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Ministry for the Environment
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Submitted to: RMreview@mfe.govt.nz

Nelson City Council (NCC) Feedback on:

Transforming the resource management system: Opportunities for Change Issues and Options paper (November 2019)

**Issue 1: Legislative architecture**

*Should there be separate legislation dealing with environmental management and land use planning for development, or is the current integrated approach preferable? (Q1)*

1. The Resource Management Act 1991 (RMA) should continue to combine environmental management and land use planning under the same legislation. The key issue is how the RMA interacts with other pieces of legislation which may also have an impact on land use planning and management of parts of the environment e.g. the Zero Carbon legislation, Local Government Act, Land Transport Act, Reserves Act and the like. How can these myriad layers be better streamlined?

**Issue 2: Purpose and principles of the RMA**

*What changes should be made to Part 2 of the RMA? (Q2-8).*

1. In making changes to Part 2 of the RMA, the Government needs to be cognisant of the costs this imposes as new case law is developed through the Courts and Plans then require change. That said there are two areas that may benefit from greater clarity and relate to the comments made in the previous section around integration across legislation:

   a) Separate statements of principles for environmental values and development (housing and urban development) in section 6 to integrate with the Urban Development Bill.

   b) The inclusion of Te Mana o Te Wai in section 6 would more accurately reflect te ao Māori in resource management and improve the protection of cultural and environmental values.
c) Greater clarity around climate change which currently focuses on adaptation and how this integrates with the Zero Carbon legislation for mitigation.

**Issue 3: Recognising Te Tiriti o Waitangi/The Treaty of Waitangi and Te Ao Māori**

*Are changes required to s8, including the hierarchy with regard to ss. 6 and 7? Are other changes needed to address Māori interests and engagement when decisions are made under the RMA? (Q9-10)*

1. Barriers to the adoption of joint management arrangements under section 36B and the transfer of powers under section 33 are complex. These barriers can include the lack of consistent national direction on iwi rights and interests (for example, freshwater), council resourcing and iwi capability, capacity and funding.

2. The requirement for councils to proactively consult with iwi and hapū when making resource management plans has been effective in Nelson and has resulted in the formation of a positive long-term relationship between Nelson City Council (NCC) planning staff and the eight Iwi in the Top of the South.

3. There is a range of partnership arrangement options available now, including the recent addition of Mana Whakahono ā Rohe in 2018. While these options may not suit every iwi or council, it is important to provide a range of different mechanisms for iwi to participate in RMA processes and to support iwi and council relationships. Council and iwi resourcing can be a barrier to the adoption of these options.

4. The meaning of iwi authorities and hapū has not been an issue so far in the Nelson City Council rohe, however, we support clarifying the RMA to assist with improved interpretation of these terms nationally.

5. A nationally consistent, centrally-administered iwi funding model for iwi participation in RMA processes has the potential to reduce the administrative and budgetary burden on councils. However, a central funding model may not necessarily increase iwi participation due to variable levels of capacity and interest in RMA processes by iwi.

6. Options for increasing iwi capability in RMA matters at a local level could include training for Iwi to learn about the RMA and utilisation of Treaty Settlement grants to fund up-skilling of whanau to increase Iwi knowledge and participation in RMA processes.

**Issue 4: Strategic integration across the resource management system**

*How can spatial planning be best provided for? (Q11-15)*

1. There is currently no impediment to the development of spatial planning within the RMA. The impediment is the most likely cost and time to develop. Where they are prepared then the following would be needed:
a) Spatial plans should be ‘live’ and should be able to adjust to changes in local or national information or direction. Spatial plans could be externally referenced documents in a resource management plan.

b) Fully integrated spatial planning would need to include links to other relevant legislation (LGA, LTMA) to provide for infrastructure and funding mechanisms.

c) Integrated spatial planning should be carried out at a local or regional scale rather than nationally. Triggers for spatial planning could include; future growth areas identified in a Future Development Strategy, a degraded freshwater management unit/catchment or a location impacted by rising sea level and coastal hazards.

**Issue 5: Addressing climate change and natural hazards**

*Should the RMA be used to address climate change mitigation, and what changes are required to address adaptation and natural hazard management? How should the RMA be amended to align with the Climate Change Response Act 2002? (Q16-18)*

1. Climate change mitigation relies on a number of factors many of which sit outside an RMA frame. For example; NCC has embarked on an emission reduction programme for its own activities. There have been difficulties which Council would be happy to provide further detail on. Once this is extended to reducing carbon emissions within a community the ability to effect action becomes exponentially more difficult.

2. Matters that would assist include (and Council would be happy to discuss these points further with you):

   a) Clearer nationally set RMA planning restrictions for new development in high-risk areas, including the clarification of existing use rights during the managed retreat.

   b) Improved alignment and integration between national policy and national guidance, particularly; the RMA, Building Act, NZ Coastal Policy Statement (NZCPS), NPS on Urban Development and *Coastal hazards and climate change: Guidance for local government* (2017). For example; the Building Code has a 50-year time horizon at current day, the NZCPS sets a 100-year time frame and the MFE guidance for Councils provides a range of scenarios depending on an activity. So where a house comes in for building consent a different level is applied than when it comes in through a resource consent process. That makes little sense.

   c) How can alternative low carbon building materials (the creation, construction, life of and demolition (including disposal to landfill and the associated carbon impact)) be managed to reduce emissions? (Replacing the unnecessary use of concrete as an example including for carparking and driveway surfaces). Where should this control best sit and how e.g. the Building Act? How can a transition to low or zero carbon building materials be supported?

   d) Given the aspects raised in c. above - how do the competing outcomes of affordable housing, brownfield intensification close to transport corridors and emission reduction, whilst maintaining amenity and creating green urban spaces get reconciled? Providing sufficient permeable spaces while providing for housing intensification is difficult particularly in brownfield situations.
e) How do we address private covenants on subdivisions which require certain larger size and construction requirements for houses? How can green star building ratings be applied?

f) How can alternative housing models (such as tiny houses, co housing) be achieved with positive environmental outcomes (e.g. access to winter sun, summer shade, urban biodiversity) without creating additional cost?

g) A requirement for Dynamic Adaptive Policy Pathways (DAPP) in the RMA to manage climate adaptation. National guidance and a consistent DAPP framework.

h) Guidance and advice for councils on managing the new risks associated with climate change including, increased risk of fire, rising temperature, wind damage, frosts, rainfall intensity/slope failure and biosecurity risks.

i) Funding for councils to resource and manage new risks, including the increased biosecurity risks associated with climate change.

Issue 6: National direction

What role should a more mandatory national direction have? (Q19)

1. Additional national policy and standards are supported where they add value and address priority national issues.

2. Improved consultation with councils to prioritise national policy and standards would be beneficial in ensuring that national direction is fit-for-purpose and addresses local issues.

3. National policy and standards improve the ability for councils to manage and control activities but can be time consuming and costly to implement and administer. The timing of national policy and standards is often aligned with central government election cycles and this doesn’t necessarily align with local government timeframes for resourcing the required changes. There is an opportunity for improved alignment of local and central government timelines as well as ensuring that where costs are being devolved to Councils they are funded for that by Government.

Issue 7: Policy and planning framework

How can plan contents and process certainty be improved? (Q20-23)

1. The resource management plan review process can be long, slow and expensive. Plans can take between 8-10 years to develop from start to finish and cost millions. Nelson City Council is currently developing an integrated unitary plan (the Nelson Plan) and this is projected to cost approximately $10 million.

2. Standardisation of the plan-making process is supported, however, any requirements should incorporate an assessment of costs and benefits to councils and include a ‘phase-in’ period for adoption.

3. The single-stage plan-making process identified in the issues and options paper is supported. The use of independent hearings commissioners as an alternative to the
current Schedule 1 process and appeals to the Environment Court could streamline the plan-making process provided councils had guidance and implementation support including funding for this model.

4. The lack of availability of trained planners in New Zealand is a significant issue and can impact the council’s ability to deliver resource management plans (both preparation and implementation). Action is needed at the national level to facilitate the training and development of planners in New Zealand.

5. The digital plan requirement in the National Planning Standards is an improvement in the accessibility and usability of resource management plans. However, more competition is needed between digital ePlan providers as there is currently only one main player. Nelson City Council has experienced delays and resourcing issues from this ePlan provider.

Issue 8: Consents/approvals

How can consent processes be improved to enhance outcomes whilst preserving public participation opportunities? (Q24-28)

1. RMA direction for councils to identify significant activities versus minor activities could improve clarity and streamline the resource consent process for applicants. This would need to be directed by central government and be nationally consistent.

2. A list of minor activities could be identified in the RMA with guaranteed 'less than minor' effects. These activities could be adequately managed without an assessment of environmental effects. Or, these activities could be deemed to be permitted activities and therefore not require a consent.

3. NCC supports a separate permitting process and dispute resolution pathway for residential activities with localised or minor effects. Deemed permitted boundary activities are well received by the public.

4. A separate permitting system with dispute resolution is a potential solution. However, the triggers for third party involvement, dispute resolution process, and cost recovery mechanisms would need to be considered.

5. Removing automatic hearings and appeal rights is likely to add another decision-making step to determine whether a hearing is necessary, depending on what the effects might be and what might be raised in submissions. Councils may also experience submitters with high expectations arguing that they should be heard, or complaining that they were not heard.

6. All applications and issued resource consents should be available to the public electronically.

7. A national online system for managing resource consents would be beneficial, however, national funding is needed to ensure a fit-for-purpose and nationally consistent solution that includes database support.
**Issue 9: Economic instruments**

*Is the RMA the appropriate legislative vehicle for economic instruments? (Q29-30)*

1. Much of the income generated from the use of New Zealand’s natural resources are not often available for use at the local level despite the social, environmental and cultural costs being carried by the local community. A fairer distribution of costs and benefits is needed to improve the status quo.
2. Economic instruments that facilitate payments for ‘resource rental’ could be beneficial, especially if those funds were made available for local projects such as environmental clean-up funds, community initiatives, and environmental monitoring and evaluation. This would need to be carefully managed and resourced to avoid unintended outcomes.
3. Resource ownership will need to be considered and addressed prior to enabling economic instruments for resource use. This applies especially to freshwater resources.

**Issue 10: Allocation**

*Should the RMA guide resource allocation, and should the use of resources such as water and coastal space be dealt with under the RMA or separately? (Q31-33)*

1. Clarification of the ownership of resources is an important consideration and something that resource allocation is dependent upon. This is particularly relevant to freshwater resources where the ownership, use, and management of these resources are currently being discussed with Iwi at the national level.
2. The ‘first in first served’ principle does not always provide for the responsible or sustainable management of natural resources. For example, this approach does not guarantee the practical avoidance of over-allocation of freshwater quality and quantity in Freshwater Management Units.
3. Proven allocation tools are urgently required to manage resource use, especially for the allocation of freshwater resources within the environmental limits and national bottom lines required by the National Policy Statement for Freshwater Management.

**Issue 11: System monitoring and oversight**

*What changes are needed to improve monitoring of the resource management system, including data collection, management, and use, and who should oversee these functions? (Q34-35)*

1. An outcomes-based monitoring system for resource management would greatly improve the quality, usability, and integration of this information at the local level. This system should include appropriate cultural monitoring and recognise mātauranga Māori. Those outcomes need to be clearly defined centrally so the data collected is for a reason that reports on those outcomes. Data collection can only effectively be done at a local level and indeed local government has those functions so why replicate them? The concern is the Government being unclear about what data they require for their own reporting, or changing what should be collected partway through, resulting in a significant shift for local government with significant cost implications.
2. An integrated webpage and portal for all resource management system data and summary information could improve the accessibility of this information to councils, iwi and the public. This would need to be led and funded by Government.

**Issue 12: Compliance, monitoring, and enforcement (CME)**

*What changes are required to improve compliance, monitoring and enforcement, and who should deliver, oversee and bear the cost of these? (Q36-38)*

1. Retaining the existing devolved CME system is preferred.

2. Councils have demonstrated improvements in CME over the last 10 years and this progress improves over time. Best practice CME guidelines published in 2018 have assisted in providing nationally consistent guidance for councils. However, resourcing and cost-recovery efficiency can be a barrier for some councils in the adoption of best practice guidance across all CME activities.

3. It is recognised that monitoring the effectiveness of the resource management system is complex. For example, the cumulative effects of resource use and ‘death by 1000 cuts’ make it difficult to determine cause and effect. Teasing out the causes of adverse environmental effects is complicated. For example, how do councils determine whether the cause of environmental degradation is a result of overly permissive plan rules, inadequate consent conditions, poor performance by the consent holder, inadequate enforcement or insufficient state of the environment reporting?

4. Improved and expanded options for cost recovery are required, particularly for permitted activity monitoring to measure the effectiveness of regulatory and non-regulatory outcomes contained in resource management plans. Cost recovery mechanisms are also needed to fund the investigation and remediation of unauthorised activities.

**Issue 13: Institutional roles and responsibilities**

*Are changes to the functions and roles of institutions exercising authority needed, can existing bodies be rationalised or improved, and are new bodies required? (Q39-41)*

1. Consideration needs to be given to how existing structures fit with the continuously evolving needs of Government e.g. the Parliamentary Commissioner for the Environment, Environmental Protection Agency, Ministry for the Environment, Stats NZ and the new role of a water regulator.

**Issue 14: Reducing complexity across the system**

*Generally, what changes to the RMA should be made to reduce complexity (including removing unnecessary detail), improve accessibility and increase efficiency and effectiveness? Are there interface issues between the RMA and other legislation (not LGA or LTMA)? (Q42-44)*

1. As noted in the response to issue 1.
Proactively released

Yours sincerely

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