30 January 2020

Resource Management Review Panel
Ministry for Environment
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Issues and Options Paper – Transforming the resource management system

The Far North District Council (Council) welcomes the opportunity to provide feedback to the Resource Management Review Panel (the Panel) on the issues and options paper regarding the resource management review. Comments are structured to provide feedback on the review followed by responses to the targeted and specific questions raised in the document.

GENERAL COMMENT – Support for a full review of the resource management system

1. The Resource Management Act 1991 (RMA) has been in place for nearly 30 years and has been amended several times in response to issues and concerns over its performance. It is considered that a full review is timely, and consideration should be given to the entire resource management system.

2. The country has changed significantly since the Act came into effect. In 1991 New Zealand’s population was 3.495 million, and it has been estimated it will reach 5 million this year. The population has been growing at a rate of 2.1 per cent per year since 2013, with immigration accounting for about two-thirds. The 2018 census has shown Northland to be the fastest growing region, with 10.9% population growth. Climate change is now identified as one of the most challenging issues facing the country. Research has also shown that we have a deteriorating natural environment and we have not adequately protected finite resources such as highly versatile soils.

3. There is concern over whether the RMA is providing for the principle of partnership with tangata whenua, which is inherent in the Treaty of Waitangi. This is an important issue for our district, with 40.6% of the population being of Maori descent and 17% of land being in Maori freehold tenure.

4. It is important that any resource management system is developed on principles that can be transferred across different contexts and scale, as there is no ‘one size’ fits all in New Zealand. It must provide for the regions as well as the main cities, otherwise it can result in unnecessary regulation for rural communities, enablement of urban areas at the detriment of highly productive land, and protection of natural reassures over economic use and development.

5. The current RMA is an enabling piece of legislation that has allowed the market to a large extent to determine how our country has been developed over the last 30 years. In part this has been caused by the lack of national direction, which is now hopefully being addressed by the introduction of new National Policy Statements. Careful consideration needs to be given to the fact that altering the system may result in greater regulation, when it’s been stated that the current RMA creates too much regulation which has caused issues around housing affordability.

6. It also needs to be recognised that other factors have influenced the current issues facing New Zealand such as infrastructure investment not keeping up with population growth, and funding
sources being an issue for many councils. Too much emphasis is placed on the RMA being the sole cause of the housing crisis for example, when many factors have contributed to this issue. Changing/improving the resource management system is only one part of the puzzle.

7. Any changes to the resource management system, must not prevent non-trained professionals being able to apply for simple resource consent applications, or practicing in the plan making process. The current framework provides for this, which is important for our community due to its limited resources.

Targeted Questions

Issue 1: Legislative architecture

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

Council, at this stage of the review, are neutral on whether a separate legislation should be created, rather than using the current framework of an integrated approach. However, the Council does have the following concerns if there was a move away from the existing legislation framework:

- potential impact on established case law, which would mean that there would be uncertainty with the new legislation while new case law was established
- having to train staff and support the public in understanding and applying a totally different resource management system
- a lack of an integrated approach may result in conflict where preference is given to one piece of legislation over the other
- conflict between the two separate legislations
- having to two pieces of legislation may result in higher costs, for example when processing resource consent applications.

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

2. What changes should be made to Part 2 of the Act

For example:

3. Does s5 require any modification?
4. Should s6 and 7 be amended?
5. Should the relationship or “hierarchy” of the matters in section 6 and 7 be changed?
6. Should there be separate statements of principles for environmental values and developments issues (and in particular housing and urban development) and, if so, how are those to be reconciled?
7. Are changes required to better reflect te ao Maori
8. What other changes are needed to the purpose and principles in Part 2 of the RMA?

It is not considered that s6 or 7 need any significant change as there is now sufficient case law to provide clear direction on those matters and there is now a suite of national direction that will help with the implementation of these matters. However, we would like to highlight the lack of clarity over what is significant natural hazard, and a lack of national direction on how to deal with this issue. This is very important as climate change has a direct relationship with natural hazards.

The principles of Part 2 are sound, the issues appear to be more about how its been applied historically. This perhaps highlights that it can be manipulated with too much emphasis placed on economic and social enablement and wellbeing. This however could be addressed with more national direction vs having to change this part of the RMA. Taking this approach would build on the recent development of more National Policy Statements.
Issue 3: Recognising Te Tiriti o Waitangi / the Treaty of Waitangi and te ao Maori

9. Are changes required to s8, including the hierarchy with regard to s6 and 7?
10. Are other changes needed to address Maori interests and engagement when decisions are made under the RMA?

Section 8 is a very clear statement that the principles of the Treaty of Waitangi shall be taken into account when decisions are made. The issue may be more about that section of the RMA not being correctly implement by users of the RMA. It also does not help that under the RMA when resource consents are applied for there is very limited time and opportunity for tangata whenua to respond to applications, as its based on the expectation that each Iwi authority has the resources to respond quickly. In many instances it is considered that applications should be dealt with at a local level (hapu / marae), and they are unlikely to have the resources to participate in the process. This results in silence or a lack of formal response being considered as endorsement of the development or that there is no issue.

For s8 to be implemented correctly the issue of funding and training for tangata whenua groups needs to be addressed. There is also difficulties in being able to identify who is the correct party to undertake consultation with. This is an issue for the Far North due to the large Maori population, the number of Iwi authorities, and large number of marae.

Further, when it comes to plan making, to truly capture the extent of sections 6, 7 and 8 with regards to Te Tiriti and Te Ao Maori, there is a need for significant resourcing for both councils and the tangata whenua entities. The current issues and criticism about the RMA have largely been around how other issues are priorities over those that provide for tangata whenua.

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 should be a requirement to undertake spatial planning for your district and region as this will ensure that there is greater alignment and integration. Due to the size of New Zealand consideration should also be given to having a National Spatial Plan. It is vital however that decisions are still made a district level, as this will ensure that local communities can easily participate in the process and local issues are considered.

Spatial planning should not be just focused on urban development as an integrated approach needs to be taken, and planning should include the rural environment. Focusing only on providing for urban growth / issues will result in poor environment outcomes. This has already occurred in many parts of the country including this district.

There also needs to be a process in places to ensure that tangata whenua are actively involved in the creation of spatial plans. This is very important in areas such as our district due to the high Maori population and the economic contribution that Iwi authorities will make in the future due to treaty settlements.

However, spatial plans do not necessarily need to be a statutory document, and careful consideration should be given to whether council’s should have the option to create these outside of any resource management system. For example our district is currently developing a spatial plan outside of the RMA framework which will provide strategic direction to our new district plan. Consideration and direction needs to be given for
how these high level plans can be best implemented, e.g. the National Policy Statement on Urban Development.

**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?

The RMA should be a tool to address mitigation, and for the RMA to align with the Climate Change Response Act 2002. However, how would the application of the RMA as a tool to address climate change mitigation actually work in a practical? Our council would not have the necessary skills inhouse to deal with this issue, nor would the majority of our applicants. If this was implemented there would have to be very prescriptive national direction and support.

As stated earlier in the document there needs to be more National direction on the management of natural hazards. Due to historical decision many parts of our district are affected by natural hazards due to large scale development occurring in flood plains and next to the coastal marine area. Adaptation is required as it is not feasible to retreat from those areas at this point in time, nor is there a community desire to walk away from these established communities. The issue is more about how will this adaptation be funded and what degree of flexibility should be in the resource management system to provide for the continued operation of these established communities? While the RMA was amended to include significant natural hazards as a matter of national importance, there is only a non statutory guidance document provided from central government.

As climate change and natural hazards become more of an issue in the coming years there needs to be clear direction to provide a consistent approach, and to achieve the best outcomes for our communities. Our council has identified climate change as the number 1 risk, and it would be more cost effective if there was a national methodology to apply vs each council creating its own process to deal with this issue.

**Issue 6: National Direction**

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

National direction is an important component of the resource management framework. However it should not replace local decision making, as local government is best places to understand its communities needs and what outcomes are required. In some instances a national environmental standard is not required if there is sufficient direction in an National Policy Statement or the RMA itself. A lot of time and resources goes into creating a district plan, which includes a lot of community investment, this means careful consideration needs to be given to creating national policy that would supersede these plans. In addition national direction can sometimes be focused on dealing with issues affecting large urban areas such as Auckland and result in some poor outcomes for the regions.

National direction also needs to align and not create conflicts, or not clearly state which national direction takes precedence. This can result in unnecessary appeals and case law having to be created to understand how to apply this new national direction.

**Issue 7: Policy and planning framework**

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?

Plans need to be developed and made operative in timeframes that respond to the urgency and relevancy of the issues. To often plans take to long to develop and are caught up in lengthy hearings and appeal processes that may mean that they are out of date by the time they are operative. When dealing with a consolidated plan review for example consideration should be given to whether it should be automatically processed in the manner of the Auckland Unitary Plan to restrict Environment Court appeals.

While the development of a stronger national framework is supported, this does result in the need to alter current plan changes to make sure they align with the new national direction. There must be stability in national direction and not have newly created policy altered every 3 years for example as we have seen with the urban and fresh water policy direction.

**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 as the review and variation of consents and conditions?
28. Are changes required for other matters such as the role of certificate of compliance?

The RMA has been in place since 1991, it is considered that councils have become efficient and effective in processing consent applications. Issues are usually created by a lack of staff or those with sufficient experience to process applications efficiently. This is something that particularly effects the regions as skilled staff are more likely to be located in the main cities. In addition the focus on meeting statutory timeframes to avoid financial penalties and have good stats to report to elected members and the ministry can result in poor decision being made.

There is also pressure to accept poorly written applications to provide good customer service, or to avoid the additional administration costs and time associated with rejecting an application. In many instance council officers will actually do the assessment for the applicant and work out what conditions are required to mitigate the adverse effects of the proposal.

It is not considered that changes are required for any of the above matters. It is more about how to encourage councils to push back on poor quality applications, to better equip councils and staff not to feel pressured to issue consents without all the required information or to take an extra day to issue a well written decision. It must be recognised that once a consent is issued the community and environment will be bare the cost of a poor outcome, and that the focus should not be on just the applicant and what benefits them.

**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?

In many instances private wealth is generated from the use of resources that are held in common, yet the social, environmental and cultural costs are carried by our communities. These costs should be borne by those who benefit from them. Some of these issues are created by the ‘first come first’ served approach to resource allocation in the RMA. This has a large impact on our Maori land owners as they have not had the resources to develop their land historically.

There would have to be a mind shift from elected members to support the use of economic instruments as there can be a lack of appetite to require developers to pay for the use of community resources. For example
in many instances councils are not even willing to charge people to use reserves, which are privatised over time.

We would support the broadening and strengthening of provisions for financial contributions as currently our council is not levying these charges, nor applying development contributions. This is currently under review and having support from central government to apply these economic instruments would be beneficial for councils such as ourselves.

**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 costal marine space be dealt with under the RMA or elsewhere as is the case with minerals and fisheries, leaving the RMA for regulatory issues?

It is considered that these issues will need to be addressed as the review progresses, as it would result in a fundamental change to the way in which we look at the allocation of resources. Changing the approach may be appropriate for certain resources such as water, as we are seeing tensions in the use of aquifers to support large scale horticultural activities in the Far North.

This however is a very complex issues and may not be able to be resolved in the timeframe set down in this review process.

**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?

Most councils struggle with the collection of data, due to limited resources being assigned to monitoring consents and capturing data. In many instances the teams that generate this data have other priorities, limited resources, and do not understand the implication of not collecting this information. In order for this information to be collected there would probably have to be an obligation to provide the data to the ministry on a regular basis. However, this will result in higher costs for councils and result in the need for IT support to deliver on this responsibility. Our council has limited resources and appropriately skilled staff to help with this required process improvement. An issue also arises with the information system councils use, as they are designed and required to carry out many functions

**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?

When enforcement action occurs, the costs imposed are sometimes insufficient, compared to the financial reward of not following the rules and regulations. There is also sometimes a political or management unwillingness to prosecute members of the public and instead a retrospective resource consent is issued to legalise the works, or the illegal work is ignored. When dealing with a large district, with a limited number of compliance staff it can be difficult to identify and address rule breaches. Reliance is placed on the community to advise council of a potential breach, which may not occur as communities may not support the rules, or don’t want to fall out with neighbours. Monitoring and compliance should have to be reported
to the ministry so that it is demonstrated that these functions are preforming appropriability. However, it should be noted that this would mean higher costs would be passed onto consent holders, or the community. Ideally the consent holder should bear the costs of compliance, however the community will also have to contribute to monitoring costs in terms of compliance with plans. However, this may require rates to be increased, which is never popular.

**Issue 13: Institutional roles and responsibilities**

39. Although significant change to institutions is outside the terms of reference for this review, are changed 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 rationalized or improved?
41. Are any new institutions or bodies required and what functions should they have?

The complexities facing New Zealand is increasing and this means there needs to be a clear direction on the roles and responsibilities of the various institutions, and a requirement to work together to ensure there is an integrated approach where required. However, we want to ensure that local government is not lost and replaced with larger bodies in order to rationalise the number of councils. We cover a large area and have diverse communities that would not necessarily benefit from a rationalised approach. Our council is already actively working where possible with the other councils in our region to achieve cost saving and an integrated approach to many resource management issues.

**Issuing 14: Reducing Complexity**

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?

It is unclear if the RMA is unduly complex or it has just been poorly implemented due to a lack of national direction, resourcing issues within councils, and periods of high growth in recent years making things more difficult. Accessibility issues have arisen due to an expectation that tangata whenua have the resources to participate in the RMA process, and the lack of public understanding of the importance of plan development and its future implications. These issues will not be addressed by just changing the RMA.

Changes are required to address interface issues with other legislation, but that would require an entire review of other acts such as the Building Act. In many instances issues arise due to lack of resources be it either financial or skilled council staff and consultants.

If you require any further information please do not hesitate to contact [redacted] or free-phone 0800 920 029.