Greater Wellington Regional Council: Submission

To: Ministry for the Environment
Submission on: Transforming the resource management system: Opportunities for Change

Preamble
Greater Wellington Regional Council (GWRC) thanks the Ministry for the Environment for the opportunity to comment on the high level analysis for resource management reform.

There is no argument that reform of the Resource Management Act 1991 is necessary. Though groundbreaking at its inception, our environment, both physical and social has changed in the last thirty years. A complex practice has evolved in that time which has failed to deliver on the purpose of the Act.

Timing and the Christmas break have curtailed opportunities to discuss our submission in detail with our local government colleagues but we anticipate many more opportunities to do so as the reform proceeds.

Analysis of the challenges and reasoning within the paper
The challenges of climate change, biodiversity and ecosystem services loss and wider environmental decline are real.

GWRC has identified a number of additional challenges that need to be addressed:
- iwi rights and interests to enable movement to partnership
- existing use rights (climate change adaptation and managed retreat – fiercely resisted by property owners)
- behaviour and attitudinal change across wider society (changing land use practices both urban and rural, increased requirements for funding)
- ability to effectively manage for cumulative effects
- market forces

GWRC also emphasises that the issues with the RMA and its practice are not the only cause of environmental degradation and shortfalls in urban development. Lack of funding to replace aging three waters infrastructure or to provide new infrastructure for urban development, land banking, reliance on market driven development, and the lack of skilled trades people are also key factors.
Key themes

Integrated statute

Change is required to “put the resource management planning into the plan” rather than critical decision making through the resource consent process (as the practice has evolved) and to short-circuit the litigious mind-set.

**GWRC supports** retaining an integrated statute.

Purpose and principles of the RMA

GWRC considers that the stated purpose of the RMA, “to promote sustainable management”, is not being achieved. Part 2 of the Act is not working as intended because there was no national direction and guidance, decision making evolved to ‘balancing effects’ of individual consents rather than comprehensive land use planning, considerations of the urban environment as a resource were under-represented and there was no ability to really address cumulative effects. The practice that has developed has resulted in extremely lengthy, litigious and costly planning and resource consent processes, as groups and individuals press for the rights to resource use and development.

**GW supports exploring options to amend Part 2 of the RMA.** The fundamental premise of Part 2 and the essence of sustainable management remains relevant in the sense that use and development and protection of resources all need to be managed. Social, economic and cultural wellbeing are all relevant outcomes from the management of our resources.

However, the urgency of action on climate change is so pervasive that this should be a lens through which all resource management planning and provisions are considered.

**GWRC supports** reforming Part 2 to address these issues and reflect changes over the last thirty years to:

- recognise the urgency for consideration and action on climate change
- include concepts from Te Ao Māori
- support *quality* urban development (or land use development)
- recognise the need for restoration as well as protection
- establish clear principles and desired outcomes.

Partnership with iwi and iwi involvement in decision making

Changes are required to Part 2 of the RMA to strengthen the reference to the Treaty of Waitangi, support partnership and provide for kaitiaki decision-making. Greater decision-making powers for iwi authorities need to be enshrined in legislation and funding/capacity issues need to be addressed for this to be effective.
GWRC acknowledges the work of the iwi leaders group and Kāhui Wai Māori in embedding Te Mana o Te Wai within the legal framework for managing fresh water resources.

**GWRC supports** the Waitangi Tribunal and Kāhui Wai Māori and others who have recommended that the concept of Te Mana o Te Wai should be recognised in Part 2 of the RMA and the provision of funding to address capacity issues.

**GWRC supports** the stance of Government to address iwi rights and interests as a necessary step for resource management and Treaty partnership obligations.

**Spatial planning**

GWRC has repeatedly advocated for regional scale spatial planning to efficiently achieve resource management outcomes which are integrated with social and infrastructure planning and outcomes.

There needs to be further integration of statutes or planning documents produced under different Acts to ensure that spatial planning can provide that function. It would be possible to use the mechanism of the regional policy statement to incorporate relevant aspects of a spatial plan and give it legal weight.

**GWRC supports** mandatory regional scale spatial planning with legal weight and further consideration of spatial planning mechanisms to achieve integration.

**Existing use rights and allocation**

Resetting of existing allocation and existing use rights to allow for positive outcomes and to allow for managed retreat, hazard management, and prioritised water use are major issues that have not been addressed successfully by previous governments. Iwi rights and interests remain unresolved since the inception of the RMA.

Resource management reform cannot be successful without addressing these issues. True partnership between Māori and local government will only be achieved if the foundations of rights and interests are in place.

**GWRC supports** central government undertaking work to address existing use rights and iwi rights and interests.

**Plan-making process**

The GWRC process of developing the proposed Natural Resources Regional Plan has taken 10 years so far and cost more than $12 million. Costs prior to notification were $4.8 million which were largely associated with consultation and development of the draft including technical and economic evidence and evaluations. The costs post notification ($ 7.2 million) are largely hearing panel, expert and legal costs. The figures do not include costs for the appeal process which is only just commencing.
Changes to the Schedule 1 process are essential. The amendments to the notified provisions and amount of money spent is out of proportion to the value of the product that emerges. In addition participation by the public decreases markedly with each step of the formal Schedule 1 process. If the process was faster, any errors, difficulties or unforeseen circumstances arising from the provisions in a plan change process could be easily and swiftly remedied.

**GWRC supports** amending the Schedule 1 process to create a single stage process that would include removal of the further submission step and retain rights of appeal for matters of law only.

**GWRC supports** the role of Council as the decision making body in a single stage process to maintain the role of democracy in local government.

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Greater Wellington Regional Council
Submission questions
Resource Management Reform – Issues and opportunities

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GWRC supports retaining the RMA as an integrated statute. Environmental protection and planning for land-use and development are functions that cannot be separated. The RMA does however require changes to improve significantly the integration between land use and environmental management to achieve better outcomes.

The legislative reform should not be considered in isolation. Integration and alignment with other legislation is essential. Environmental protection does not and cannot solely lie within the remit of the RMA. Environmental matters, such as climate change and biodiversity, need to infuse all aspects of public and corporate decision-making if we are to reverse environmental degradation, reduce the risk of further decline, and pursue synergies. For example, to achieve the net zero carbon target 2050 it must be a requirement in other legislation. The Building Act, the Land Transport Management Act and the Local Government Act all influence resource outcomes.

GWRC supports:
- Retaining the RMA as an integrated statute.
- Ensuring integration with other statutes that affect the sustainable management of natural and physical resources.

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<td>4. Should s6 and s7 be amended?</td>
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<td>7. Are changes required to better reflect Te ao Māori</td>
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GW supports exploring options to amend Part 2 of the RMA. The fundamental premise of Part 2 and the essence of sustainable management remain relevant. Social, economic and cultural wellbeing are all relevant outcomes from the management of our resources.
Part 2 includes the elements to achieve sustainable resource management but there has been a lack of national guidance and guidance within the purpose to help make decisions as to whether use development or protection of a resource is appropriate. There is limited ability to look at big picture societal changes.

In particular, the lack of guidance has led to a reliance on balancing of effects in decision-making, both when developing plan provisions but especially in making decisions on individual resource consents. National direction for outcomes, through policy statements, standards and limits were not set. As a lowest common denominator, activities are acceptable if the effects are mitigated. Consideration of the cumulative effects of activities is difficult.

The King Salmon decision (belatedly) has upheld the original premise of sustainable management by providing direction that, where an activity cannot achieve an outcome, a balancing exercise is not appropriate.

In addition, much has changed in the last 30 years. Te ao Māori is recognised as a uniquely New Zealand perspective, climate change has exacerbated, the environment has degraded. There is a growing realisation that consideration of urban development to meet social needs is under-represented.

Amendments to Part 2 and section 5 are required to provide better guidance and establish clearer outcomes, with a recognition that protection of the environment is a fundamental bottom-line. Te ao Māori is recognised in the proposed amendments to the NPS-FM and needs to be validated by inclusion in the parent Act.

Should the purpose be amended to elevate protection of natural and physical resources and then allow for their sustainable use and development? Incorporating Te ao Māori in Part 2 would be one mechanism to do so. We note, however, that such a change should be developed in partnership with Māori so that there is agreement on how the concepts have been expressed. Inclusion of outcomes related to mauri is a very high bar and may not be appropriate as it does not allow for any degradation and possibly no use or development.

The legislation needs to seek positive outcomes or change, rather than focus on prevention of harm. There are unacknowledged synergies and co-benefits between well-beings. As an example, water sensitive urban design done well can deliver improved water quality, reduce stormwater impacts, increase biodiversity, provide recreation outcomes, and build environmental and social resilience. The reform should consider adding a positive duty to maintain and restore the environment. Note that imposing this duty would need to acknowledge that achieving urban development will require offsetting of effects.

The ability of our society to consider the factors that are adding to climate change, as well as the effects of climate change, when managing our natural and physical resources is crucial. Land, water, and climate must be considered together and the RMA reform needs to support other statutes that govern climate change considerations. Provision for this must be in Part 2. Further commentary is made under issue 5.

Section 5(2)(c) includes the effects management statement “avoid, remedy and mitigate”. GWRC questions whether this is the appropriate hierarchy. If retained, consideration should be given to reframing it as a true cascading hierarchy: “avoid, minimise, remedy, and then offset”. Effects should be avoided in the first instance, then made as small as possible, then fixed/remedied as far as
possible, and only then consideration be given to offsetting, noting there are certain effects that should not be able to be offset.

Section 6 should clearly articulate what is important at a national level and should be outcomes based. The intention of section 6 is to provide outcomes for nationally important resource management issues. Whereas section 7 matters should give guidance to decision makers for those matters which are vital for everyday life and use of resources. These ‘other matters’ must be reviewed to ensure consistency and determine their real value. Some appear to be random. Some are outcome statements (e.g. clause c) while others are just statements (e.g. clause a).

**GWRC supports:**

- Creating a proper effects hierarchy and clarifying that protection of the environment is the bottom-line of sustainable management.
- Making a clearer distinction between matters that require non-negotiable outcomes and those that involve balance
- Working with Māori to develop inclusion of Te ao Māori (including Te Mana o te Wai)
- Including an explicit duty to require restoration and consideration of adding a positive obligation to maintain and improve the environment
- Adding a requirement that all aspects of climate change are addressed as part of resource management decision making
- Retention of the current architecture of Part 2, including a split between section 6 (matters of national importance) and section 7 (other matters).
- Recognition of the benefits of quality urban development and provision of sufficient development capacity
- Review of section 7 matters
- Creating clear outcomes for planning, including setting explicit environmental limits and/or targets to manage cumulative effects
- Alignment of section 8 with other legislation responsibilities for the Treaty of Waitangi

**GWRC does not support:**

- Separate principles for the built environment and environmental values. Everything happens within an environmental context. The ‘natural environment’ does not stop at the urban boundary.

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<th>Issue:</th>
<th>Recognising Te Tiriti o Waitangi / the Treaty of Waitangi and te ao Māori</th>
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<td>Are changes required to s8, including the hierarchy with regard to s6 and s7?</td>
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<td>Are other changes needed to address Māori interests and engagement when decisions are made under the RMA?</td>
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GWRC supports the Waitangi Tribunal and Kāhui Wai Māori and others who have recommended that the concept of te Mana o te Wai should be recognised in Part 2 of the RMA.

GWRC considers that further changes are required to Part 2 of the RMA to strengthen the reference to the Treaty of Waitangi, support partnership and provide for kaitiaki decision-making. Using wording such as “give effect to the principles of the Treaty of Waitangi” is consistent with the provisions of the Conservation Act 1987 and would therefore ensure greater consistency in resource management work carried out by DOC and local authorities.

Unless the RMA review “requires and enables” mana whenua participation and decision making and specifies mana whenua rights and interests within resource management legislation, new grievances will be created and there will be increasing calls for mana whenua focused legislation to achieve this which would create parallel processes. That would be a retrograde step away from the inclusive and connected ethos of Te Mana o Te Wai.

Treaty partnership is a fundamental prerequisite of RMA implementation and the current delegations are inadequate for Councils to achieve this. Legislation should be explicit in specifically delegating the Treaty partner responsibility to statutory authorities (regional and territorial councils) in addressing resource management issues. Council would be operating as an agent of the Crown.

GWRC supports the options set out in paragraph 81 of the Issues and Options Paper, but considers that they will be ineffective unless capacity and funding issues that currently limit Māori participation are not resolved. Identifying funding mechanisms to support Māori participation is critical.

Utilisation of s33 transfer of powers has not occurred for mana whenua. Section 33 should be reviewed to remove barriers to uptake opportunities for transfer of power under this section. One concern GWRC has is our capability and mandate to determine who is and is not an iwi authority or a group that represents hapū. The RMA defines ‘iwi authorities’ as the authority which represents an iwi and which is recognised by that iwi as having authority to do so. GWRC considers that this definition is far too broad and places local authorities in the position of having to determine what is and is not an iwi authority. GWRC has neither the mandate nor the capability to determine who is and is not an iwi authority.

A Mana Whakahono a rohe is a binding statutory arrangement that provides for a more structured relationship under the RMA between:

- an iwi authority and a local authority (a council);
- a combination of iwi authorities and local authorities;
- a hapū and a local authority (if initiated by the local authority); or
- a combination of hapū and local authorities.\(^1\)

GWRC recommends strengthening this definition to require evidence of ongoing customary occupation and use through marae and urupā. This, however, does not recognise and provide for the emergence of new entities.

\(^1\) Ministry for the Environment “ Mana Whakahono a Rohe draft guidance for review and feedback” page 5
GWRC supports:
- Amending section 8 and elevating the Treaty of Waitangi to “give effect to the principles of the Treaty of Waitangi”
- Delegation of Treaty obligations to council as an agent of the Crown for resource management issues
- Review of section 6(e) and amending section 7(a) to be “kaitiaki decision-making”
- Review of section 33 and 36(b)
- Clarifying the meaning of iwi authorities and hapu and consideration of how to include non-iwi Māori in resource management issues.
- Providing funding mechanisms to support Māori participation

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The RMA has failed to provide for the effective management of cumulative environmental effects and appropriate responses to climate change. The review must include revision of regulatory spatial-scale planning beyond the property level or territorial authority boundary to provide for system or catchment health and enable communities to act collectively in response to cumulative effects and the new challenges of climate change.

The reform correctly identifies that there is currently poor integration across land use, infrastructure and regional planning. A number of planning instruments at the regional and city/district level contribute to land use planning. These are often not aligned. Infrastructure planning often reacts to land use planning, rather than being an integral component. Regional planning is often ‘missing in action’ in decisions around land use, and territorial authorities often do not adequately consider effects of land use planning on land, air and water and natural hazards.

The result being that land use change, in both urban and rural settings, is often not well considered and is largely driven by developers, resulting in environmental degradation and poor outcomes for society. Dairy expansion into poorly suited environments and urban sprawl are obvious examples.

GWRC has long advocated for regional scale spatial planning to align institutions, planning and funding processes. To overcome the barriers identified in the issues paper para 85, spatial planning needs to be a requirement, not an optional exercise, addressing more than just housing and urban
growth. The only requirement to date was the proposal in the proposed National Policy Statement for Urban Development to require a Future Development Strategy (akin to a spatial plan) which needed to be considered in later plan reviews. However it applied only to a handful of larger urban areas.

We do not support the creation of another overarching piece of legislation to provide the alignment.

Regional scale spatial plans support councils’ long-term planning process, land use and resource management planning processes. They can provide and forecast large-scale infrastructure spending as well as environmental management requirements. Currently, they are prepared under the LGA. GWRC considers that there are advantages in retaining this, as these plans cover more than resource management issues, such as transport planning and funding.

The consultation process through the LGA allows for adequate public participation. There would need to be a change to make it mandatory to prepare a spatial plan. They should be prepared with input from central government, for matters such as education facilities and transport, and all councils in the geographic area and iwi. Currently, the only mandatory requirement is in the proposed NPS-UDC, which requires areas with high growth patterns to prepare a future development strategy.

Preparing a plan will not achieve integration unless the RMA components are legally binding and included in the hierarchy of documents prepare under the RMA. GWRC supports the land use and resource management planning components of a spatial plan prepared under LGA being included in the RPS to give legal effect to the plan. There should be direct inclusion into the RPS without the need for a Schedule 1 process. Regional and district plans will then further develop the spatial plan through zoning and rules and these will be subject to the Schedule 1 process (as amended by the reform).

Designations are an existing infrastructure/spatial planning tool and need to be reflected in spatial plans.

GWRC supports:

- Requiring mandatory regional-scale spatial plans for all areas of NZ which address both land use and environmental outcomes for rural and urban areas, including future urban zones
- Spatial plans being prepared under the LGA
- Requirement for all councils, iwi and central government to contribute to the process
- Spatial plans to cover resource management, funding and infrastructure
- Resource management aspects of a spatial plan must have legal weight
- Resource management aspects of a spatial plan should be integrated into the RPS

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Development continues, and is difficult to prevent, in areas exposed to natural hazards. This will result in increasing future costs to individuals and communities as increasing amounts of capital and operational expenditure is required to protect property and infrastructure. This in turn creates the impression of safety and encourages ongoing investment in areas prone to natural hazards, further increasing the risks and residual risk from the failure of mitigation works and engineered structures that have a limited lifetime. Furthermore, many hard engineered approaches to protect development from natural hazards, such as seawalls and stopbanks, are directly harmful to the environment (incl. natural process, ecosystems and biodiversity) and can actually exacerbate natural hazards in adjacent areas (eg, end effects of erosion from seawalls) and in the longer term (eg, beach loss from scouring).

The impacts of climate change and natural hazards can be managed and reduced by preventing further development in hazard prone areas, retreating at-risk communities and infrastructure, and investing in resilience.

There is currently a lack of national direction, guidance and support from central government for application of legislative and regulatory requirements to reduce risk from natural hazards. This leads to a difference in approach and lack of consistency and cooperation between local authorities. It is frustrating for communities when adjacent local authorities apply different rules to address the same hazard that extends across jurisdictional boundaries such as faults and coastlines experiencing long term erosion.

With regard to flood risk and seismic hazards, central government has focussed on disaster recovery and post-event response, rather than pre-event response to manage risks and increase resilience.

GWRC considers that it is essential to use our principal resource management and planning act as a tool to address climate change mitigation. Land use and development activities have the potential to exacerbate climate change effects and must be able to be considered in resource management decisions. Natural resources have an important role in mitigating climate change e.g. the value of peat for carbon sequestration, dune systems for buffering the impacts of coastal flooding and erosion, and the importance of retaining zero order streams and wetlands for holding and slowing the flow of water. Actions to achieve water and ecosystem health outcomes can often have co-benefits for climate change mitigation and vice versa.

Mitigation and adaptation to climate change needs to be added, as a minimum, to section 6 and in turn s30 amended to reflect these responsibilities.

We recommend that the reform consider creating a new section within Part 2 to recognise the international importance of addressing climate change in our resource management planning and decision-making. Without a prominent place in the RMA, we will not be able to create the changes needed to address the climate change emergency and the aspirations of the Climate Change Response (Zero Carbon) Amendment Act.
The RMA should further integrate natural hazard risk management with sustainable land management and catchment management. It should ensure consideration of the consequences of natural hazards and climate change, including the resilience and vulnerability of communities and infrastructure, as well as the risk to life and property. This should include amended provisions to enable managed retreat, support/incentivise land retirement and encourage different land tenure arrangements such as leasing.

The RMA should take a long-term risk management perspective, including climate change, residual risk and having a 'no regrets' precautionary approach to risk and uncertainty. It should respect environmental limits and natural processes, including integrated river and catchment processes and coastal processes and protect the life-supporting capacity of water, soil and ecosystems.

National direction is critical to ensure that new use and development (both urban and rural) avoid areas presently at high risk from natural hazard and those places that are increasingly becoming high risk from the unfolding impacts of climate change. This should be a consideration when developing a spatial plan.

In addition to the commentary under Issue 2, GWRC proposes that the review should consider:

- Amending Section 6(h) the management of significant risks from natural hazards and the effects of climate change,
- Adding a new clause Section 6(i) the reduction of human induced greenhouse gas emissions,
- Amending Section 7(i) the contribution to and effects of climate change,
- Reviewing responsibilities for land use under S30
- Repealing sections 104E and 70A and replace with provisions that link to the Climate Change Response (Zero Carbon) Amendment Act’s emissions reduction targets.
- Extinguishing existing use rights in high risk areas to enable managed retreat

Local authorities have various proactive legislative responsibilities to reduce the risks posed by natural hazards, including the effects of climate change, under statute (e.g. the Resource Management Act 1991 (RMA), the Soil Conservation and Rivers Control Act 1941, the Civil Defence Emergency Management Act 2002 and the Building Act 2004) however these are poorly aligned. For instance, the Building Act focuses on a 50-year time frame, while the New Zealand Coastal Policy Statement issued under the RMA requires local authorities to look forward ‘at least 100 years’. The reform should look to align the responsibilities under these Acts to enable action rather than debate.

GWRC supports:
- Inclusion of full consideration of climate change mitigation, adaptation and effects into Part 2 of the Act
- Ensuring that climate change considerations can be adequately addressed in spatial plans
- Ensuring that the Act aligns and supports the Climate Change Response Act and the Climate Change Response (Zero Carbon) Amendment Act.

GWRC asks that central government:
- Addresses the issue of existing use rights in the context of managed retreat and adaptation to enable resilience to climate change effects and reduction of risk from natural hazards
- Addresses the lack of national direction and consistency in legislation that manages natural hazards.
Lack of national direction has long been identified as one of the shortfalls in the practice which has arisen under the RMA. GWRC strongly supports the development of national direction to guide how local authorities manage resources to achieve the purpose of the RMA and to assist the behaviour change required in that practice. We would also support any options that enable national direction to be put in place in a timely and efficient manner.

GWRC supports legislating a core suite of national direction that is reviewed regularly (every 10 years), but is not subject to political party preferences. This could include mandatory national policy statements on:

- Freshwater
- Coast
- Climate change (if included in s6)
- Indigenous biodiversity
- Urban development.

GWRC considers that some matters may need to be elevated from national policy statements into the core legislation, for example climate change. GWRC is unsure how a national policy statement on the Treaty could be developed and whether it is appropriate to do so.

GWRC supports alignment and co-ordination of national direction to set a clear strategic direction across the programme as a whole. GWRC is concerned that local authorities will be left to reconcile competing national policy statements. GWRC recognises that some of these conflicts are most appropriately resolved at the local level, through local authority plan-making or even the resource consenting process. However, any competing direction that can be resolved at the national level should be either within individual NPSs or by having a single national policy statement.

Using a Government Policy Statement is one mechanism suggested to coordinate between areas of national importance and provide a long-term approach. If this option is adopted then it should be different in intent to the infrastructure policy statement, which is primarily a funding mechanism. The timeframe would need to be long-term over political cycles.

GWRC supports:

- Providing national direction through use of national policy statements and national environmental standards and regulations
- Mandatory national policy statements for, at least, the list above
- Better alignment and coordination between different pieces of national direction
- Exploring the option of a Government Policy Statement
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?

The RMA planning hierarchy (RMA-national instruments-RPS-regional/district plans-consents) is intended to provide increasing direction, specificity and detail at appropriate levels and spatial scales. One of the primary causes of litigation, cost, and uncertainty in the RMA process is the lack of guidance and direction at the appropriate level and spatial scale in this planning hierarchy. Major decisions are contested at the consent level.

The planning hierarchy should be outlined as a principle in the Act. Direction should be provided to ensure the hierarchy is complete. Elements of this hierarchy have been missing which has led to great expense at local planning and consent levels. The need to assess consents against Part 2 (this is changing since King Salmon) is a symptom of this.

GWRC supports the following options:
- Requirement for regional spatial plans with effect across the RMA, LGA and Land Transport Management Act
- Reviewing and simplifying the process to prepare combined plans
- Clarification of the functions of regional and district councils – particularly around managing land-use effects on coast, water, ecosystems, habitat and air
- More flexibility in plan-making processes, especially for minor plan changes
- Increased status of iwi management plans or greater decision making power/role for iwi
- Establishment of iwi management plans as a requirement of mana whakahono arrangements

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?

There is significant room for improvement in respect of the plan-making processes.

GWRC strongly supports a ‘single stage’ plan making process similar to the Board of Enquiry process. Changes to the Schedule 1 process are often resisted by interest groups, using the argument that proposed changes reduce the opportunity for public participation in resource management decisions.
GWRC contends that there are many opportunities for public participation in a plan or plan change development and councils generally encourage communities to be involved. Most councils have extensive engagement and consultation prior to notification of a plan or plan change. Increasingly, resource consent applicants are following the same course of action. Development of the Proposed Natural Resources Plan for the Wellington Region provides a recent example of the public’s interest and involvement in the pre-notification stage (see http://pnrp.gw.govt.nz/assets/Uploads/s42A-Officers-Report-PART-A-Section-32-and-Consultation.pdf).

The Schedule 1 process unfortunately often undermines the community input on values and activities put forward by the community in the plan making engagement processes.

Once a plan is notified and starts in the Schedule 1 process, public participation decreases. The complexity of legal arguments and the minutiae and technical nature of the discussions effectively excludes the general public from the submission process, hearings and the appeal process. It is not an environment where the public feel they can express their values and concerns in the same way that they can in the engagement processes before notification.

Councils have tried to remedy this through mechanisms such as Friends of Submitters and information sessions, with limited success. Hearing commissioners on a hearing panel offer supportive encouragement to members of the public who wish to speak.

By the appeal stage on the decision version, participation is generally limited to a restricted number of lobby groups/interest groups, as costs and complexity increase. Environment Court judges will advise any members of the public who have filed an appeal to get legal representation, rather than represent themselves.

Though there are opportunities to refine the RMA in terms of section 6 in section 7 and to debate the premise of the RMA to manage effects, a major reason for failure of our resource management processes can be ascribed to the increasingly complex legal and technical capture of the debate by planners and lawyers. In response, councils have become increasingly risk averse as every step of the process can, and is, under threat of judicial review.

The amount of money spent is out of proportion to the value of the product which emerges.

Amending the schedule 1 process to remove the further submission step and retain rights of appeal for matters of law only will retain the ability of the public to participate at the meaningful stage and reduce the time and cost for councils and communities of resource management planning processes.

GWRC supports the use of an Independent Hearings Panel model akin to a Board of Inquiry approach. This should be appointed jointly by central and local government, with iwi participation to provide recommendations to Council for decisions. Charging rates would need to be capped to reflect the implications for Council rates.

However GWRC considers that it is the role of the council who are democratically elected to make the decisions. The decision-making body should make recommendations to the initiating Council.
GWRC is unsure of the purpose of getting a draft plan approved by central government; this is an additional step for what benefit? If the intent is to help with consistency there are other avenues to do so for example increased MfE involvement at plan development stage and processes.

GWRC supports:
- Removal of the further submissions step
- Appeal rights limited to points of law
- Further investigation on the use of Independent Hearing Panels (with charging rates capped) with recommendation to Council for final approval
- Development of a national system for online submissions and a submissions database that councils can use when undertaking notification/hearings processes
- Simplifying section 32 evaluations, potentially using a template

GWRC does not support:
- Adding a central government approval step to the process.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Consents/approvals</th>
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<tbody>
<tr>
<td>24.</td>
<td>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?</td>
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<tr>
<td>25.</td>
<td>How might consent processes be better tailored to the scale of environmental risk and impact?</td>
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<tr>
<td>26.</td>
<td>Are changes required for other matters such as the process for designations?</td>
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<tr>
<td>27.</td>
<td>Are changes required for other matters such as the review and variation of consents and conditions?</td>
</tr>
<tr>
<td>28.</td>
<td>Are changes required for other matters such as the role of certificates of compliance?</td>
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The consenting framework set out within the RMA is complex, although do attempt to provide appropriate consenting pathways that are commensurate to the scale and complexity of the application.

The different categories for consented activities (controlled, restricted discretionary, discretionary, non-complying, prohibited) allow for different levels of consideration by decision makers. For example, controlled and restricted discretion consents allow decision-makers to take into account a limited range of effects rather than the full suite. Local authority plans tend to use controlled and restricted discretionary activity status’s for activities that require consent but are of a smaller scale.

We do not think that simplifying these categories will make a material difference to the efficiency of consenting and potentially could have a negative impact by certain activities being subject to a more stringent consent pathway.
GWRC supports more clearly specifying permitted development rights for residential activities, such as extending existing buildings and structures, residential use, noise requirements, car parking and vehicular manoeuvring requirements. These could potentially be set nationally, with a distinction between different zones (residential, suburban centre, etc) through the extension of the national planning standards.

GWRC does not support notifying all activities. This would involve a significant change in practice for local authorities and increase the resources required to manage the process.

GWRC does not support a requirement for plans to specify the activities that must be notified. GWRC supports the current approach in the RMA (Section 77D) whereby plans may make a statement as to whether a rule is to be publicly notified, limited notified or non-notified. There are many instances with the Proposed Natural Resource Plan where activities with vastly different scales of effect would require consent under the same rule. Requiring plans and thereby rules, to specify activities that must be notified would increase the complexity of plans. There would have to be additional rules, carefully crafted to only be triggered by activities of a notifiable scale.

GWRC supports maintaining a separate pathway for nationally significant proposals, which includes the Board of Enquiry process and appeals on points of law. See issue above for discussion on a single stage Schedule 1 process.

GWRC supports issued resource consents being electronically available to the public.

GWRC considers that changes are required to the review and variation of consents and conditions, as these are arduous for both the applicant and local authority.

GWRC suggests that certificates of compliance should have the same timeframes and charging ability as resource consent applications as these applications can often take as long a processing a resource consent.

**GWRC supports:**

- more clearly specifying permitted development rights for residential activities
- maintaining a separate pathway for nationally significant proposals, which includes the Board of Enquiry process and appeals on points of law
- providing more efficient processes and use of electronic media
- changes to review and variation and certificate of compliance processes

**GWRC does not support:**

- notifying all activities or a requirement for plans to specify the activities that must be notified
GWRC strongly supports moves to expand the role of economic instruments. There is a natural market failure whereby market forces are likely to encourage an over-exploitation of natural resources by the current generation at the expense of future generations. We consider that correcting market incentives to promote a more optimal intergenerational utilisation of natural resources would be a useful role for the RMA.

The importance of promoting the use of economic instruments hinges on four interlinked observations:

1. The aim of natural resource management has gone beyond the point of limiting the pace of further encroachments on the natural environment to the point of needing to promote the restoration of already altered environments back to more natural states.
2. The restoration process will require the active use of national resources. This will take the form of active restorative activities (e.g. planting), the creation of opportunity costs in the form of lost production (e.g. lost farm production) and/or through the public cost of compensating private landowners for facing these costs.
3. The resources for funding such activity are limited.
4. Economic instruments are likely to promote more effective utilisation of these limited resources than most other regulatory interventions.

In other words, the design of the RMA needs to move from being a passive tool for resisting damage to the environment to a mechanism that actively promotes the creation and achievement of positive restoration objectives.

Well-designed economic instruments will promote more effective achievement of environmental goals by:

- Creating incentives for innovation.
- Encouraging competition for public funding of restoration activities and so reducing opportunities for private profiteering from rent seeking activities by private land owners.
- Encourages a spread of restorative activities that optimises the use of limited restoration funding.

It is too early in the review process to be prescriptive about the type of economic incentives that should be adopted. Instead the focus should be on the broadening of the RMA; (or complementary forms of legislation) on moving the aims from passively resisting environmental damage towards aims that actively promote restoration activities. In making such a move it will naturally encourage the promotion of economic instruments in the regulatory arsenal.
The review should therefore consider the appropriate use of economic instruments such as taxes, tax deductions, trading schemes, competitive tendering, appropriate discount rates and the options outlined within paragraph 118 of the Issues and Option Paper. In so doing we consider the tools should promote as much focus on the implications between generations as for different segments of the current generation and should be geared to avoid irreversible environmental degradation or the loss of irreplaceable or scarce ecosystems. Councils need additional funding mechanisms including incentives/drivers for improved environmental performance.

GWRC supports:
- further investigation and expansion of the role of economic instruments

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<th>Issue: 10</th>
<th>Allocation</th>
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<tr>
<td>31. Should the RMA provide principles to guide local decision making about allocation of resources?</td>
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<tr>
<td>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?</td>
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<tr>
<td>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 for regulatory issues?</td>
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</table>

GWRC supports the work programme that seeks to address issues relating to Māori rights and interests and considers that this be progressed with all urgency as a prerequisite for implementation of NPS-FM requirements and development of the RMA reforms. Additionally, any allocation regime developed under the RMA must take into account Māori rights and interests in freshwater.

Allocation should remain in the RMA and be applicable to water quality, water quantity and coastal marine space. The current system of ‘first in first served’ needs to be replaced. It benefits existing resource users and, given the scarcity of resources available, results in inequitable outcomes. The general principles of allocation are well understood. However, the RMA needs to direct a different basis for allocation, one that focuses on prioritised resource uses (i.e. public water supply and efficient use).

This change must come through in national direction on allocation methods and criteria. Councils will not be able to make this change without strong direction from central government. The process of transition will be difficult but it is necessary and, in the long term, will result in a fairer system.

Additionally, national direction should be clear that allocation beyond limits is prohibited and that there is no certainty in gaining ‘renewals’.
GWRC supports:
- the central government work programme that seeks to address issues relating to Māori rights and interests
- allocation remaining in the RMA
- national direction on allocation and reallocation of resources

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<th>Issue</th>
<th>System monitoring and oversight</th>
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<tr>
<td>11</td>
<td>34. What changes are needed to improve monitoring of the resource management system, including data collection, management and use?</td>
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<td></td>
<td>35. Who should have institutional oversight of these functions?</td>
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</table>

GWRC considers that provision of a national database/information management system funded nationally would enable better alignment of monitoring methods and approach and therefore consistency of information. In turn that would enable better implementation of resource management instruments such as national policy statements.

A centralised SOE monitoring programme funded by central government could be very effective, and enable Council’s to spend money on more specific (effectiveness) monitoring, for example compliance and effectiveness of a new regulation or approach, or detailed investigations to inform policy development for key issues within regions.

GWRC also supports any assistance for iwi and Councils in their development of matauranga Māori monitoring frameworks. Funding and capacity are key issues in this area.

GWRC supports:
- national funding of SOE databases
- support for iwi/Council matauranga Māori framework development

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<tr>
<th>Issue</th>
<th>Compliance, monitoring and enforcement</th>
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<tr>
<td>12</td>
<td>36. What changes are needed to compliance, monitoring and enforcement functions under the RMA to improve efficiency and effectiveness?</td>
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<tr>
<td></td>
<td>37. Who should have institutional responsibility for delivery and oversight of these functions?</td>
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<td></td>
<td>38. Who should bear the cost of carrying out compliance services?</td>
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</tbody>
</table>

GWRC considers that many of the issues raised with respect to lack of compliance, monitoring and enforcement and SOE monitoring are not for lack of willingness but a lack of resource in councils. Creating an authority to audit these functions simply adds more administration time and cost and not necessarily better outcomes.

To better resource this area the ability to charge for permitted activity monitoring and investigations of unauthorised activities is critical.
In contrast to the usefulness of a national SOE monitoring framework, centralising the compliance, monitoring and enforcement function runs the risk divorcing the consented knowledge from the outcomes sought. This is an issue in councils even where these functions are split across different departments.

GWRC notes that some new technologies are not being used as they are too costly so resourcing is the key issue here.

GWRC supports:
- Providing for the ability to charge for permitted activity monitoring

GWRC does not support:
- a separate audit authority
- a centralised compliance, monitoring and enforcement function

<table>
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<th>Issue</th>
<th>Institutional roles and responsibilities</th>
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<td>13</td>
<td>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?</td>
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<tr>
<td></td>
<td>40. How could existing institutions and bodies be rationalised or improved?</td>
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<td></td>
<td>41. Are any new institutions or bodies required and what functions should they have?</td>
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Institutions, particularly regional councils, fail to carry out some of their land use functions; territorial authorities fail to recognise the impacts of land use on coast, water, and air. This has resulted in a permissive regime in respect to land use effects on coast, water and air. The RMA needs to be amended to more clearly articulate and align the responsibilities of regional councils and territorial authorities in terms of managing the effects of land-use on coast, water, ecosystems, habitats and air.

The RMA currently provides for combined decision-making by regional councils and territorial authorities. GWRC supports any amendments that expands or simplifies the ability for councils to undertake combined decision-making.

GWRC supports the establishment of a National Māori Advisory board on Planning and the Treaty provided it is appropriately resourced and funded.

GWRC does not support additional auditing as this involves time and resources that regional councils already lack. Regional councils would benefit from more centralised frameworks.

GWRC supports:
- amendments to clarify responsibilities for land use and the interactions with coast, water, and air and climate change as strengthened through the reform
- amendments that improve the ability for councils to undertake combined decision-making
- establishment of a National Māori Advisory board on planning and the Treaty

GWRC does not support:
- additional auditing
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<th>Issue: 14</th>
<th>Reducing complexity</th>
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<tr>
<td>42. What other changes should be made to the RMA to reduce undue complexity, improve accessibility and increase efficiency and effectiveness?</td>
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<tr>
<td>43. How can we remove unnecessary detail from the RMA?</td>
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<tr>
<td>44. Are any changes required to address issues in the interface of the RMA and other legislation</td>
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