Ministry for the Environment
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By Email: RMreview@mfe.govt.nz

ISSUES PAPER: REVIEW OF THE RESOURCE MANAGEMENT ACT 1991

Tēnā koe Honourable Tony Randerson,

1. Thank you for providing Te Korowai o Ngāruahine Trust (Te Korowai) with the opportunity to provide a response to the Resource Management Act 1991 (RMA) issues paper. Review of this legislation is timely, and from our perspective the document provides a strong indication that the Government is committed to making changes that would see it meeting its Treaty obligations in relations to petroleum and minerals.

2. Te Korowai’s interest in the RMA review is because Ngāruahine iwi has a special cultural, spiritual, historical and traditional association with the area within which the activities take place, and the Taranaki region has the highest number of on and offshore oil and gas installations in New Zealand. Te Korowai, as the post-settlement governance entity for Ngāruahine has a responsibility to ensure that the interests of Ngāruahine are safeguarded. This includes considering the extent to which the proposed activities, may impact (potential or actual) on the environmental, cultural and spiritual interests of Ngāruahine within its’ rohe (tribal area); and those areas under statutory acknowledgement and/or Deed of Recognition (Ngāruahine Claims Settlement Act 2016); and the potential or actual risks to the physical, psychological, cultural and spiritual wellness of Ngāruahine (Te Korowai o Ngāruahine Trust Deed).
Issue 1: Legislative architecture

3. In considering legislative architecture, the integrated approach is preferred. This should then be supported by national direction and guidelines, for the built environment for example. It is important that all who are involved in the process operate to one clear framework. Where two pieces of legislation are development, notwithstanding the best efforts of all involved we often find the legislation did be incommensurate, even at a small scale, which then leads to interpretation and implementation problems.

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

4. It is important to revisit sections 6 to 8 of the Act. The overarching principles set the tone for the implementation of the legislation. As an iwi entity who works closely with this legislation, we are continually challenged by the interpretation given by the regional and district councils. As we detail below there is a presumption that some level of adverse effects is to be allowed and expected. We do not support this. As the issue paper signals, Te Mana o Te Wai principles provide a really useful framework that would be applied to section 5. If implemented with the intent to which it was created, section 5 could have delivered positive environmental outcomes, but the presumption for development and growth has resulted in a manipulation of the Act in favour of development and growth over environmental protection.

5. Where a regional council allows an activity to occur (whether permitted or consented) their typical approach is to allow impacts to occur to a point, on the basis that impacts to this point are not significant. For example, the allocation of water is accompanied by a minimum flow. However, the science is often not certain enough, and there is a risk that the effects will be more severe than anticipated. This is even more likely when other factors come into play, such as climate change and further resource use/modification. Cumulative effects are also rarely adequately considered. Once this has occurred, it is difficult to claw back the activity, as there is now a financial dependence on it. We are
seeing this with the agricultural industries response to the freshwater reform. The lack of consideration for cumulative effects is a fundamental flaw in the process. We also propose that the principle of an effects-based legislation can remain, but the total actual and potential effects must be considered, although we do acknowledge that assessment of this data will be challenging.

6. The term ‘life supporting capacity’ is simply too broad and open to interpretation. For example, a stream that supports oligochaete worms and chironomid bloodworm midge larvae supports life, but is no different to an effluent pond, I am sure this is not the life was are aiming to support. In addition, 5.2.c. doesn’t specify how severe an effect needs to be before it needs to be avoided, remedies or mitigated. This implies that all effects need to be addressed, which is not pragmatic. Instead, councils and applicants only seek to address those effects which are considered to be more than minor but ignore cumulative impacts. Points b & c of section 5(2) need to be revised and clarified to ensure that activities do not worsen the situation for already threatened or at-risk species/habitats/resources.

7. When we consider section 6, we are challenged by the limitation of the protections:

“(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development.” The word preservation offers no place for protection or enhancement.

“(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.” In our opinion the ONFs do not extend to the extent that we would like, and protections should extend beyond subdivisions.

“(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.” The comment made for (b) applies here and there needs to be in place systems and protections to restore, enhance and expand areas.

“(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers”. For Māori we do not always want public access to be maintained and enhanced. This provision requires considerable work.
“(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga”. Our Regional Council continually fails to attend to this concern sufficiently.

“(f) the protection of historic heritage from inappropriate subdivision, use, and development:

(g) the protection of protected customary rights”. Whilst this is OK in itself, most of our Māori heritage is not protected. This statement is limiting and requires further work.

“(h) the management of significant risks from natural hazards”. This provision needs to broaden to a focus its attention of climate change, alongside the risks, not just significant, natural hazards.

8. When we consider Section 6(a) in more detail, it is not clear on what is ‘appropriate’.

With the majority of wetlands now lost, less environmentally minded Taranaki farmers are now seeking to modify their small stream, through straightening or piping. Although the proposed freshwater reform is in part addressing this, how could such an activity could ever be considered appropriate when these small streams support at risk and nationally vulnerable species? The act should be clear in that activities should not cause any adverse effects on at risk or threatened species or the habitat of at risk or threatened species (whether utilised by that species or not). Protecting unutilised habitat will aid with species recovery. It may be necessary to apply this restriction to activities that are undertaken for the financial gain of an individual or small group of entities. Te Korowai recently submitted to the Taranaki Regional Council on the use of the term ‘appropriate’, in that its use does not provide certainty around what activities would meet this definition. This is why iwi/hapū involvement at the decision-making table is critical, especially with Councils often dominated by pro-industry councillors.

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

9. Many of the matters in S.7 could be re-shaped and integrated into S.6, thus elevating their focus and attention. Finally, section 8 is such an important clause, but rarely understand in a way that is meaningful and useful for iwi and hapū. This is an area of
focus where Government must provide guidance and direction to the Council’s, many of whom do not understand what it means to work in a Treaty centred partnership.

10. The Act should explicitly provide for iwi participation in the decision-making process (but within clear parameters) and subsequent monitoring of activities. Iwi involvement in State of the Environment monitoring should also be explicitly provided for. There needs to also be a cost recovery mechanism, to ensure this participation is adequately resourced, just like is in place for local & regional government. This is the only fair way to provide for co-governance.

11. The current act is simply not prescriptive enough. Te Korowai has been pushing the Taranaki Regional Council to provide for iwi/hapū monitoring to be included in the conditions of a particular resource consent. This is something that Te Korowai would like to see included for a number of activities. Unfortunately, the TRC is resisting facilitation of iwi/hapū in fulfilling their role as kaitiaki. We also find that the term kaitiaki and kaitiakitanga is being appropriated and mis-appropriated by councils and resource users and consent holders. This is not appropriate.

Issue 4: Strategic integration across the resource management system

12. Questions 11 and 12 are related and the answer to question 11 may in part be fulfilled by a spatial planning framework that spans across the regulatory frameworks. Spatial planning is necessary at both a national and regional level. For matters of national significance, a national plan, framework or direction is important. An example is water. The national discomfort of the water quality issues in Canterbury and Southland that were discussed prior to the last election is a good example of this. Where there is a national appetite to protect certain parts of the country from development and exploitation, then it is reasonable to expect a national level compensation. Such a mechanism has the potential to provide some safeguarding against industry led councils overexploiting their own region.
13. At a regional level, spatial planning needs to be a multi-agency and cross boundary process, enabled and required by legislation. As part of this structure it is important that iwi are full and equal representatives around the development and decision-making table. For a spatial planning to be meaningful within a framework whose first presumption is the protection of the environment, principles such as those described by Te Mana o Te Wai would provide clear parameters to shape and influence the focus of such work. There is also a need to consider this planning approach with an ecosystem-based planning lens and with a clear direction to take into account cumulative effects.

14. We do consider that spatial planning should be legally binding, but equally there must be provision for responsiveness, review and adaption, so that plans remain realistic and achievable.

Issue 5: Addressing climate change and natural hazards

15. There is an important role for the RMA in supporting the response to climate change. Guidance should be developed for high risk areas or high-risk events; the latter could be applied widely as needed. Te Korowai would also support the development of an NES with controls on greenhouse gas emissions under the RMA. As a rohe that is home to a large number of industrial and other intensive agricultural activities, we would support further direction in this area.

16. Whilst we are very supportive and excited by the transition to a low emissions economy caution is needed if thinking about less restriction on certain activities, to encourage the transition. It is acknowledged that some activities should have preference over others, but all environmental effects must be considered.

Issue 6: National direction
17. The necessity for increased national direction is as a result of the incongruent application of the RMA across New Zealand. The level of interpretation applied in some Council areas, including Taranaki has resulted in insufficient protection of the environment. Te Korowai is in favour of further national direction, where that direction is developed in partnership with Māori, and where that national direction has a presumption towards the environment before other activities. Again, the principles of Te Mana o Te Wai seem relevant and pertinent as a reference point. We do support a mandatory policy statement on the Treaty, so long as this process is led by Māori. Without this we are at risk of a statement that further prejudices the Māori relationship to the environment. National guidance and direction on the assessment of cumulative effects, spatial planning and ecosystem-based planning would also be useful. There is merit in a single Government Policy Statement, but if this becomes too unwieldly its purpose and value will be lost. The key consideration is that direction is developed to drive environmental performance and improvement.

Issue 7: Policy and planning framework

18. Te Korowai agrees that improvements are needed to the planning system. Our challenge at a local level is the limited responsiveness to matters of concern raised by Māori and the absence of a Māori voice in hearings processes, and where there is a Māori representative, they often hold a token seat. We agree that increased status be given to Iwi Management Plans. Too often plans are dismissed and not adequately considered because Councils default to their interpretation of sections 6-8 of the Act. Iwi Management Plans are treated as a reference document, so changes to the RMA must be strengthened so that IMPs are ‘given effect to’.

19. At a general level certainty could be improved with reducing vague terminology and being more prescriptive. E.g. replacing ‘life supporting capacity’ with various ecologically
relevant measures and minimising the use of the term ‘appropriate’. It is important to provide certainty and clarity about the standards and expectations that are required.

20. With reference to the issue that plan making processes are lengthy and litigious, it is our experience that this is the case because Councils fail to engage in a true collaborative partnership whereby the terms of reference and terms of engagement are developed and agreed at the outset of processes. Too often Council’s embark on ‘their’ journey and invite iwi to provide comment. They then wonder why their documents and assessments are challenged, and the process takes longer. There is an absence of skill and commitment in Councils to co-construct and co-manage processes. If this were to take place, we would seem improved and swifter plan processes. If there is improvement to process requirements there is no need to add more government oversight and ministerial approval, except where absolutely necessary.

Issue 8: Consents/approvals

21. The challenges associated with the consenting process stem from the planning process. If there was more confidence with the Plans and their rules, there would be greater trust in the consenting process and many of the options set out in para.114 a-f would be reasonable. However, with the current challenges in the local planning processes there remains a need for a consenting regime whereby community and Māori, as treaty partner has rights to engage in the process.

22. For Iwi, a key area of concern and opportunity is that of affected party status. The view of Te Korowai is that this is too limited, and there needs to be a clearer definition of who is an affected party and when. It is the view of Te Korowai that any activity in close proximity to wāhi tapu, sites of significance and statutory acknowledgements affords us affected party status. We then have the opportunity to work in partnership with Councils and applicants about the significance of the effect. By expanding affected party rights there is no presumption that a more complex or lengthy process will result. What it does
force however, is an active and meaningful conversation between parties with an opportunity to influence outcomes that protect the environment.

23. Providing more direction as to the role of iwi in the consent process is also required, particularly with the monitoring of consents. We would also like to see clear direction to Councils that they are required to incorporate iwi comments about consents into decision making reports with clear and complete information about how the comments have been treated and responded to.

24. Regarding the question relating to changes with consent variations and reviews, section 127(4) states, “For the purposes of determining who is adversely affected by the change or cancellation, the consent authority must consider, in particular, every person who—made a submission on the original application; and may be affected by the change or cancellation.” If the original consent was processed as non-notified or alternatively if people gave their written approval, they are then excluded from the variation process, even if the proposal is to increase the scale of the activity, or there has been adverse effects that were not known or anticipated. This is must be changed, with the assessment of who may be adversely affected by the variation – thus it should be treated as an application for a new consent.

Issue 9: Economic Instruments

25. Te Korowai agrees that increased use of economic instruments is required. To provide certainty we agree that national direction is required. We also support an expansion of the provisions for financial contributions and the introduction of charges for the occupation and use of public spaces. We support Council’s ability to use the revenue from any additional charges, subject to compliance with any national direction and a clear statement as part of the Annual Plan and LTP planning processes – thus allowing community engagement in the setting of the allocation strategy or approach.
26. The issue of economic instruments is bigger than the RMA and there is merit in including this with the LGA or other broader local government financial legislation.

27. It is our position that those that gain a benefit from the environment should pay for this benefit. This would include occupation of public land, abstraction of water for irrigation, discharge effluent etc. The income from this can then be used for environmental enhancement projects, although it is important that the projects are related to the impact of the activity that generated the income.

28. One matter that does require further consideration is the transfer of consents, particularly where there is an economic value or benefit involved. Te Korowai is nervous about the issue of transferable rights. Such a proposal is wrought with difficulties and requires significantly more thought.

29. Allocation of resources needs to be done with care, with priority given to public good. It must also consider the intrinsic value of the resource prior to it being allocated. It is currently not possible to apply for a resource consent for water with the intention of using this water to maintain the instream values (i.e. leaving the water in the stream). The current system is geared to facilitating exploitation of those resources, and we as Iwi often feel the negative effects of this exploitation.

30. The allocation of resources should remain within the RMA, as they are often associated with related activities such as discharges. However, the allocation of resources must be given a clear framework, so that it can be quantified and limited. Where a resource cannot be quantified, it should not be allocated, or at the very least be heavily restricted.

Issue 11: System monitoring and oversight

31. Any framework that requires an agency to undertake monitoring which may detect that the (same) agency has failed is flawed. Especially where said agency is governed by pro
industry representatives. A good example was the discussion regarding ‘at-risk catchments. Despite evidence to the contrary the Taranaki Regional Council did not consider Taranaki to have any at risk catchments, because to do so would mean they had failed. In this case, it was Iwi who had to provide this monitoring role and advocate for our at-risk rivers to be nationally recognised. This example highlights that in the current model it can be more important to not appear to have failed than to maintain and enhance environmental values.

32. We can counter manipulation of the system by separating the resource management system (and the state of the environment) should be kept separate from the management of the resource. The Parliamentary Commissioner for the Environment could be the agency responsible for environmental monitoring. We also believe that a mātauranga approach with oversight from Iwi is an important way to keep a check and balance in the system.

Issue 12: Compliance, monitoring and enforcement

33. A key change is that permitted activities need to be monitored. They potentially represent a significant resource use, especially permitted water takes. If there is a further relaxing of the consenting environment (which we do not support without more national direction and improved local plans), it is important to counter this with enhanced and tighter monitoring regimes, across all consent classes. In this model good performance is recognised and poor performance can be more readily addressed. The option of cancelling consents due to persistent and/or significant non-compliance must be encouraged, and this can only be achieved through an enhanced monitoring regime. There are still people and organisations who simply do not care about their environmental impacts, and the financial penalty for breaching the rules is enough for them. We must make the penalties harsher to deter this cowboy approach.
34. The timeframes for issuing an infringement notice must be changed, to be from the date of discovery. A number of stream modification works have occurred in Taranaki but were discovered after the six-month timeframe. This is because they are usually identified via aerial photos. No enforcement action eventuated, as the works did not warrant prosecution (of which the timeframe is six months from discovery). The timeframes should be the same (six months from discovery). This connects to the comments above, people do not care as they know that there is very little action that will take place should they breach the rules.

35. Where Regional Councils have in place sound and trustworthy compliance monitoring programmes the power can remain here. There are however improvements that can be made, and these relate to resourcing with a user pays model. This system can reward good performance and financially penalise those who require enhanced monitoring because of poor performance.

36. There is also the ability to provide the compliance monitoring services with some level of independence and authority. A relevant example would be the role of the Medical Officer of Health in DHB’s. In fulfilment of their health protection role they hold a degree of independence from their employing body. It would be reasonable for the RMA to mandate the appointment of a Chief Environmental Officer, within regional councils who could perform a similar monitoring role of behalf of the environment. This role could be authorised by the PCE.

37. If there was provision for an improved and independent environmental protection role in Councils, there could perhaps keep their State of the Environmental reporting. If the function remains at a regional level the reporting needs further national direction and the monitoring programmes should be developed in partnership with iwi, and community. If, however the status quo remains responsibility for State of the Environment monitoring and reporting should not sit with Regional Councils because it puts them in a conflicted
position. In this case the PCE may be the right agency to undertake this monitoring to ensure some independence and transparency.

Issue 13: Institutional roles and responsibilities

38. Notwithstanding the need for integrity and independence with monitoring and compliance an achievable change would be to further simplify local government. Eliminating the district/regional split in favour of unitary councils would enable spatial planning, improve consenting processes that often span both tiers of government and streamline the relationships that Māori have. Within Taranaki, with its population of 110,000, the Ngāruahine rohe spans each district, thus we are working with three district councils and one regional council. We have eight iwi across the region and the relationship permutations differ for each. Amalgamation would support the efficiency and effectiveness of decision making and engagement processes.

39. In regard to new bodies, our preference is to not create new regulatory or policy bodies, but to look closely at those that exist, such as the PCE or MfE and consider what other functions might be appropriate for them to undertake. Everyone time we create new bodies we add further layers of complexity and add administrative costs that result in less resources for service delivery. Te Korowai is not in favour of this.

Issue 14: Reducing complexity across the system

40. Many of the issues relating to complexity and potential improvements has been addressed in this submission. The only other matter not reflected in enable and encourage pre-application consultation. This pre-application consultation will lay the groundwork for a swift and efficient consenting process.
41. We trust that these comments are helpful. Should you require any further information or clarification please contact s 9(2)(a) at policy@ngaruahine.iwi.nz.

Nāku iti noa, nā

s 9(2)(a)