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Ministry for the Environment
PO Box 10362
Wellington 6143

Email: RMreview@mfe.govt.nz

Transforming the resource management system: opportunities for change
Issues and Options paper

1. Introduction
Barker & Associates (B&A) is a specialist planning and urban design consultancy founded in 1997. Today B&A has a team of more than 35 planning and urban design staff operating out of Whangarei, Warkworth, Auckland, Hamilton, Napier and Christchurch offices. We service clients nationwide and undertake projects of all sizes. This submission represents the view of the company and not necessarily individual employees.

2. General
As professionals who work with the Resource Management Act (RMA) daily, B&A welcomes the opportunity to make a submission on the issues and options paper for transforming the resource management system. Much has progressed since the RMA was introduced in 1991 as risks of climate change and environmental decline are more immediate and many of our urban centres are facing rapid population growth. B&A supports a forward-thinking and comprehensive review of the resource management system, that builds on international best practice to design an effective and resilient resource management system while reflecting New Zealand’s distinct environmental, social and cultural context.

In considering reform of the current system, we note that regulation cannot be the only solution to New Zealand’s resource management issues. The system will need to promote behavioural incentives to drive positive change and action. It is important that authorities and institutions who exercise roles in the resource management system are supported to foster a culture of change. B&A strongly recommends that any changes in the plan making and consenting space be trialled with authorities and institutions not only to test how amendments will work in practice but also to gain support and understanding of the new system.

3. Issue 1: Legislative architecture
B&A acknowledges that there are challenges in managing all of New Zealand’s the vastly different environments, interrelated issues and competing environmental and urban development interests. This makes any conversation regarding legislative architecture for managing land use planning and the natural and built environment challenging.
B&A supports an integrated and streamlined statute with a clear purpose that addresses outcomes for both urban and rural areas and environmental management, and sees merit in reviewing the existing RMA. While there may be benefits of splitting the legislation to deal with environmental management and land use planning separately, in our view the risks associated with such a split outweigh the benefits. In particular there are significant complexities with determining what would be dealt with under each legal framework. Furthermore, splitting the legislative framework also gives rise to the issue of competing land use planning and environmental interests being addressed in separate legislation, with no clear guidance as to what interest takes priority. Having an integrated piece of legislation with a clear purpose and principles that guide planning in the built and natural environments will ensure a holistic approach is taken within planning practice in New Zealand.

If there is a desire to streamline the planning legislation through separate statues then a more logical approach would be to introduce separate legislation for major infrastructure. The development of major infrastructure will always lead to significant effects while also resulting in substantial benefits to communities. Therefore, major infrastructure may more appropriately in our view sit in a different piece of legislation with a purpose that recognises this point of difference.

Central to reforming the current system is that resource management legislation needs to be more strategic and outcomes focused. In our experience, the RMA is being interpreted and implemented in an “effects-based approach”, leading in some cases to reactive planning rather than focussing on outcomes. In our view the legislation needs to be framed in a way that considers and fosters positive change in the natural and built environment. Legislation should continue to set bottom lines, but it should do so in a more proactive, positive and outcomes-focused manner. We consider that requiring compulsory spatial planning, with strong legal weight over environmental management and land use plans, is key to ensuring a more strategic, forward-thinking focus is taken to land use and environmental planning.

The reform of the legislative architecture for resource management in New Zealand also needs to consider how to achieve better integration with other legislation which has a role in shaping the built environment. In particular land use planning needs to be integrated with infrastructure and transport planning to support successful urban growth. This requires further exploration and consideration as to how this is best achieved.

B&A encourages the Panel to review and consider international approaches which could offer a fresh and new way of legislating land use and the built and natural environment, whilst keeping in mind the unique social, environmental and cultural context in New Zealand.
4. Issue 2: Purpose and principles of the Resource Management Act 1991 – what changes should be made to Part 2

B&A supports amendments to the purpose and principles in Part 2 to provide more recognition of the built environment and the role that this legislation will have in shaping cities and communities. B&A is of the view that the purpose should be amended to promote strategic outcomes and encourage positive change in the natural and built environment. The approach to using principles to set bottom lines also needs to be reviewed to enable responsive planning to dynamic issues and shifting priorities.

Purpose:
While the current wording of Section 5 is wide encompassing, the emphasis in s5(2)(c) on avoiding, remediing or mitigating adverse effects has led to a more reactive planning approach concerned with managing the impacts of development, rather than focusing on achieving positive outcomes for the natural and built environments. B&A supports an updated legislative purpose that promotes a strategic outcomes-based approach for land use planning and environmental management. It will be beneficial for the purpose to recognise that environments can positively change over time and the language in the purpose of the Act should be enabling of change where it supports an outcomes-based approach.

Principles:
B&A is of the view that there are two key issues with the principles of the RMA set out in s6 and s7. The first issue with the s6 and s7 principles is that while many of these matters remain highly relevant, particularly the matters of national significance listed in s6, there are other significant matters that are not addressed including urban growth, housing supply and infrastructure development. There are also matters listed in s7 such as “the maintenance and enhancement of amenity values” which are out of date in urban centres which are having to accommodate rapid population growth.

To overcome this issue B&A support a two-pronged approach to the guiding principles of any new legislation, with:

**Summary:**
- Adopt an integrated statute with clear purpose and principles.
- Legislation needs to be strategic, proactive and outcomes-focused; must foster positive change in the natural and built environment.
- Achieve better integration with other legislation that has a role in shaping the built environment.
- Review and consider international approaches which could offer a fresh and new way of legislating land use and the built environment in New Zealand.
• Bottom lines being set in response to matters where outcomes sought remain consistent over time, and then
• Introducing of a more responsive approach to setting guiding principles for fast-paced issues to accommodate changing priorities.

In our view there continue to be environmental, cultural and heritage matters which are of national importance and which significant weight needs to be afforded within the planning framework. Recent experience, however, has seen the emergence of many dynamic and fast-moving issues such as the response to earthquake disasters, climate change, water quality and supply, population growth, housing supply and infrastructure development where priorities need to shift rapidly to keep up with the pace of change. B&A is of the view that it is not appropriate to “lock in” bottom lines for the lifetime of a piece of legislation in relation to these types of issues. Legislation by its nature is not designed or built to change as rapidly as required to keep up with these types of significant issues and changing priorities. Therefore, B&A encourages the Panel to investigate how national outcomes which relate to dynamic issues such as those listed above can stay relevant within legislation. One possible approach may be to introduce a process or mechanism that would allow the review of the guiding principles in relation to dynamic and fast paced issues every 3-5 years. This approach could involve a requirement to undertake national reporting to measure the relevance of these issues and the priority that should be afforded, as well as whether the planning system is well placed to deliver outcomes in response to the given issues. We would suggest looking at how international examples of legislation, for example the UK enable guiding principles while providing flexibility to reflect changing priorities.

Another key issue with the current guiding principles of the RMA is that currently sections 6 and 7 have a strong focus on maintaining the status quo. As a result, there is an underlying tone that ‘change is bad’. This does not promote positive change in order to respond to the many scenarios planning is currently facing, including the adaptation of urban environments to respond to climate change, accommodate population growth without encouraging sprawl or incorporate new technology. B&A supports amendments to the language of the principles to recognise that change is often necessary to keep up with the rapidly changing world and that positive outcomes can arise as a result.

**Summary:**

- Support an updated legislative purpose that promotes a strategic outcomes-based approach to land use planning and environmental management.
- Purpose and principles should encourage positive change rather than striving to maintain the status quo.
- Continue to set bottom lines in response to environmental, cultural, and historic matters where outcomes sought remain consistent over time.
- Investigate how national outcomes which relate to dynamic issues can stay relevant within legislation; Review and consider international approaches.
5. **Issue 3: Recognising Te Tiriti o Waitangi / the Treaty of Waitangi and tea o Māori**

Recognising Māori interests is important not only within the RMA but also within the wider planning framework. B&A supports strengthened references to Te Tiriti o Waitangi and the spirit of partnership in the legislation and would welcome new approaches to support greater Māori partnerships and participation. The principles of Te Tiriti o Waitangi - notably partnership - need to be “mainstreamed” and embedded throughout the legislation and planning system, not just in Part 2 of the Act.

The RMA as enacted references Te Tiriti o Waitangi and provides opportunities and functions for Māori partnerships and participation in the resource management system. Many of these opportunities however are not well utilised as in our experience iwi often do not have the capacity or capability to participate within the resource management system to the extent envisaged in the legislation. To increase opportunity for iwi to effectively utilise these provisions, appropriate support needs to be provided to iwi by local authorities including putting the onus on councils to be more proactive in engaging with iwi and supporting partnership arrangements. For example, the RMA currently includes provision under s58 for Mana Whakahono ā Rohe: Iwi Participation Arrangements. These arrangements should not be optional but instead a requirement for councils who must be responsible for initiating the process and then providing support for iwi to be able to engage.

In addition, there should be a requirement for the transfer of powers to iwi on ancestral Māori land and Treaty Settlement land, rather than this function being an optional mechanism available to Councils. However, there needs to be a machinery of support provided from local authorities who should hold a ‘duty of care’ function to support iwi who do not have the capacity to utilise these powers alone.

B&A are of the view that spatial plans should be required to be developed in partnership with iwi. This will enable Māori values, aspirations and interests to be clearly identified and provided for through the framework of RM plans and decision making, including spatial cultural landscape matters. We consider that involvement in spatial planning that has statutory weight will be more effective at promoting Māori values and interests than elevating reference to iwi management plans within the purpose and principles of the Act.

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**Summary:**

- Strengthen references to Te Tiriti o Waitangi and the spirit of partnership in the legislation.
- Mainstream and embed the principles of Te Tiriti o Waitangi throughout the planning system and not just Part 2 of the Act.
6. Issue 4: Strategic integration across the resource management system

B&A are of the view that requiring compulsory regional and district spatial plans, which have legal weight when preparing regional and district plans, is key to ensuring a more strategic focus is taken within land use and environmental planning. B&A consider this is potentially the most powerful of all things that could be done to improve planning in New Zealand. Properly undertaken spatial planning will address many of the current problems, inequalities and inefficiencies identified in the issues and options paper.

Spatial plans should be developed at a regional and district level ensuring that local authorities are forward-thinking and anticipating the changes that need to occur to allow communities to thrive, rather than simply reacting as issues arise. Spatial plans should be used to create an outcomes-based vision that is specific to a region. They should cover place making, urban design, urban growth, infrastructure, environmental issues, iwi aspirations, transport, protection of heritage and funding. We commend the Auckland Plan as a good example of a spatial plan which successfully integrates a broad scope of matters. Central to the benefits of spatial plans being realised is a mandatory requirement for spatial plans to be given effect to within RM plans.

Spatial planning also provides an ideal vehicle to enable a true partnership approach to planning, in line with the principles of Te Tiriti o Waitangi. B&A is of the view that active and meaningful engagement in spatial planning, undertaken with a true partnership approach, is fundamental in enabling a step change in Māori participation. In addition, the cultural landscape and Māori world view should be deeply integrated and embedded into Spatial Plans enabling a step change in Māori.

B&A support timeframes for the development and a mandatory review of spatial plans being set in the legislation to ensure these plans are delivered efficiently and remain relevant focusing on the appropriate priorities. We acknowledge that the issues being faced in major growth centres will result in more complex spatial plans and the mandatory process and timeframes should be reflective of this. It should be noted that the Auckland Plan took only two years to produce despite its wide scope, participatory design process, and the fact that Auckland Council itself had only just emerged from the upheaval of local government reorganisation. This suggests that spatial planning has the ability to respond and adapt quickly to changing circumstances which is central to any future planning system. We suggest that producing a national standardised template that could sit with the National Planning Standards could assist councils with the efficient development of these plans.

Summary:

- Support a requirement for spatial plans, which have legal weight in the preparation of environmental management and land use plans.
- Regional and district spatial plans are key to ensuring a more strategic focus is taken within land use and environmental planning.
7. **Issue 5: Addressing climate change and natural hazards**

Addressing climate change and natural hazards is important. Climate change in particular will need to inform most decision making in the future in the RM system. The RMA does not currently give much focus or weight to climate change and it is becoming increasingly important that greater strategic direction and recognition of climate change is given at the higher legislative level.

We consider that the NZ ETS should be retained but climate change also needs to be significantly elevated in the RMA to support the influence planning can have from a land use and development perspective. We consider that there is potential for strategic elements of climate change to be incorporated into an integrated statute. The RMA should be used as a tool to assist in climate change mitigation, alongside other central government processes and initiatives, and could be amended to dovetail into the CCRA 2002. We consider that to use the RMA as part of the package of tools to address climate change number of amendments could be made, including:

- Retention of s7(i), with either expansion to this section, or an amendment to s7(j) to include the requirement to have regard to the benefits of climate change mitigation
- Amending s31 to include mitigation of effects of climate change as a function of territorial authorities, allowing direct consideration of climate change mitigation through plan making and resource consent processes
- Introducing an NPS or NES on climate change and natural hazards

Such amendments would enable consideration or encouragement of climate change mitigation for example for developments that are carbon neutral, or provide for carbon absorption. It may be appropriate to incentivise carbon neutral or climate change beneficial development through lower activity status, resource consent rebates or development contributions (DC) credits (acknowledging for the latter that DCs are an LGA process and change would be needed to that legislation to facilitate this).

We know that many local governments are looking at climate change adaptation strategies. We consider that the government should be looking at funding mechanisms for climate change adaptation, as options such as managed retreat or extinguishment of existing use rights are

**Spatial plans should be used to create an outcomes-based vision specific to a region and should cover place making, urban design, urban growth, infrastructure, environmental issues, iwi aspirations, transport, protection of heritage and funding.**

**Support timeframes for the development and a mandatory review of spatial plans being set in the legislation to ensure these plans are delivered efficiently and remain relevant focusing on the appropriate priorities.**

**B&A**

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considered. S85 may require amending to better address scenarios where extinguishing existing use rights are proposed, with regard to reasonable use of land and compensation.

More generally, we note that the paper focuses on natural hazards that are impacted by climate change and effects, particularly coastal hazards. There is little commentary on other natural hazards that may not / may not always be climate change related, such as fluvial and pluvial flooding (which are also affected by climate change), slope instability, fire risk and earthquake related natural hazards. These natural hazards are experienced NZ-wide, and an approach to their management and mitigation would also benefit from central government policy direction.

In addition, we consider central government direction to provide for clearer planning restrictions for development in areas with high hazards is required. This is an area where smaller councils in particular will struggle to get buy in from their communities (for example, recent storm events affecting coastal settlements on the West Coast).

8. **Issue 6: National direction**

B&A supports the use of national direction and the role it has to play. We see merit in national direction becoming a requirement for central government which gives effect to a revised purpose and principles of the Act (Part 2 matters), as opposed to an optional tool available to central government. This would mean that where matters are identified in the Act as being a matter of national importance, then it would be expected that there is supporting national policy. B&A suggests that the review of the legislation should also be used as an opportunity to look at how we can make greater use of more directive national direction instruments that are faster to effect change, such as NPS, NES and regulations to address priority issues.

**Summary:**

- Support elevating climate change in the RMA to support the influence planning can have from a land use and development perspective.
- Support the retention of s7(i), with amendments to include the requirement to have regard to the benefits of climate change mitigation.
- Amend S31 to include mitigation of effects of climate change as a function of territorial authorities, allowing direct consideration of climate change mitigation through plan making and resource consent processes.
- Explore amendments to s85 to better address scenarios where extinguishing existing use rights are proposed, with regard to reasonable use of land and compensation.
- Support an NPS or NES on climate change and natural hazards.
- Investigate funding mechanisms for climate change adaptation, as options such as managed retreat or extinguishment of existing use rights are considered.
Current national direction under the RMA doesn’t align and integrate well together and is not always easy to interpret. It is not clear how the different NPSs are meant to work together or influence each other. For example, the draft National Policy Statement for Urban Development has scenarios where competing interests occur with no clear oversight from central government as to which interests takes priority. In addition, the format and structure of national direction varies, adding to confusion for councils expected to give effect to it. These issues are only becoming more pronounced as more national direction is being introduced to address particular problems. Careful consideration is needed as further national direction is introduced in terms of competing interests, format and structure and how the different pieces of national direction work together.

B&A suggests that the Panel should look to how the national planning standards can be further developed to support the implementation of national direction to achieve greater consistency in the interpretation, implementation and application of national direction and ensure it is achieving its intended purpose. It may be beneficial to introduce an overarching national direction guidance document which addresses all the NPSs and NESs and the relationship between them.

Alternatively, a requirement could be introduced for central government to produce a single, integrated and coherent piece of national direction (a National Direction Plan) addressing all matters of national importance and the relationships between them. The more separate pieces of national direction that are developed, the more complicated the relationships and cross-referencing between them becomes. A single National Direction Plan would ensure:

- Coherence across policy provisions currently contained in different NPSs and NESs;
- Consistency between regulatory and policy provisions;
- Better connections and relationships between the different pieces of national direction as all direction would be in one place with close links; and
- An integrated instrument covering all matters of national importance.

**Summary:**

- **Support the use of national direction and the role it plays.**
- **Require national direction to be developed which gives effect to a revised purpose and principles of the Act.**
- **Make greater use of more directive national direction instruments that are faster to effect change.**
- **Explore how the national planning standards can support the implementation of national direction.**
- **Explore the potential for a National Direction Plan – an integrated and coherent piece of national direction which addresses all matters of national importance and the relationship between them.**
9. Issue 7: Policy and planning framework

B&A is highly supportive of reforms to the policy and planning framework to ensure that planning promotes positive outcomes and remains responsive to keep up with the increasingly fast-paced issues facing communities. There are however many inefficiencies in the policy and planning framework that are currently preventing this. B&A supports updating the plan framework so that RM plans are informed by regional and district spatial plans with strong legal weight. Falling out of this, B&A supports combining regional policy statements, regional plans (including regional coastal plans) and district plans to create a more streamlined and integrated plan framework. The process of plan making and plan changes needs to be reformed to be more agile and flexible to respond to rapidly changing needs and priorities.

The reforms need to balance the desire for more timely outcomes with the need for robust decision-making and meaningful public involvement. The emphasis of community involvement should be shifted to more active involvement in the early stages of plan making rather than the current emphasis of responding to a notified plan through submissions and appeals. Iwi and hapu should be partnered with in the co-production of plans.

Structure of Plans and Regional and District Plan Functions

As previously discussed, B&A is highly supportive of requiring compulsory spatial plans, with strong legal weight over environmental management and land use plans. This approach allows for strategic outcomes identified through a spatial plan to filter directly into the RM planning framework to influence positive change in line with this strategic vision.

B&A is also highly supportive of combined plans and sees little need to retain the approach of having separate regional policy statements, regional plans and district plans. Having separate plans has resulted in hundreds of plans across the country. There is unnecessary variation between district plans within regions as councils often roll over “tried and true” provisions rather than drafting provisions that respond directly to the applicable regional policy statement. While the National Planning Standards have begun to assist with the style and structure of plans, there is still a lot of room to have a significant degree of variation within the plan content. The breadth and complexity of planning issues is increasing, and plans are becoming more expensive to prepare. The common approach of having separate regional and district plans is inefficient as each council, regional stakeholders, iwi and plan submitters have to spend time and resources developing and inputting into separate plans.

Experience around the country with unitary plans shows that separate roles and functions of regional and district plans can be successfully amalgamated into a single document. This approach is beneficial in that it results in a more efficient plan making process. Further to this, in our experience combined plans allow a for stronger integration and line of site between the different tiers of the planning system. B&A support plan making balancing strategic direction with local placemaking and are of the view that this can be successfully achieved in combined plans through the use of tools such as
precincts. The Auckland Unitary Plan is an example of a combined plan that successfully manages a complex metropolitan area, rural areas, rural and coastal settlements and satellite towns all with very different pressures, issues and character. The Auckland Unitary Plan achieves a good balance between providing an integrated planning framework across the Auckland region focused on enabling strategic outcomes while providing for local variation where required through the use of precincts.

B&A are strongly of the view that plans should be focused on achieving positive outcomes with plan drafting occurring in an activities/outcomes-based style.

**Plan Making Process**

The current plan making process is overly cumbersome and does not enable councils to undertake responsive planning that keeps up with increasingly fast paced issues facing communities. B&A is highly supportive of reforming the current Schedule 1 processes to enable a more streamlined process for minor plan changes and a ‘single-stage’ process for plan reviews and significant plan changes. The ability for councils to undertake a “rolling” plan review needs to be removed altogether.

In B&A’s view a single-stage process for plan review and significant plan changes should utilise an independent hearings panel. Appeal rights should be removed as appeals add significant costs and delays to the plan making and plan change process. To enable the removal of appeal rights the independent hearings panel for a plan review should be chaired by an Environment Court judge and the panel be made up of commissioners who are highly experienced and who have undertaken further training than the Making Good Decisions course. The independent hearings panel for significant plan changes should be chaired by a commissioner from a pool of highly experienced and qualified commissioners. The hearings process should also enable the opportunity of the cross examination of expert witnesses should the chair see this of being some value. Compulsory mediation, expert conferencing and mediated direct discussions with submitters over property-specific issues should be utilised to narrow issues prior to a hearing.

Changes in process to a more single-stage plan making process needs to be balanced to ensure members of the public are still able to participate in what could be perceived to be an intimidating environment. The Auckland Unitary Plan process was an example of a successful single-stage process where many lay people participated and the Panel should consider some of the aspects of this process that worked well. In particular although the hearings were chaired by an Environment Court judge, they did not have an unduly formal conduct. Mediation and mediated direct discussions with submitters on property specific topics, such as notable trees and scheduled buildings, offered the opportunity for lay people submitters to progress their submission points without always having to appear at a hearing.

The process for minor plan changes needs to be significantly streamlined. Often a minor rezoning is subject to a greater process than a complex resource consent that may result in more significant
effects. The introduction of limited notification of plan changes is helpful however there is no clear
guidance in the RMA regarding the types of plan changes that should be processed on this basis and
who notification should be limited to. Therefore, in our experience councils are being risk adverse due
to the potential threat of judicial review regarding their decision to limit notification of minor plan
changes. Clarifying the limited notification provisions in legislation and removing appeal rights will
significantly improve the timeframes and efficiency of the process for minor plan changes.

Private Plan Changes
B&A strongly support retaining the ability to apply for private plan changes where these align with the
strategic outcomes sought in the spatial plan. Regional or district plans represent a point of time. Plans
need to be changed and updated in order to stay relevant and respond to changing needs and
priorities, particularly in fast changing urban areas. Councils are not in a position to initiate all the plan
changes that are required and will tend to prioritise more strategic plan changes of greater community
benefit. This can lead to private stakeholders, community groups or developers being stuck with a
planning framework that is no longer appropriate.

In terms of the private plan change process, B&A is of the view that the decision to accept, adopt or
reject a plan change needs to reformed so that the ability for a council to reject a plan change request
for processing based on vague matters is removed. Plan change requests, like resource consent
applications, should only be able to be rejected for processing on the grounds of insufficient
information.

Further reforms of the private plan change process are required to formalise the pre lodgement
process particularly in regards to consultation. A reformed private plan change process should also
formalise the requirement for pre-lodgement meetings with the council.

Approval to Notify Draft Plans and Plan Changes
The issues and options paper suggests that a requirement be introduced for draft plans to be approved
by a Minister or central government authority prior to notification, and/or prior to finalisation. B&A
strongly disagrees with this suggestion and is of the view that the decision to notify a plan or significant
council-initiated plan change should sit with the council. Councils are are usually best-placed to make
decisions on behalf of, and with, the local community and therefore this role should continue to be
devolved to councils. Furthermore, aside from B&A’s view that councils are best-placed to make this
decision, the time delays in getting a minister to sign off on notification of a plan are likely to be
significant relating to greater inefficiencies in the plan making process.

Central Government Assistance with Plan Making
B&A sees benefits in central government providing assistance to councils, particularly smaller councils,
with plan making to lift the quality of plans. This type of assistance should involve strengthening the
relationship between councils and MfE and clarifying the support functions currently available.
Status of Iwi Management Plans
The issues and options paper suggests that greater status could be given to Iwi management plans in Part 5 of the RMA. B&A are of the view that there are risks associated with giving greater status to Iwi Management Plans as these documents vary significantly in terms of content and value across the country. In our view the requirement to develop spatial plans with strong legal weight over RM plans in partnership with Iwi will more effectively provide a vehicle for Iwi to ensure that their aspirations, values and issues are addressed.

Summary:
- Support combined ‘unitary’ plans – having separate regional and district plans is inefficient and leads to unnecessary variation across regions.
- Plans should be focused on achieving positive outcomes with plan drafting occurring in an activities/outcomes-based style.
- Support a more streamlined process for minor plan changes and better guidance regarding when it is appropriate to undertake limited notification for a plan change.
- Support a ‘single-stage’ process for plan reviews and significant plan changes – the ability to undertake a “rolling review” needs to be removed.
- Appeal rights should be removed for plan reviews and plan changes as appeals add significant costs and delays to the plan making and plan change process;
- Independent Hearings Panels for a plan review should be chaired by an Environment Court judge.
- A ‘single-staged’ plan making process needs to ensure members of the public are still able to participate in what could be perceived to be an intimidating environment – utilising compulsory mediation, mediated direct discussions and expert conferencing can assist with narrowing or resolving issues outside of a hearing.
- Retain the ability to apply for private plan changes where these align with the strategic outcomes sought in the regional spatial plan.
- Plan change requests, like resource consent applications, should only be able to be rejected for processing on the grounds of insufficient information and the ability for a council to reject a plan change request for processing based on vague matters is removed.
- The decision to notify a plan or significant council-initiated plan change should sit with the Council not central government.

10. Issue 8: Consents/approvals
B&A is supportive of taking a comprehensive approach to reviewing how the consent process can become more efficient while enabling quality decision making with appropriate opportunities for public participation.
Categories of Activities
B&A is of the view that simplifying the category of activities will not in itself streamline the consenting process. Rather, the focus should be on the drafting of plans to ensure the wording is clear in meaning and concisely focuses on the relevant matters for assessment (including positive effects) and reduces unnecessary rules. In our experience, many restricted discretionary activities have been drafted to incorporate broad matters for discretion, leading to very little difference in assessment for a restricted discretionary and a full discretionary activity. Furthermore, obtaining a certificate of compliance for a permitted activity under larger more complex plans such as the Auckland Unitary Plan is often a more expensive and difficult process than obtaining a resource consent. B&A do consider that further investigation into the activity categories and how the categories are working in practice would be a worthwhile exercise.

Process for Minor Consents and Residential Activities with Localised/Minor Effects
B&A supports establishing a separate permitting process and dispute resolution pathway for minor consents and residential activities with localised/minor effects (building on the current process for marginal or temporary non-compliance or boundary activities). Currently there is a lot of double up of work between an assessment of environmental effects prepared by a consultant planner on behalf of an applicant, and the assessment of environmental effects prepared by the council planner. This creates a lot of additional time delays and costs for consents for minor consenting matters where the issues are very straightforward. Some councils such as Queenstown Lakes District Council do already try to simplify this process through adopting the reports of the applicant’s planner. Many councils however, are reluctant to take this approach because if the applicant has not properly identified the reasons for consent or affected parties, the risk of judicial review sits with the council.

Central to establishing a separate permitting process will be determining what constitutes minor and quantifying this within legislation. There are already provisions under s87BB to treat marginal activities and temporary non-compliances as permitted activities however, currently the RMA only guides the identification and does not specify marginal activities and temporary non-compliances. Consequently, councils across New Zealand take different approaches to identifying marginal activities. To reduce risk however, most councils have only ended up with a very limited number of activities being categorised as marginal. This risk to councils would be reduced if the legislation was more specific regarding what activities benefit from a simpler consenting path.

B&A supports expanding a separate permitting process for boundary activities. In our view it is overly onerous for an applicant with a minor boundary infringement to go through a full consenting process because the neighbour does not sign off when they are likely to get consent.

In our experience different councils around the country are coming up with bespoke pathways for consents to further streamline the process. This review provides the opportunity to build upon some of these ideas and formalise some processes which are proving to be successful and role these out
nationwide. This will provide a level of comfort for councils where there is a legislative pathway for different processes rather than councils having no legal basis to impose a different streamlined application process.

Simplify Notification Decisions

In B&A’s view the current notification provisions lead to a more lengthy and costly consenting process as councils are very risk adverse requiring very comprehensive notification assessments due to the threat of judicial review. Furthermore, the current threshold for deciding if a person needs to provide written approval is very low as a person is considered affected by a proposal if the effects of an activity are “minor”. B&A supports revising the approach to notification so that a more appropriate balance is struck between public participation and enabling quality decision making while providing more certainty to applicants. In our view this review provides the opportunity to promote a new approach to notification. If the Panel decides to retain the current system, at the very least B&A would suggest that the thresholds for affected parties are increased from “minor” to “more than minor”. It is important to note that changes to the legislative architecture will ultimately affect the approach to notification particularly if earlier comments in this submission are adopted which would see a change to an outcomes-based approach rather than the current more reactive effects-based approach.

B&A see benefits to the first suggested approach within the issues and options paper for simplifying notification decisions. This option appears to be based on the UK model where applications are notified to all immediate residents in the area who have a set timeframe to submit concerns. Within the UK developments over a certain threshold will be heard by a Council Committee. It is up to the Council to determine these thresholds with some basing the threshold on the number of submissions with other Councils basing the threshold on the scale of the project or infringements. This approach has clear benefits as it is very transparent and provides certainty to applicants in relation to applications. As hearings and appeals add a lot of time and cost to the application process the key to this approach being successful in the New Zealand context will be limiting the hearings and appeals to large complex applications where the decision maker requires the ability to hear and question experts. If a threshold for when a hearing or appeal right is triggered then this should be based on the proposal itself rather than the number of submitters. This is because just because an application attracts a lot of community opposition does not mean that it will result in adverse environmental effects or that the activity is unanticipated. An example being that applications for social housing can often attract a lot of unsupportive submissions because of perceived social issues.

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B&A also supports investigating the increased use of plan provisions which specify whether or not an activity should be notified and also support plans having more scope to identify who is and isn’t an affected party. If the panel decides to pursue a plan-based approach to simplify notification decisions then any proposal will need to consider the legal requirement to bundle reasons for consent and consider the effects of an application in the round. In particular the Panel should investigate the Auckland Unitary Plan where rules that prohibit notification of certain residential activities have been undermined through this requirement.

Requirements to make all Consents Electronically Available to the Public and Mandate Online Systems
B&A supports proposals to require all applications and consents to be electronically available to the public and to mandate online systems. We would suggest that support is offered from central government to support smaller councils with this task.

General Observations
Often there is a lack of balanced consideration by council planners to specialists providing siloed advice and trying to achieve best practise in their particular area with little regard for the policy framework. Furthermore, the risk of judicial review creates a risk adverse consent processing culture in councils. These factors can lead to a consenting process that lacks transparency and creates uncertainty, additional costs and delays for applicants, without lifting the quality of decision making.

B&A would suggest that Auckland Council’s Special Housing Office is an example of a successful consenting team which was customer focused, fostered collaboration and less risk adverse. From our perspective there were several benefits to the HASHAA legislation that contributed to a less risk adverse consenting culture. In particular the HASHAA legislation focused on the housing supply issue providing more certainty for applicants and councils and enabling fast track consents with limited public notification and appeal rights and clear weighting of assessment where significant housing was being proposed. Under this legislation the limited public notification and appeal rights were justified through the upfront process that sites had to go through to become Special Housing Areas.
Additionally, we support the Panel investigating some alternative approaches to consent fee systems considering the public benefit vs the private benefit. Within the UK there is a fixed fee system. B&A suggest that fixed fee consents or free consents could be appropriate in New Zealand where there is a clear public benefit. For instance, applications in relation to papakianga, the maintenance of notable trees or heritage buildings. Councils should be able to state in plans where consenting should be free or for a fixed fee.

B&A also note that some councils now offer pre-application meetings to provide guidance for applications. These meetings have no statutory weight but offer an opportunity to streamline the assessment of qualitative matters such as design. The panel could investigate giving more weight to the pre application meetings within the assessment process. For instance, requiring less assessment if an applicant has followed advice given by officers in a pre-application meeting.

**Summary:**

- Simplifying the category of activity will not necessarily streamline the consenting process however it will provide more certainty to applicants.
- It is currently very difficult and expensive to obtain a certificate of compliance.
- Support establishing a separate permitting process and dispute resolution pathway for minor consents and residential activities with localised/minor effects where the threshold for a minor consent is clearly defined in legislation.
- Support expanding a separate permitting process for boundary activities.
- Current notification provisions lead to a more lengthy and costly consenting process as Councils are very risk adverse requiring very comprehensive notification assessments due to the threat of judicial review.
- Support revising the approach to notification so that a more appropriate balance is struck between public participation and enabling quality decision making while providing more certainty to applicants.
- Support proposals to require all applications and consents to be electronically available to the public and to mandate online systems.
- HASHAA legislation contributed to a less risk adverse consenting culture focused on the housing supply issue providing more certainty for applicants and Councils and enabling fast track consents with limited public notification and appeal rights and clear weighting of assessment where significant housing was being proposed.
- Support the panel investigating some alternative approaches to consent fee systems considering the public benefit vs the private benefit.
- Support the panel investigating the role that pre application meetings could have in reducing the time involved in assessment of applications for qualitative matters such as design.
11. Issue 9: Allocation

Allocation under the RMA has generally been dealt with on a “first-in, first-served” basis, with an expectation by users that allocation/access rights will extend over long periods of time and be renewed. B&A agrees with the issues and options paper that extended access to resources for long periods of time has limited the ability of the management system to respond to new environmental pressures and changing environmental priorities and also favours the first in first served as opposed to new users or users who offer the highest value of the use of the resource. There is no easy answer as to how to address allocation issues and B&A suggests that the Panel will need to carry out a detailed review and exploration as to how this should best be dealt with under the legislation.

However, B&A considers that the future system needs to approach allocation in a more structured and proactive way than in the past under the RMA, including providing more guidance about resource allocation in order to give local authorities more clarity and consistency in respect of allocation decision making. The legislation needs to provide for common allocation principles through Part 2 and in national direction which is becoming particularly important as there is greater demand for access to resources, resources are becoming limited and environmental limits being exceeded.

Reallocation rights needs to be considered, not just to meet environmental limits but also address issues regarding fair distribution of resources. B&A does not believe that relying on a first in first served basis in the future will be adequate and there should be no expectation about reallocation occurring based on historical or existing use. If the RMA is to become more enabling, clear methods and criteria for allocation should be developed nationally and implemented locally for consistency.

Regardless of how allocation is dealt with in the legislation, a clear pathway for issues of Māori rights and interests will need to addressed and provided for.

Summary:

- Extended access to resources has limited the ability to respond to new environmental pressures and changing environmental priorities and favours the first in first served as opposed to new users or users who offer the highest value of the use of the resource.
- Future allocation system needs to approach allocation in a more structured and proactive way.
- The legislation needs to provide for common allocation principles through Part 2 and in national direction.
- Reallocation rights needs to be considered, not just to meet environmental limits but also address issues regarding fair distribution of resources.
- A clear pathway for issues of Māori rights and interests will need to addressed and provided for.
12. **Issue 10: System monitoring and oversight**

There is currently insufficient monitoring of the performance of resource management plans due to an insufficient evidence base and poor data collection of consents. The lack of evidence base affects the ability to make robust decisions and improve the performance of the system. B&A strongly support changes to the legislation that will better enable and strengthen monitoring, data collection and use for example:

- Sharing of resources between regional and district councils and central and local government;
- Central government having greater oversight of system monitoring and the monitoring and collection of data and information by local authorities;
- Strengthened independent oversight and review through regular audits to hold councils accountable; and
- Standardised data collection systems, particularly for council consent data. The Panel should explore the potential of an integrated digital planning platform (e.g. E-Plans, electronic consent lodgement and digital consent processing) which could provide a national data source with quality inputs and outputs and consistent information collection to support improved system monitoring.

**Summary:**

- Support changes to the legislation that will better enable and strengthen monitoring, data collection and use.
- Support Central government having greater oversight of system monitoring and the monitoring and collection of data and information by local authorities and the introduction of standardised data collection systems.

13. **Issue 11: Compliance, monitoring and enforcement**

Compliance, monitoring and enforcement (CME) is essential to the RM system. B&A agrees with the issues and options paper in that investment made in legislation, plan-making and consent processes will be undermined in the rules and conditions imposed through decision-making are not upheld. CME is currently very fragmented under the RMA as it is reliant on different councils and agencies and competes against other priorities of these organisations. CME is required to be undertaken with limited capacity and capability and there is limited overarching national guidance.

B&A supports the suggested options and potential improvements for CME in the issues and options paper. We note that while the suggested changes from the Panel sound good in theory, there needs to be the capabilities and capacity of staff on the ground to deliver CME functions, of which is a current issue being faced across councils. Industry bodies should take a leadership role in educating local authorities, to ensure those that work with regional and district plans have a greater understanding of the entire system in order to support improved CME.
There is not necessarily a need for a full overhaul of CME, but rather the following changes could be made:

- CME functions could be linked to and provided for by a single institution. Alternatively, there could be an opportunity for more complex regional type CME to be undertaken through a national body for consistency, with district level CME being retained and delivered by District Councils.
- CME should be strengthened by broadening the range of penalties available under the RMA, including applying harsher penalties, particularly in terms of regional CME and strengthening the ability to decline or revoke a resource consents where there is consistent non-compliance.
- The EPA should have a stronger role in terms of enforcement powers and active oversight of Council’s CME. The role of the EPA in terms of their functions, powers, when they would get involved etc. should be clarified.

**Summary:**

- Investment made in legislation, plan-making and consent processes will be undermined in the rules and conditions imposed through decision-making are not upheld.
- Support the suggested options and potential improvements for CME in the issues and options paper with resources provided to councils to lift capabilities and capacity of staff on the ground to deliver CME functions.
- CME functions could be linked to and provided for by a single institution or through a regional institution.
- CME should be strengthened by broadening the range of penalties available.
- The EPA should have a stronger role in terms of enforcement powers and active oversight of Council’s CME.

14. **Issue 12: Institutional roles and responsibilities**

As previously discussed, while B&A acknowledge that local government reform is out of the scope of this review, the streamlining of local authorities into unitary councils in our view will assist greatly with creating planning frameworks that balance strategic outcomes with local variation. This approach will also lead to much greater efficiencies across the RM system.

**Summary:**

- The streamlining of local authorities into unitary councils will assist greatly with creating planning frameworks that balance strategic outcomes with local variation.
15. **Issue 13: Reducing complexity across the system**

The RMA and the systems and processes that fall out of it are overly complex. B&A strongly support a refresh and reform of the RM system in order to facilitate an integrated piece of legislation which has a clear purpose and is proactive and outcomes focused. B&A believes that central the RM system is having a clear purpose as to what is to be achieved with a clear direction on how to get there.

Numerous rounds of reform on the RMA has contributed to the confusion and complexity being experienced with the RM system. Therefore B&A recommends that the Panel thoroughly explore all options to undertake a comprehensive review and refresh of the RMA and look to international examples for forward thinking and fresh approaches to managing the natural and built environment in New Zealand in an integrated way.

**Summary:**

- Support a comprehensive reform of the RM system in order to facilitate an integrated piece of legislation which has a clear purpose and is proactive and outcomes focused.
- International examples may provide fresh approaches to managing the natural and built environment in New Zealand in an integrated way.

16. **Conclusion**

B&A supports a reform of the RM system and consider there to be significant opportunities to improve the system and how we manage resources and national and built environment in New Zealand.

B&A thank the Panel for the opportunity to submit on the issues and options paper for transforming the RM system.

Yours faithfully,

Barker & Associates Ltd

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