However, the direction given is that the natural character be protected from inappropriate use and development. The direction does not indicate what constitutes inappropriate use and development. It does not resolve, or give guidance in the resolution of, competing values or uses of the coast.

In terms of the issue of protecting the natural character of the coast, direction on what constitutes inappropriate use and development is contained within the New Zealand Coastal Policy Statement (NZCPS).

It is accepted that it is likely to be difficult and impractical for any legislation to incorporate the resolution of all potentially competing uses/values. Rather, other national direction will often be required, e.g. through National Policy Statements (NPSs) and National Environmental Standards (NESs). The critical role of NPSs and NESs in the effective and consistent implementation of the RMA is discussed further below.

The Council does, however, consider that Part 2 of the RMA, or any replacement legislation, needs to specifically include the principle that providing for human wellbeing must occur within environmental limits of the natural environment. There needs to be a clear expectation that such limits are anticipated by the legislation, particularly for critical and nationally significant issues. Just what those limits or bottom lines should be will in most cases need to be identified in other national direction, e.g. NPSs and NESs. However, there may be some that can be incorporated within the RMA where those bottom lines are to apply in all circumstances. An example may be that the protection of critically threatened species must occur wherever such species occur. That would exclude any activities that pose a threat to such species.
Not all potential bottom lines relating to natural values may prevent all activities or use of a resource. For example, a bottom line requiring the maintenance of the indigenous biodiversity of all waterways. This would not prevent some reduction in numbers of some species in some waterways if, for example, some were collected for food, provided it was at a level that did not result in the loss of any species. It would not be an absolute restriction on the use of waterways or the natural elements they contain.

This reflects the Council’s submission on the draft NPS on Freshwater Management and related statutory documents. In those submissions the Council sought that the NPS be amended to make it clear that there was not an absolute direction to avoid any adverse effect on natural values of waterways. Without that clarification the NPS would effectively prevent any use of waterways and the natural values in them for human needs and activities. Rather, the Council sought that the use of waterways must occur within the limits of critical natural bottom lines.

In circumstances where no critical bottom lines are at issue, management decisions on competing natural and human values and needs should involve a balancing exercise, assessed on the basis of the relative significance of those competing potential uses. Likewise, when there are competing human values and needs. These other values and needs may also be of national significance and therefore warrant national direction.

**National Policy Direction**

What has been particularly missing from the resource management system to date, is clear national policy direction on what are the critical and nationally significant bottom lines and how other significant values and activities should be managed, particularly where there are competing values and needs.

At the moment the RMA only requires one national policy statement, i.e. the NZCPS. As many commentators have indicated, the lack of national direction on many other issues that are of national significance has constrained the effectiveness and efficiency of the RMA system.

The potential for national direction to increase the efficiency and effectiveness of achieving better environmental outcomes is significant. It can save considerable costs for communities, and time, if the research, policy formulation, and statutory processes are undertaken at the national level, rather than each Council having to undertake the same exercise on the same issues (note the New Zealand Productivity Commission’s comments along these lines in respect of natural hazards and climate change referred to under Issue 7). It can also increase consistency of outcomes across the country, increase certainty, and potentially reduce costs for those seeking to undertake activities and developments and in the administration of the system.

However, an important point is that the extent to which these potential benefits are achieved depends in large part on how clear and specific the national direction is. This can be achieved by clear directive policies that resolve competing uses and values. This has not always been the case with existing and proposed NPSs.

The Council considers that any amended/replacement legislation should include a requirement for national direction to cover the nationally significant issues. Considering that the matters in s.6 are identified as matters of national importance, there should be an obligation within the RMA to provide national direction on those matters.
The form of that national direction should at least be NPSs and potentially targets and standards included in NESs where possible. The alternative of a single Policy Statement may also be an appropriate mechanism, or as suggested below, a National Plan. Irrespective of the form of the national direction, the critical issue is clear and specific national direction that resolves competing values and needs. That is not necessarily guaranteed just by having a single national direction document, but is more likely in a single document.

At the very least there should be an obligation in the legislation to consider providing national direction on s.6 matters. To give such an obligation some teeth, there could be a requirement that, where such national direction is not provided, a clearly reasoned decision is required as to why national direction is not appropriate or necessary for any existing or new s.6 matter.

The extent of consideration for national direction should include standards that are appropriate nationally, sub-nationally, or in certain situations wherever they occur in the country. The suite of draft national documents proposed for freshwater management is an example of such an approach.

The existing RMA enables national standards to specifically allow councils to include more stringent or more lenient standards. This considerably increases the situations in which national standards may be appropriate, as it enables variations that take into account local considerations, while still setting bottom lines where necessary.

Likewise other forms of national direction should enable variations that take into account local considerations in appropriate circumstances.

**Overlaps between NPSs**

In line with the comments above about the need to achieve integrated management of natural and human/built values and needs, it is noted that there is national direction on some specific human/built elements, such as the NPSs on Electricity Transmission and on Urban Development Capacity. Such direction can overlap with national direction relating to natural elements.

It needs to be clear how overlapping national documents are to be applied in such circumstances. This would seem to be best achieved by the national direction on natural elements indicating how nationally significant human elements are to be managed in respect of such natural elements. It would assist if any separate national direction specifically on human elements clearly stated the national direction on natural elements that had precedence. This should be required by any replacement legislation.

**Weight to be given to NPSs**

The Council considers it important, for the effectiveness and efficiency of the resource management system, that the status of NPS’s be similar to that accorded the NZCPS in the King Salmon decision. So that where NPSs contain clear and directive objectives and policies on how competing values and needs are to be resolved, then they are not at risk of interpretations that they do not establish bottom lines and can be overridden by other considerations. To achieve this, the purpose of an NPS providing direction on natural elements/environments should be amended. It should be similar to that of the NZCPS, i.e. “to state objectives and policies in order to achieve the purpose of this Act”. 
**Review of national direction**

The Council supports a requirement to regularly review national direction and ensure consistency and clear direction where national direction documents overlap. The alternative of a single Policy Statement may also be an appropriate mechanism, but the critical issue is clear consistency in national direction, which is not necessarily guaranteed just by having a single policy document.

**A National Plan**

Serious consideration should also be given to providing for a national plan which contains a vision of what we want NZ to be like in the future as “Aotearoa/NZ Inc.”. For example, do we want NZ to have best practice sustainable farming, what is the strategic plan for the development of NZ (including a national urban growth strategy), how should NZ take into account climate change (both in terms of existing development and communities within NZ and potential immigration from outside NZ).

As with the Danish planning system, this could contain an overview of national interests, national directions and a spatial plan at the national level, including identified nodes of development, necessary infrastructure provision and significant natural environment objectives.

It could be created under the RMA, but be required to be given effect to by not just national, regional and district RMA planning documents, but also by actions under other legislation, e.g. the Land Transport Management Act, the Local Government Act, and the Climate Change Recovery Act. This would assist in achieving integrated and co-ordinated planning for natural and human values and needs at all levels.

It is a more visionary and aspirational approach which seeks to ensure more positive outcomes in the future for NZ as a whole.

**Positive outcomes**

In line with the above comments on a national plan, the Council agrees that there is insufficient focus on positive outcomes in the RMA’s purpose and principles. Although the existing definition of “effect” includes positive effects, that does not come through clearly in the purpose of the RMA. The direction to enable people to provide for their wellbeing does implicitly include the enhancement of their wellbeing. However, the direction in respect of effects on the natural environment is limited to protecting what exists at best, or potentially just mitigating adverse effects. The Council agrees that the degree of degradation of the natural environment requires obligations for enhancement beyond what currently exists. This should include restoration to environmental bottom lines.

One step towards the achievement of enhanced outcomes could be for this to be more clearly included as part of the purpose of the RMA through amendments along the following lines;

- Sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for and enhance their social, economic, and cultural well-being and for their health and safety while...

  (a) sustaining and enhancing the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
(b) safeguarding and enhancing the life-supporting capacity of air, water, soil, and ecosystems; and
(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

This should also be reflected in s.6 matters, along similar lines to the new s.6 matters recommended below.

**Additional and amended matters of national importance**

In terms of possible changes to s.6 of the RMA, the Council suggests that the following be added as matters of national importance because of their significance;

- the maintenance, enhancement and restoration of indigenous biodiversity, including the protection of critically threatened species;
- the enhancement of urban environments to create high quality and efficient urban areas;
- the provision of sufficient housing and business opportunities to meet future demand in urban areas, including affordable housing;
- management of natural hazard and climate change risks over time to ensure they do not become unacceptable

With respect to the second bullet point above, a clearer descriptor of what “high quality” means for urban areas would be better. Alternatively, this should be elaborated on in a NPS, as has previously been suggested for all matters of national importance. In respect of the second and third bullet point, these overlap to some degree with the existing direction on the maintenance of amenity values and the quality of the environment under ss.7(c) & (f). However, the proposed additions would be of higher priority and give somewhat different direction in respect of urban areas. In terms of urban areas, it provides for changes to the amenity and environment, particularly where necessary to provide for housing and business demand, provided new development is of high quality.

With respect to the final bullet point above, given the importance of climate change issues both internationally and nationally there is a strong argument for management of the effects of climate change being elevated to a section 6 matter rather than section 7. The current wording for this clause is in need of amendment to provide a threshold at which management needs to occur and more clarity in terms of the type of management. For example, ‘managing significant risks’ could simply mean mitigation, even if this could lead to inappropriate development, and thus sets a very low threshold currently. Ensuring that risks do not become ‘unacceptable’, and bringing in the ability to consider changing risks over time, provides a more directive framework for management which focuses on the outcome sought. This proposed wording can be more easily defined (i.e. “unacceptable” is able to be defined through existing precedent and community engagement) applies to the range of hazards and risks, and recognises that management of risks shouldn’t happen too early and lead to maladaptation and significant unnecessary cost on property owners.

**Additional s.7 matter**

In terms of possible changes to s.7 of the RMA, the Council suggests that the following is an important objective that needs to be recognised and provided for;

- the maintenance and enhancement of natural values within urban areas.
The Council considers that trees, other planting, and natural habitat within urban areas enhance biodiversity as well as increasing the wellbeing of people and communities.

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

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?

The requirement in s.8 is simply to “take into account” the principles of the Treaty of Waitangi. This compares with the requirement in respect of the matters listed in sections 6 and 7, which are respectively to “recognise and provide for the following matters of national importance” and to “have particular regard to”. Considering the significance of the Treaty it is considered that it should be at least listed as a s.7 matter, if not a s.6 matter. The direction should be to give effect to the principles of the Treaty.

The Council would support further work on how te tiriti and te ao Māori should be recognised and provided for through the RMA. Te ao Māori could be specifically recognised in Part 2. There is also a need for national direction on how te tiriti and te ao Māori should be recognised and provided for. This could be in more general direction in a National Plan or an NPS, or more specific direction within each NPS, or both.

The Council also suggests that one of the significant ways of improving the likelihood that Māori interests are addressed would be to require a nominee of the relevant iwi to be on any plan review/change hearing panel, except where the iwi advises one is not required.

The Council supports other mechanisms that support Māori participation, remove barriers to the uptake of opportunities for joint management arrangements and the transfer of powers, and provide for new approaches and partnership arrangements in the management of resources. The clarification of the meaning of iwi authorities and hapū is also supported.

**ISSUE 4: STRATEGIC INTEGRATION ACROSS THE RESOURCE MANAGEMENT SYSTEM**

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?

There is no legislative impediment to spatial planning being undertaken to achieve integration and/or co-ordination across a myriad of plans and processes, but changes to legislation could significantly improve efficiencies and integration. Spatial planning occurs to a degree through district plans and regional planning documents. Spatial planning that achieves a degree of alignment between land use planning and the LGA and LTMA also occurs currently, with decisions on each usually taking into account what has been decided under other legislation.
Larger cities and towns, particularly those with higher growth rates, will, for example, consider issues such as the availability of existing infrastructure capacity, the cost of extending infrastructure and natural environment considerations when providing for growth in their land-use plans. Likewise a high degree of coordination is necessary in the preparation of the Infrastructure Strategies required of Councils and in undertaking their core financial obligations, including the setting of rates and development contributions. All such functions require a degree of spatial planning. Therefore, the issue is more particularly, what specifically could a Spatial Plan achieve to add value and resolve resource management issues?

The NPS on Urban Development Capacity also requires district and regional councils with higher growth rates to prepare future development strategies for urban growth and take into account the availability of infrastructure, or commitment to provide infrastructure under the LGA. Although such strategies can be included in Regional Policy Statements (RPSs) or district plans, through statutory changes or reviews of those documents, it still requires separate processes to amend each planning document and to amend council LTPs. These fragmented statutory processes take considerable time and need to be sequential, due to district plans being required to give effect to RPSs and the risks in making provision for infrastructure/projects in LTPs when changes/reviews of the relevant RMA documents are not yet beyond challenge.

The potential is for a statutory spatial planning process that enables RMA planning documents and LTPs to be reviewed and amended as outputs of the process, and at the same time through one process. Such an approach has the potential to resolve resource management issues and achieve better and more efficient overall outcomes by, for example, changing the permitted land use and providing funding for the desired activities. To maximise integration and benefits it could include more than just the infrastructure that Councils provide, by including commitments for all relevant government funded infrastructure and projects, such as state highway developments, schools, and social and affordable housing. It could also incorporate non-growth related planning such as biodiversity strategies.

Further, as the development of the spatial plan would not involve the current time consuming sequential processes it would be informed by, and respond to, the most current information and assessments, rather than planning in part based on statutory documents that were prepared some time in the past.

However, such an overarching planning process would be a large and potentially complex undertaking and possibly unrealistic for all councils. An alternative would be for a statutory spatial planning process that enabled at least council land-use planning and infrastructure planning to be undertaken in a single process that amends both RMA, LTMA and LGA documents, with such regional and national agency input and commitment as can be obtained.

This is still likely to be a major undertaking for councils and it is recommended that any statutory provision made for such a combined process be on the basis that it is a voluntary process available to councils, should they decide to undertake such an exercise.

Such a statutory process would appear to sit best under the RMA, as it would be a logical extension of the future development strategies required by the NPS on Urban Development Capacity. Considering the potential significance and impact of such strategies, an RMA process that allows the strategy to be fully tested would also seem appropriate. Amendments would obviously be necessary to the LGA, LTMA and other legislation to recognize such a spatial plan and require that actions are not inconsistent with it.
ISSUE 5: ADDRESSING CLIMATE CHANGE AND NATURAL HAZARDS

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?

This Issue really consists of two different, although partly related issues. The first is to what degree should the RMA manage activities based on whether they produce or reduce greenhouse gases that cause climate change? The second is how should the RMA manage natural hazard risks, including natural hazard risks that are likely to increase as a result of climate change?

Managing activities that generate or reduce greenhouse gases

Considering the first issue, it is critical that activities that generate or reduce greenhouse gases are managed to address the significant climate change consequences of greenhouse gases. The current situation is that RMA plans cannot be used to manage activities on the basis of the climate change consequences of the greenhouse gases they produce. It is understood that management of such climate change implications of the greenhouse gas emissions that activities produce is intended to occur at the national level through the Climate Change Response Act 2002, and through the introduction of a price on emissions through the New Zealand Emissions Trading Scheme. However, it is noted that the national level of management is not currently in place. For example, as per the Council submission on the Climate Change Response (Zero Carbon) Amendment Act 2019, there is still a need to make greenhouse gas emission reductions mandatory.

The previous ability to consider the adverse climate change effects of greenhouse gases emissions under the RMA was removed by an amendment act in 2004. The RMA still enables consideration of the benefits of activities that reduce greenhouse gas emissions. It specifically requires consideration of benefits of the use and development of renewable energy, and specifically provides for consideration of those benefits when an application for a discharge to air will enable a reduction in greenhouse gases.

If all the adverse climate change consequences of greenhouse gas emissions are ultimately adequately managed at the national level, it would be questionable as to whether it is appropriate for those same adverse consequences to be considered, and weigh against development proposals, through the RMA. That would result in two different statutory mechanisms penalizing developments for greenhouse gas emissions for the same purpose of avoiding climate change effects.

If all those adverse consequences are not adequately managed at national level, then either the national management of such greenhouse gas emissions should be amended or provision be made for them to be managed under the RMA. As an example, the form of urban growth can have a significant impact on greenhouse gas emissions through the use of transport that different urban forms generate. If not otherwise adequately managed at national level, there should be national direction on the management of this issue under the RMA, either in a National Plan (raised earlier under Issues 2 & 6) or in the NPS for Urban Development.
The paper also states, quoting the Productivity Commission report on Low-emissions economy, “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”. The quote from the Commission’s report is followed in that report by the comment that “additional incentives or regulation, often catchment specific, are needed to secure co-benefits and avoid co-harms. Incentives may take the form of pricing or subsidy of benefits (for instance the biodiversity benefits of native afforestation); levies to compensate for harms (such as the negative effects of harvesting forests on local infrastructure); and regulation of standards to secure benefits or avoid harms.”

The “co-benefits” and the “co-costs”, i.e. benefits other than reducing the climate change effects of greenhouse gas emissions and costs other than increasing the climate change effects of greenhouse gas emissions, can be managed already under the RMA. An example, in reference to one of the examples above in the Commission’s report, is that District Plans can have rules relating to the nature of traffic generated by activities and their negative effects. Likewise, in terms of other examples in the Commission’s report, RMA documents can manage the planting of exotic forests in sensitive landscapes and the sedimentation in waterways from forestry activities. The RMA also allows consideration of the pollution effects of greenhouse gas emissions.

The Commission’s report also indicates ways in which the other benefits and the other costs could be encouraged or discouraged through national mechanisms. National mechanisms would seem to be particularly appropriate where the benefits/costs apply nationwide. An example it mentions is the government funding of its one billion trees in 10 years project favouring native trees.

The paper raises the option of influencing the way urban areas are developed to decrease the need for carbon-intensive transportation and improve energy efficiency. The RMA enables the climate change benefits of such a form of urban development to be taken into account. However, as indicated earlier, what would assist would be if the proposed National Policy Statement on Urban Development provided clear direction on how these considerations are required to influence the form of urban development.

Given the existing wide scope under the RMA to consider other costs and the full range of benefits, there may not be a need to amend the RMA to take into account such other costs and benefits. That is, other than as has been suggested under Issue 2 to strengthen the focus on positive and aspirational outcomes in the RMA’s purpose and principles. Those aspirations could be that new activities both do not result in an increase in greenhouse gases and also reduce existing greenhouse gases, e.g. by including tree planting which sequesters existing greenhouse gases. The need to amend the RMA is also reliant on whether all the adverse climate change consequences of greenhouse gas emissions will be adequately managed at the national level.

However, it will be important, in terms of potential amendments to the RMA, to ensure any amendments to incentivize activities that reduce greenhouse gases and climate change do not prevent consideration of any potentially significant adverse effects that some of those activities can have in some circumstances.

Managing natural hazards, including those resulting from climate change

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The second issue relates to how the RMA should manage natural hazard risks, including those likely to increase through climate change. The RMA currently includes direction to manage such risks through its inclusion as a matter of national importance. However, the Council supports the view expressed in the paper that there is a need for "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."

The Council is of the view that this needs to be addressed more broadly, beyond the existing or potential scope of the RMA on managing land use. It is easier to manage the natural hazard risks in respect of new development through the RMA. The more difficult issue is how to manage existing settlements and urban areas that are at risk.

The RMA could, for example, be amended to allow planning documents to achieve a managed retreat if adaptation planning with communities resulted in a decision to undertake managed retreat from an area at a point where the risk became unacceptable. This could include the ability to remove existing use rights and rezone land. Considering the significant impact such mechanisms would have on people and communities, there would need to be clear and specific national direction as to the circumstances in which such mechanisms should be included in planning documents.

However, the Council considers that there are a range of other tools and mechanisms that may need to come into play to fully implement such an approach, such as financial compensation, property acquisition and management, asset management and relocation. Such mechanisms either could not, or could only partly, be achieved through the RMA. Other legislative and national mechanisms, clear direction, and thresholds are needed to adequately manage such a situation.

The Council supports the views expressed in Productivity Commission report on Local government funding and financing\(^2\), on the need for central government leadership and support, including co-funding adaptation measures, and the comment that “it makes little sense for councils to be working individually on such a novel, important and complex challenge”.

The Council considers that the critical priority is that a national adaptation plan be developed and adopted that considers the broad range of potential mechanisms necessary to adequately deal with the issues that arise through adaptation planning, as already recognised in the Climate Change Response (Zero Carbon) Amendment Act 2019.

However, it has been noted, in respect of the Adaptation Plan provided for in that Act, “that there is a lack of clarity as to how that adaptation plan will relate to other legislation and a lack of legal force and effect - such as mechanisms to create alignment with the Adaptation Plan in local authority decision-making processes". Further, that the “Adaptation Plan is intended to be a strategic, direction-setting document, rather than a regulatory one".\(^3\) More specific national direction and commitment involving a broad range mechanisms will be required to address the natural hazard risks of climate change.

\(^2\) New Zealand Productivity Commission report on Local government funding and financing 2019, p.228.
\(^3\) Andrew Braggins and Edwin Sheppard “The Zero Carbon Act an opportunity to fix the legal framework for adapting to climate change” Planning Quarterly (December 2019), p.31.
In addition to the issues raised above, a national adaptation plan will need to include such things as clarification of what must be protected, who is responsible for protecting private property, how the costs of managing natural hazards will be managed over time with increased risk from climate change, consideration of alternative frameworks to provide infrastructure services to communities, how to transition between different models of service, and appropriate thresholds for different potential responses. It will be important to clarify the legal status of the national adaptation plan and any subsequent Council adaptation plans, and to ensure commitment to such plans over the long timeframes of climate change. The hazards covered should include rising shallow ground water.

The national adaptation plan may be a more appropriate location for climate change related guidance, tools and direction, provided it is able to be given sufficient legal status. However, there is still a need for stronger and more comprehensive national direction for non-climate change related hazards that are not covered by the NZCPS.

There are also some specific issues that are causing problems and need resolution. In particular, clarification of the boundary between the jurisdiction of District and Regional Councils with changes to the location of mean high water springs as a result of climate change, and mechanisms to deal with that changing situation. It would also be helpful to have more specific guidance on how resource consent applications could be managed when dealing with changing/increasing risk over time as a result of climate change.

Part 2 should also be amended, combining existing matters in sections 6 & 7 and providing stronger direction, along the lines of the amended s.6 matter recommended under Issue 2.

**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?

**Effects vs. outcomes focus**

One of the matters raised under this issue is how a shift to an ‘outcomes’ rather than an ‘effects-based’ planning system might be reflected in plans. The implication being that the existing planning system is not outcomes focused. That implication would not be consistent with Part 2 of the Act or the purpose of national, regional and district policy statements and plans.

The purpose of the Act essentially consists of a number of broad outcomes. Section 6 is largely a list of outcomes directing protection, preservation, maintenance or enhancement of the matters included.

The purpose of national, regional and district policy statements and plans includes stating objectives to achieve the purpose of the Act. Objectives are, or should be, a statement of the outcomes being sought. The policies and rules being the methods to achieve those outcomes. Those outcomes are relevant considerations in resource consent applications, although limited to those specified in the matters of control or discretion in the case of controlled and restricted
discretionary activities. The consideration of effects includes a consideration of the impact on the achievement of the stated outcomes.

It is suggested that the concerns about the effectiveness of planning documents may not be dependent so much on whether the Act is effects or outcomes focused, but how clear and directive the objectives are that define the outcomes. The more vague the objective the less the likelihood that the intended outcomes will be achieved.

However, as commented on under Issue 2, there is a need for the RMA to more clearly provide for positive outcomes.

**Achieving positive outcomes and community planning**

Policies and plans are inherently for the communities they apply to and as such should be informed by community aspirations and be able to be understood and actioned by the subject community. Currently policies and plans rely largely on words, with little use of visual material, limiting understanding and certainty.

The Council made the suggestion under Issue 2 of a national plan that had an aspirational approach which seeks to ensure more positive outcomes in the future, rather than just protecting what exists or limiting adverse effects. The same aspirational approach could be incorporated into other levels of policy statements and plans.

In terms of plan-making at the district level, the process could provide the opportunity for the preparation of community generated plans which indicated how communities would like their area to develop. The process could be along the lines that, on deciding to review a district plan, the Council notifies all resident’s associations and calls for community plans to be submitted, giving an appropriate amount of time for that to occur. Those community plans could then inform the preparation of the draft district plan. The Council would not be bound to include all aspects of the community plans, as there are sometimes district wide issues that also need to be factored into the district plan.

The plan-making process at both regional and district levels could also require that a draft plan/policy statement be notified for consultation, before a final proposed plan/policy statement is notified for formal submissions. Many Councils already do this.

Both these additional plan-making steps will involve extra up-front time and resourcing. However, they are likely to resolve more issues before getting into the more formal submissions, hearings and appeals stages of the plan-making process. They should considerably reduce the outstanding issues raised, and resources required, in those later stages.

Greater community consultation prior to the formulation of proposed statutory plans can provide significant public input, identification of important outcomes, and high levels of consensus as a basis for such plans. This was well illustrated in Christchurch through Share an Idea in the development of the draft Christchurch Central Recovery Plan and the consultation and development of the Greater Christchurch Urban Development Strategy.

The Council also considers that mechanisms should be established to resource RMA advice for communities to enhance their ability to contribute to the resource management system.
Finally, plan-making does not physically deliver the desired activities, i.e. the better outcomes. It can provide opportunities, but a variety of other factors may mean that those opportunities are not taken up. This is particularly the case with urban regeneration. Existing patterns of land ownership, the need to acquire larger blocks of land and other factors make it difficult to achieve the more efficient and higher quality urban environments achievable through more comprehensive redevelopment. Consideration needs to be given to legislative changes, such as powers to acquire land, for the purpose of achieving the outcomes included in the district plan. There also needs to be national direction under the RMA requiring urban regeneration to be undertaken in accordance with master plans to ensure more efficient and higher quality urban environments are achieved.

Certainty of plans

In terms of certainty about what development is or is not permitted by a plan, as raised in the paper, the RMA does not require the status of activities to be determined purely by whether they comply with “effects-based” standards. A number of the so-called “effects-based” first generation plans under the RMA have been replaced with plans that specifically identify the activities that are, or are not permitted. That includes the Christchurch District Plan which replaced the former “effects-based” Christchurch City Plan. In reality, even the former Christchurch City Plan did not determine activity status solely on the basis of compliance with standards. It still included activity descriptions such as “residential activities” and “other activities” (i.e. non-residential).

On the other hand, even plans that include lists of activities to identifying whether an activity is permitted or requires some sort of resource consent, almost invariably also include standards for that activity. Non-compliance with those standards changes the status of that activity from permitted to requiring some sort of resource consent.

Oversight on plan content and outcomes and monitoring requirements

In terms of improving plan content and ensuring plans achieve appropriate outcomes, particularly those set in national directions, it would be appropriate that some oversight of this was undertaken by a national agency. The Parliamentary Commissioner for the Environment would appear to be the most appropriate agency. National monitoring of how well councils were undertaking their required monitoring functions would also be appropriate.

The results of such monitoring could provide helpful guidance for all plans and policy statements and focus effort on achieving outcomes. To date the monitoring at national level in respect of the RMA has largely been focused on the monitoring of processes through the National Monitoring System, rather than on outcomes.

Statistics NZ and MfE produce a biannual State of the Environment Report that does report on some outcomes at a high level. However, this is generally not broken down to district level in a way that is useful for plan making processes.

However, as an initial step, there is a need for amendment of the existing obligation in the RMA to monitor the efficiency and effectiveness of all policies, rules and other methods (in s.35(2)(b)). The resources required to achieve that across the diverse range of matters managed by district plans are well beyond most local authorities. There are also real difficulties with effectiveness and efficiency monitoring in attributing the outcomes observed specifically to District Plan policies and rules when there are a number of other drivers for the outcome.
The RMA needs to recognise and validate the need for a monitoring prioritisation process. That should be accompanied by national coordination or guidance on prioritisation and methodologies for monitoring in the first instance (and funding opportunities for monitoring of national priorities) as well as auditing the quality of the reports after they are produced.

This could be contained within a single national direction document on monitoring or could be topic based. For example, NPSs could include monitoring priorities and methods. This would assist in providing comparable results on the achievement of nationally significant issues.

It is also worth noting that monitoring can be hampered by the difficulties with collecting information on permitted activities. It would be helpful if the RMA included a process that better enabled territorial authorities to require specified activities to register or provide information to the Council without requiring a full resource consent process. While Councils can include performance standards requiring notice or specific information, including these kinds of standards raises the question of how to go about assessing the resource consents required when activities do not provide that notice or information.

**Appeals to the Environment Court and participation**

The Council has given careful consideration to the proposal in the paper for the general plan making process to be a “single stage plan making process” involving a more robust first hearing, with no appeals on merits to the Environment Court (only appeals on points of law). The Council acknowledges that such a process has the potential to result in by far the most significant time and cost savings in the plan making process, potentially saving years in achieving changes to a plan.

However, there is a risk that such a process will discourage public participation as it seems likely that it would need to include provision for processes such as cross-examination of those presenting evidence and submissions, in order achieve a robust consideration of the issues. Experience with a number of hearing processes is that the more formal and judicial the hearing process, the more intimidating it becomes and the less likely that the wider community will participate. It would also remove the opportunity for a second and independent in-depth consideration of the merits of the proposal as currently available through the Environment Court.

Such a single stage process would also potentially remove an incentive and opportunity for parties to increase understanding and reconsider their positions so as to potentially achieve better overall outcomes, prior to the Environment Court hearing. However, somewhat similar opportunities and benefits could arise from the use of pre-hearing meetings in a single stage hearing process, particularly if attendance was effectively compulsory, along the lines of that proposed for the freshwater hearings panel in the Resource Management Amendment Bill 2019.

The Council tentatively and conditionally supports further in-depth consideration of such an alternative process. The process should include the appointment of a hearing panel by the Council with a requirement for the inclusion of independent commissioners, one of which should chair the panel. Provision should also be included for elected representatives on the hearing panel if the Council so wishes. As per the Council’s response under Issue 3, there should also be provision for a nominee of the relevant iwi. In terms of the issue raised in the paper on government involvement, provision for a central government nominee should be available where the matter relates to a
specified s.6 matter of national importance. Such a panel would provide for an appropriate mix of independent and local input, with national input where necessary.

The Council considers that the hearing panel should be able to require attendance at pre-hearing meetings in order to improve understanding of the issues and facilitate resolution prior to the hearing. As per the plan making process proposed for freshwater management in the Resource Management Amendment Bill 2019, the consequence of not attending the pre-hearing meeting, without reasonable excuse, could include that the panel may decline to consider the submission and the loss of rights of appeal. Likewise, the panel should be able to direct a conference of experts for the same purposes.

The hearings panel should make a recommendation to the Council, irrespective of whether the matter was Council initiated or a privately requested change to the plan. This reflects the existing process, which has generally worked well.

Such an amended plan making process could, as suggested in the paper, potentially be limited to more significant issues. This could possibly be defined as any change that involves a matter listed in s.6 or that is the subject of a NPS. All plan reviews are likely to include at least some significant issues, so would be able to use such a process, which is where the greatest savings in time and costs can be made. However, if such a fast-track process is appropriate for significant proposals, it would also seem to be appropriate for less significant proposals which are likely to have lesser effects. As such there does not appear to be any reason to limit the plan change proposals that could use such a process, or to include complications within the RMA in trying to define what is a suitably significant issue.

The Council does not support the inclusion, in an amended process, of an additional step requiring ministerial or central government approval of draft plans or of plans following decisions on submissions. Any such steps would reintroduce a second merits assessment and considerably reduce the savings made by the removal of the existing second merits assessment by the Environment Court. Such approvals would be made without the advantage of the robust second merits assessment that occurs at the Environment Court.

In addition such central government approvals would considerably widen the scope of the second merits assessment that would be required. In the current process the second merits assessment by the Environment Court is limited to only those matters that remain contested after decisions on submissions. A requirement for central government approval of plans would require all aspects of the plan to be assessed. If a plan making process was introduced that included such central government approvals, the Council would prefer that it was an optional process to the existing process, available to Councils if they chose to use it. Such a process is already available under the RMA through the Streamlined planning process.

A further alternative that should be considered, which would retain the opportunity for a review of the merits of the first decision would be an appeal heard by appointed commissioners, rather than a court, but with powers to allow cross-examination, etc. This is likely to retain community participation in the first hearing, enhance community participation in appeals, and reduce timeframes if a sufficiently large pool of commissioners were appointed. Both this process and the more robust first hearing process suggested in the paper could be applied to resource consents.

A further alternative option could be to provide for a plan change, whether initiated by the Council or privately requested, to be directly referred to Environment Court for a decision. However, this
could place significant demands on the Court’s resources due to the potentially wide range of issues that may be raised in submissions. It would probably be impractical for such a process to be available for plan reviews.

An option that has been raised in the past is the removal of the further submissions stage in the process. The Council opposes such a proposal as it limits the participation of people who are potentially adversely affected by amendments proposed in the initial submissions, and who may raise matters relevant to the consideration of the initial submission. The time and cost involved in providing for further submissions is relatively small in relation to that for a plan change or review as a whole, and is justified by the potential for improved outcomes as a result of the further submissions.

**Regional spatial plans and combined plans**

Refer to the Council’s earlier comments in respect of spatial plans under Issue 4. The difficulties mentioned for even larger district council’s in preparing such plans, that result in amendments in RMA, LTP and other statutory documents, are likely to be considerably amplified if it is attempted at a regional level. This is particularly so where a number of district councils need to be involved. Although the inclusion of options in the legislation for spatial or combined plans is appropriate, the Council does not support that such plans be compulsory.

**ISSUE 8: CONSENTS/APPROVALS**

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?
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?

**Range of consent types – significance of effects and certainty**

Although the RMA has a number of consent types, they are designed to deal with different situations based on the extent of the likely effects on the environment. The range being from controlled activities where the effects will be limited to those that can readily be dealt with through conditions of consent, to non-complying activities where the effects are likely to be so great that they are inappropriate in a zone or in certain circumstances.

The different consent types, except for non-complying activities, also provide a degree of certainty for an applicant, with the matters able to be considered for controlled and restricted discretionary activities being limited to those specified, and the certainty of consent for controlled activities. It is common for submitters on plan changes/reviews to seek such activity status to provide that extra certainty. Even the provision for an activity as a discretionary activity is often sought in preference to being a non-complying activity, as it tends to suggest that at least some forms of the activity are likely to be appropriate on some sites in a zone.
The Council is of the view that the range of existing consent types do provide effective mechanisms for managing activities, based on the effects that are likely to be generated. The issues with the range of consent types may be more related to whether those tools are used appropriately, i.e. whether the activity status given to an activity in a plan is appropriate. Too onerous an activity status can result in unnecessarily complicated, time consuming and costly applications. Likewise when an activity is required to obtain a resource consent when its potential effects could be managed as a permitted activity with appropriate standards. On the other hand, too permissive an activity status can mean significant effects are not able to be considered and managed. However, the practical application of the range of consents does have difficulties.

With controlled activities it can be difficult to determine the extent to which a proposal can be modified by conditions to mitigate effects, that do not effectively decline the application. Further clarification of this should be provided in the legislation or consideration be given to removing this activity type. The use of controlled activity status also relies on being able to be certain that the activity will never have effects that would warrant declining the activity. It can be difficult to be absolutely certain of this in respect of all the sites in a zone and in all the circumstances it applies to.

In terms of non-complying activities, there is often very little difference between the assessment undertaken for such activities and fully discretionary activities. The distinction does not come through clearly in the RMA that non-complying activities should be generally regarded as being inappropriate in a zone or in specified circumstances, whereas discretionary activities are likely to be appropriate on some sites in some form. The gateway tests in s.104 need to provide greater differentiation for there to be practical benefit in retaining non-complying activities.

**Approvals with and without a resource consent**

The RMA already provides for Councils to permit activities without a resource consent that do not strictly comply with Plan requirements, based on an assessment of effects for a Permitted Boundary Activities and a Permitted Marginal Activity (PMA). For example, in the case of a PMA, it is assessed on the basis of whether adverse effects will be the same or less than the permitted activity and the effects on any person are less than minor.

There is potential for this approach to be used in a greater variety of circumstances to reduce the need for resource consents, including increasing the circumstances when PMA’s can be used and specifying when they should be used.

The Council is also open to the idea of exploring extending this approach to enable approval without a consent whenever a proposal meets the intended outcomes in the Plan and does not require the imposition of conditions. Provision for such an approval should, however, include a requirement for the Council to consult neighbours (as distinct from formal submissions) to provide useful community input into the assessment of the proposal. Such an approval mechanism obviously relies on the outcomes intended being clearly identified in the Plan, which is not always the case. If the purpose of the Act and Plans is clearly to ensure more positive outcomes in the future, as suggested earlier, than that should hopefully focus Plans on more clearly identifying those outcomes. This may well involve, particularly in urban situations, more use of illustrations to more clearly identify those outcomes, e.g. to illustrate the form of urban regeneration required.
If such broad approval discretion is not considered to be appropriate, processing tracks could be broadly separated into three categories, with the activities in each category defined by statute:

1. **Category 1 process (consent exemption)** – enhanced permitted boundary activity / marginal or temporary non-compliance process for activities with localised effects where the neighbours are clearly not affected or have given written approval (see comments below as to how this should be enhanced)

2. **Category 2 process (effects on environment and persons less than minor)** - the Council informs the neighbours (in addition to formally notifying affected persons) who then have the opportunity to provide written comments (via email) within 10 working days (so within existing statutory timeframes), limited to the matters specified in the District Plan.

   Those comments would be taken into account in the assessment of the application, including whether notification is required, but wouldn't give rights to appeal. It would increase public awareness of applications and potentially increase council officers’ understanding of issues and concerns, and would still be a quick and efficient process with balance between public participation and efficiency.

3. **Category 3 process (the current limited or public notification processes where effects are minor or more than minor)** - However, the limited notification provisions of the RMA (s.77D) should be amended so that a Plan can legally specify who the Council must notify and/or who are the only persons who can be notified. This would enable notification to be limited where those affected can be identified in the Plan. This would provide certainty, including enabling applicants to quickly identify whose consents they could seek to expedite the consenting process.

**Separate permitting process for activities with localised minor effects (Category 1)**

As indicated above this is supported, but not just for residential activities. The permitted boundary activity process works well in all zones, and could be extended to other types of rule breaches where the effects are clearly localised. A simple process should also be available for proposals with no/negligible adverse effects and hence no need for written approvals, e.g. minor site coverage breaches.

**Full assessment of environmental effects for minor consent applications**

The Council supports codification of the “horses for courses” approach to tailoring information requirements to the complexity of the application, to ensure consistency across councils. For example, applicants should not need to provide an assessment against the objectives and policies of the District Plan for simple applications. Schedule 4 should be amended to only require an assessment of objectives and policies for non-complying and discretionary activities. An assessment of effects relating to the defined matters of discretion or control is sufficient for restricted discretionary and controlled activities.

**More clearly specify permitted development rights**

This is supported, but again not just for residential activities. Greater standardisation of rules in District Plans via implementation of National Planning Standards should greatly assist. However, rules and provisions in the National Planning Standards need to be clearly worded so there is no
ambiguity, because interpretation issues add to the time and cost of processing, often considerably. There is currently too much reliance on legal advice and case law for interpretation of provisions.

Dispute resolution

Where there is dispute over the interpretation of legislative provisions, a determination process similar to that conducted by MBIE (for building consents) could work well. A government appointed body could issue legally binding determinations/declarations on provisions of the Act and National Planning Standards. It would be more accessible than the Environment Court and would reduce the time and cost of resolving interpretation matters.

It is also considered that a less formal and more accessible alternative to the Environment Court is desirable for appeals, in order to improve participation and reduce time and cost for applicants, submitters and councils. As suggested earlier in respect of plan preparation processes, appeals on merits could be heard by a pool of commissioners similar to those appointed under the Local Government Act for Development Contribution objections. Alternatively consideration of the merits of a proposal could be limited to a single, but more robust, hearing process, including cross-examination, etc.

Simplify notification decisions

- An option raised in the paper is to require plans to specify the activities that must be publicly notified. At the moment the RMA provides that plans may specify the activities that must be publicly notified, and also whether certain activities are precluded from being publicly notified or limited notified. It is not common for plans to have such rules for all activities. Where a plan does not have such notification rules for an activity and notification is not required or precluded by the RMA, public notification is determined by the Council through an assessment of whether the adverse effects on the environment are likely to be more than minor. The Council is of the view that this existing assessment requirement for public notification on a case by case basis avoids the potential time and costs of unnecessary public notification that may result if public notification rules were included in the plan, but some such activities only had minor effects.

- The special circumstances provisions for limited and public notification ought to be removed. In our experience it is unclear what constitutes special circumstances and when they might apply to an application, and as a result these provisions are rarely used. There is limited case law on this matter, and in any event it is not ideal to routinely have to rely on case law for assistance in applying these provisions.

- With regard to defining who is an affected person, we would like to see further codification of matters established via case law in relation to what can and cannot be taken into account when carrying out this assessment. There is a considerable amount of case law on matters such as the “existing environment” and “anticipated environment”, and we consider that it could be codified in a single section. This would reduce the need for interpretation via case law, and re-litigation or debates between parties to an application (which generally results in increased time and cost).
Separate consent pathway for nationally significant proposals

The retention of this pathway is supported.

Applications and consents electronically available to the public and mandated online systems

These proposals are supported and it is considered that a centralised national database should be developed and implemented for all RMA applications, with functionality to make records electronically available to the public. Consenting IT systems are costly to develop and implement at an individual council level, and a centralised system would be the most cost effective from a national perspective. It would ensure consistency in data recording and matters such as calculation of statutory processing days, and could facilitate direct uploading to the National Monitoring System (NMS) database.

In the absence of a centralised database, the extent of data required to be reported in the NMS should be minimised, as this currently involves considerable time and cost for territorial authorities and hence ratepayers.

It is also considered that there is merit in standardising application forms across the country, to achieve consistency between councils in the nature and level of detail required, and reduce the costs of each territorial authority maintaining their own forms. This would be particularly helpful for consultants and others who submit applications to a number of different territorial authorities. The applications would be able to be submitted electronically via a single national “portal”, similar to that in the United Kingdom.

Process for designations

The notice of requirement provisions in the RMA are very complex as they involve a lot of cross-referencing of resource consent provisions. It would be much clearer if there was a separate set of provisions for notices of requirement. Additionally, the current provisions enable affected persons to be taken into account in making the notification decision, but not when it comes to the substantive decision. This may be an oversight, but in any case should be amended so such effects are taken into account in both decisions.

Review and variation of consents and conditions

There is a need for Section 221 (variation or cancellation of a condition specified in a consent notice) to cross-reference section 127(3) in order to establish an activity status for these applications. No other changes required for reviews and variations of conditions have been identified.

Other approvals matters

Cancellation of applications

It is recommended that the RMA should enable councils to “cancel” applications after they have been on hold for a specific length of time, e.g. 60 working days. Although the RMA includes timeframes for responses to requests for further information, the consequence of not meeting the timeframe is public notification which is impractical in the majority of cases. As a result, that path is seldom followed and while councils can and do follow up with applicants regarding suspended
applications, there is no other legislative ability for us to withdraw or cancel an application that is not progressing (other than when the application is suspended at the request of the applicant under s91A or proposed new s91D).

Certificates of compliance
It is unclear whether a certificate of compliance can be issued for a new building/activity that is permitted by the District Plan where it will be located on the site of an existing building established via resource consent (e.g. adding a garage or dwelling extension to an existing house, or a sign to a commercial property). Clarification in the statute on matters such as this will avoid the need for costly legal advice and inconsistent approaches.

ISSUE 9: ECONOMIC INSTRUMENTS

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?

The potential scope for the use of economic instruments in the RMA will depend on the purpose and principles of the RMA. The scope would be greater if the purpose is widened to clearly enhance outcomes for people and the natural environment. As discussed under Issue 2 above, enhancement is not clearly part of the purpose and principles of the RMA. Particularly in respect of the natural environment, the focus is on protecting what exists at best or mitigating adverse effects.

The existing economic instruments of development contributions and financial contributions reflect this, with their use limited to where they can be justified because of the adverse effects that would otherwise result.

As also indicated above, the Council supports that the purpose and principles of the RMA more clearly seek the enhancement of outcomes and it supports the availability of economic instruments to achieve that, supported by clear national direction.

The Council also supports the greater use of the tax system to incentivise the achievement of environmental outcomes, e.g. indigenous biodiversity and heritage.

ISSUE 10: ALLOCATION

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 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 to address regulatory issues?

These issues relate largely to Regional Council functions such as permission to take water resources and to occupy coastal marine space.
The Council seeks to ensure that the allocation of the right to use resources takes into account the reasonably foreseeable needs of future generations, as per the purpose of the RMA. In the case of Christchurch, this includes the potential future water supply needs of the City and the allocation of water from the underground aquifers.

The Council agrees with the comments in the paper that with increasing resource scarcity the existing “first in first served” approach is not an effective management mechanism. Rather, the RMA, or national direction, should provide a more specific framework to guide resource allocation. In terms of the allocation of water, where water rights are no longer required for the purpose for which they were granted, those rights should not be able to be transferred or used for other purposes without a fresh application. Instead any new use should be required to make a new application and there should be a requirement that consideration be given to the reasonably foreseeable needs of other uses in the region, in coming to a decision on whether to grant the application. This is illustrated by the situation in Christchurch where the aquifer water supply for the residential and business needs of the City is forecast to grow significantly, but unused water rights are being transferred and used for other less critical activities.

However, there should be provision for exemptions for the need for consents for such transfers and new uses in situations such emergencies and the current work to safeguard the City water supply system.

It is noted that the LGA already provides a “framework and powers for local authorities” to guide local decision-making so that when making a decision, “a local authority should take account of:

• the diversity of the community, and the community’s interests, within its district or region
• the interests of future as well as current communities
• the likely impact of any decision on each aspect of well-being” (s.14(1)(c)).

Any more specific direction on decisions on the allocation of resources under the RMA should be consistent with those broader principles.

**ISSUE 11: SYSTEM MONITORING AND OVERSIGHT**

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?

As per the Council comments on Issue 7 relating to improving the content of plans and policy statements, it would be appropriate that some oversight of the achievement of appropriate outcomes, particularly those covered by national directions, was undertaken by the Parliamentary Commissioner for the Environment. National monitoring of how well councils were undertaking their required monitoring functions would also be appropriate. This may be able to draw on existing national monitoring, such as that undertaken by Heritage New Zealand Pouhere Taonga.

Changes needed to improve monitoring are also included under Issue 7.

**ISSUE 12: COMPLIANCE, MONITORING AND ENFORCEMENT**

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?
The Council is generally supportive of the options contained in the paper for the improvement and enhancement of the ability of local government to deliver compliance, monitoring and enforcement functions under the RMA.

The Council supports the option, suggested in the paper, of increasing the penalties for non-compliance so that they are an effective deterrent compared to the financial advantage of non-compliance.

The Council also supports provision for the escalation of enforcement matters to a central agency, but only with the agreement of the Council and to the extent outlined in the Council’s submission on the current Resource Management Amendment Bill 2019.

The Council considers that the RMA should include provision for resource consents to be cancelled as an outcome of enforcement action, particularly for repeat offences.

Additional, low cost enforcement approaches such as court enforceable undertakings would also be a helpful addition to Councils’ enforcement toolkit. This option is provided for in other legislation and facilitates an effective, low cost approach to settlement where parties are willing and able to remedy a breach, without the need to initiate a Court led enforcement process (such as prosecution or application for enforcement orders). Undertakings of this kind are voluntary and can reduce the time and cost associated with resolving enforcement outcomes whilst still holding offenders to account. Undertakings can also enable creative solutions that are not available under current legal mechanisms such as a contribution towards investigation costs, for example.

Amendments to excessive noise provisions and additional enforcement tools for excessive noise issues would increase the effectiveness of directions and provide further options to Councils when excessive noise directions prove ineffective as an enforcement mechanism. This could include an increase to the prohibition period (for the resumption of excessive noise) from 72 hours to 7 days (to cover a weekend to weekend cycle). The Council also supports the express provision for the service of abatement notices and infringement notices where multiple excessive noise directions have been issued and there is ongoing non-compliance.

Enhanced investigation tools such as compulsory information gathering powers would increase the ability of Councils to undertake investigations in an efficient and timely manner and the overall capability to enforce compliance with the Act. The nature and scope of land use activities giving rise to potential breaches of district planning documents, and the RMA, is vast. The type of information necessary and relevant to establish a breach is similarly varied. The current tools available to enforcement officers are limited to inspections powers (excluding a dwellinghouse) and search warrants. There is considerable reliance on the voluntary provision of information to investigate an alleged breach. The processes related to obtaining a search warrant are rigorous and unhelpful where civil or administrative outcomes (as opposed to prosecution) are contemplated. The ability to obtain information by requiring persons to supply documents or any other information in writing would make investigations more targeted, responsive and effective.

The Council supports improved cost recovery mechanisms for compliance, monitoring and enforcement functions, particularly in relation to permitted activity monitoring and the investigation of unauthorised activities where breaches are identified.

**ISSUE 13: INSTITUTIONAL ROLES AND RESPONSIBILITIES**
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?

Refer to earlier comments, e.g. an expanded role of the Parliamentary Commissioner for the Environment to monitor the achievement of nationally significant outcomes and monitoring by Councils.

**ISSUE 14: REDUCING COMPLEXITY ACROSS THE SYSTEM**

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?

Refer to earlier comments, e.g. the prospect of removing appeals on merits to the Environment Court.

Refer also to the comments on heritage in OTHER ISSUES below, in terms of the need to clarify the roles of Councils and HNZPT in archaeological protection under the RMA and the HNZPT Act. Also the HNZPT role in heritage protection in RMA processes, which may need to be achieved through the HNZPT Act.

**OTHER ISSUES**

**Heritage**

A review of the definition of Historic Heritage should be considered in order to fully provide for the broad aspects of heritage of New Zealand, including the multiple cultures and communities who have contributed to our heritage over time. It needs to recognise that Historic Heritage includes the built and natural environment, urban and rural landscapes, tangible and intangible heritage, stories, memories and traditions, and movable heritage. Further, that multiple values are associated with individual places, and that the heritage of cultures and values is often intertwined and interconnected. The fact that natural and built elements of the environment can have multiple and competing values for different cultures and communities, and that this needs to be identified and recognised in the management of resources, should be more clearly expressed as one of the principles of the RMA.

If not reflected within the RMA itself, this should be reflected in a mandatory NPS on heritage, along with other national direction. The need for national direction was identified in the Ministry for Culture and Heritage recent survey and paper Strengthening the System for Protecting Heritage, A paper to support stakeholder discussions as part of policy development (August 2019). The Heritage New Zealand Pouhere Taonga (HNZPT) National Assessments for RMA policies and Plans indicates areas for improvement, particularly for identification and protection of Maori heritage. This research and analysis should also be drawn upon to inform national direction. The loss of domestic heritage needs to be included as it has been identified as a typology at risk in the
ICOMOS New Zealand Heritage@Risk reports to ICOMOS International since 2002. As does clear direction on the protection of building interiors.

There is also a lack of direction around the issue of ‘demolition by neglect’, that is the absence of protective care of a heritage place which results in its ultimate loss. If not covered by the RMA, then any NPS on heritage should provide clear direction that the owners of heritage items have a duty of care of the heritage place, as stewards for intergenerational equity. There should, as a minimum, be an expectation that any empty or unused heritage place is stabilised and secured.

Removing ‘Historic’ from the terminology is also recommended as this does not reflect the broad range of cultural heritage and the wide acceptance of heritage as including more recent places (e.g. post war/ early Modernist buildings). New Zealand’s modern (post 1940s) heritage has been identified by ICOMOS New Zealand as a heritage type under threat since 2007.

It would be useful for the RMA to clarify the role of Councils in archaeological protection which should be complementary to, rather than duplication of, the HNZPT Act. It would also be useful to clarify the HNZPT role in heritage protection in RMA processes, for example through their involvement in consenting processes which is not necessarily consistent throughout the country. This may need to be achieved through the HNZPT Act.

**Existing Use Rights**

Existing use rights, which permit existing uses to continue when no longer permitted by a regional or district planning document, do not apply in respect of all issues managed under the RMA. Consideration should be given to including a mechanism that enables existing use rights to cease in other circumstances.

As mentioned earlier, the rezoning of land and removal of existing use rights may be necessary where the risk from natural hazards becomes unacceptable. The removal of existing use rights would also have assisted in achieving better outcomes in Christchurch following the earthquakes. Poor redevelopment occurred, including insurance companies choosing to rebuild buildings that did not comply with current District Plan minimum hazard risk requirements (e.g. minimum floor levels to avoid flooding) because they could under existing use rights. Also buildings were constructed that were not consistent with the form of urban development required to be achieved by the Christchurch Central Recovery Plan and more widely in Christchurch under the City Plan. The removal of existing use rights may also be necessary for other situations to achieve the more aspirational focus of the RMA suggested earlier. It is likely to need to be combined with other mechanisms such as financial compensation and property acquisition.

**Assessment of the “Purpose” of a Plan Change**

The RMA currently requires that, where a plan change does not contain changes to the objectives of the plan, the “purpose” of a plan change must be evaluated to determine whether it is the most appropriate way to achieve the purpose of the Act, (ss.32 (1)(a) & (6)(b)). This is an unnecessary and pointless requirement.

There is no definition of what, or how to determine, the “purpose” of such a plan change. There is no requirement for a plan change to express a “purpose” (other than for privately requested plan changes). Even if the “purpose” of the plan change is considered to be the more appropriate way to achieve the purpose of the Act, compared to the existing plan objectives, a change that does not
include changes to the objectives could not change those existing objectives. The RMA requires that the policies of a District Plan implement the objectives of the Plan and the rules are required to implement the policies (ss. 75(1)(b) & (c)). So such a plan change must implement the existing objectives.

Such plan changes should simply be required to be assessed on the basis of whether the “provisions” (policies, rules and other methods) of the plan change are the most appropriate way to achieve the objectives, i.e. the existing objectives (s.32(1)(b)). The requirement to assess the “purpose” of the plan change should be deleted.