Feedback on:
Transforming the Resource Management system: Opportunities for Change
ISSUES AND OPTIONS PAPER

Federated Farmers of New Zealand
FEEDBACK ON TRANSFORMING THE RESOURCE MANAGEMENT SYSTEM – OPPORTUNITIES FOR CHANGE: ISSUES AND OPTIONS PAPER

TO: The Resource Management Review Panel
RMreview@mfe.govt.nz.

DATE: 1 February 2020

ABOUT FEDERATED FARMERS
Federated Farmers of New Zealand is a membership organisation, which is mandated by its members to advocate on their behalf and ensure representation of their views. Federated Farmers does not collect a compulsory levy under the commodities levy act and is funded from voluntary membership.

Federated Farmers represents rural and farming businesses throughout New Zealand. We have a long and proud history of representing the needs and interests of New Zealand's farmers.

Federated Farmers aims to empower farmers to excel in farming. Our key strategic outcomes include provision for an economic and social environment within which:

- Our members may operate their business in a fair and flexible commercial environment;
- Our members’ families and their staff have access to services essential to the needs of a vibrant rural community; and
- Our members adopt responsible management and sustainable food production practices.
SUMMARY OF GENERAL THEMES

- That appropriate acknowledgement must be given to the full range of problems associated with environmental management, and with our environmental reporting system. The focus within the Options paper currently seems to be providing for urban concerns, while focussing on rural resource use.

- The primary sector plays a key role in NZ’s future food security and supply, and overall wellbeing. This should be recognised through any RMA reform.

- Considerable workstreams are already underway, including at local catchment-level, to address problems with our water, biodiversity and climate. Reform must be sufficiently reflective of existing planning and catchment-scale processes underway, and the potential for improvements as a result of these processes.

- That while the management of cumulative effects is an issue, this will not be easy to regulate or implement efficiently and effectively, and real caution must be exercised in this regard;

- Any proposed reform should not render land incapable of reasonable use or place an unfair and unreasonable burden on the landowner’s legitimate activities. Where this does occur, landowners should be adequately compensated or otherwise redressed.

- There needs to be better integration across the resource management system, with a focus on efficiency.

- While the volume of national direction is not at issue, a lack of strategic direction over national regulation frustrates both implementation and outcomes.

- Unclear or ambiguous plans are often due to a lack of quality information, modelling and monitoring data;

- Issues with capacity and capability at Council planning level need to be carefully acknowledged and addressed. Increases in central government demands and expectations on local government are seldom matched with the financing necessary.

- Unnecessarily complex rules cause problems in both rural and urban areas.

- Impacted landowners need full opportunity to be involved in planning processes impacting them.

- The education component of CME is vital. Issues with CME are often due to council capacity and capability. Any intervention from a central agency such as EPA should only be at the council’s request. It would be more effective and efficient for the EPA to instead focus on ensuring better information, advice and options, and supporting local planning processes, rather than ‘doing’ these themselves.

- Federated Farmers prefers the retention of an integrated RMA statute, with enhanced principles for land use and environmental management.

Answers to the Panel’s specific questions follow at Part B of this response paper – from pages 13 to 47.
FEEDBACK ON TRANSFORMING THE RESOURCE MANAGEMENT SYSTEM – OPPORTUNITIES FOR CHANGE: ISSUES AND OPTIONS PAPER

1. INTRODUCTION

1.1 Federated Farmers of New Zealand (Federated Farmers) welcomes the opportunity to provide feedback to the Resource Management Review Panel on the Resource Management System Opportunities for Change Issues and Options paper ("the options paper"). We consider the Panel has very well encapsulated the challenges and issues associated with the Resource Management Act ("the RMA").

1.2 Federated Farmers has a keen interest in the RMA review. We are concerned to see that the interests of those who rely on the land-based resources of New Zealand are adequately considered, and that any proposed changes to the RMA are necessary, pragmatic, achievable and appropriate.

1.3 We agree that reform of the RMA is needed, and we support the review currently being undertaken. Federated Farmers is in a unique position to provide feedback, given our comprehensive involvement across the country in virtually all District and Regional Council planning processes that impact rural land users since the RMA’s enactment in 1991. This involvement typically includes new and proposed changes to existing, regional plan, district plan, air, water and unitary plans from early consultation through to the Environment Court or higher.

1.4 Federated Farmers would appreciate the opportunity to meet to directly discuss our feedback on the options paper with the Panel. Despite our significant involvement in RMA processes, we have not had any opportunity to engage in the lead-up to the development and publication of the options paper, which is disappointing.

PART A. TE HOROPAKI O TE AROTAKENGA – OPPORTUNITY FOR REFORM

2. GENERAL COMMENTS

2.1 Federated Farmers agrees with the need to review and reform the RMA. As we enter a new decade, it’s timely to take a comprehensive look to what New Zealand’s resource management systems needs are into the future. A lot has changed since the RMA’s original enactment in 1991, and our needs and challenges as a country require new thinking, so that into the future we get better outcomes for our environment, people and the economy.

2.2 Despite, and perhaps in part because of, the continuous ad hoc changes to the RMA over the past 30 years the Act is now complex, confusing and over-complicated. Planning processes seldom end at Council hearing stages, and typically extend into lengthy and costly Environment Court mediation, caucusing, evidence-exchange and hearings.
2.3 There is an acknowledged lack of environmental reporting, knowledge and data collection within New Zealand, as recently highlighted in the Parliamentary Commissioner for the Environment (PCE) report *Focusing Aotearoa New Zealand’s environmental reporting system*. We agree with the PCE that the inadequacies in our data collection and analysis make it hard to construct a clear national picture of our environment, including the extent to which these values have deteriorated, the linkages between resource use and deterioration, and the justification for prioritising some factors over others.

2.4 Alongside any reform of the RMA, we urge the government to appropriately invest in addressing the recommendations of the PCE.

**The Effects-based ethos of the RMA**

2.5 In our view, fundamentally, the ‘effects-based’ nature of the RMA must remain. We disagree with the comment at page 6 of the options paper that the outcome of an effects-based approach has been a diminished role for planning in the interest of economic efficiency.

2.6 We agree that the context has changed significantly since the early 1990s when the RMA was first introduced, and that there is greater need for information and clarity around environmental tipping points and limits. Additionally, in our view the intention to narrow the role of planning processes has not resulted in efficient processes nor addressed cumulative effects.

2.7 However, we disagree this is justification to move away from an effects-based approach. In our view, when implemented and informed properly, an effects-based approach appropriately focusses attention on what environmental outcome is needed, rather than taking an arbitrary or ideological stance on what activities are preferred. It is our view that improved information and processes will better enable the efficiency of the effects-based approach while ensuring tipping points are not reached.

2.8 An effects-based approach is the most efficient and effective way to link resource use with environmental outcomes. It is also a key component in enabling New Zealand’s export-orientated and unsubsidised primary sectors to respond quickly and efficiently to changing market signals, thereby maximising the economic wellbeing of the nation while ensuring appropriate environmental safeguards are in place.

2.9 Federated Farmers considers the inefficiency of a move away from an effects-based approach is evident from RMA plans in recent years, with a number instead focussing on restricting activities and inputs. This is in part due to the increasing complexity of resource management issues. In our view, these recent approaches have decreased the efficiency and effectiveness of regulations while at the same time delivering no better outcomes. The recurring theme in these examples is a lack of sufficient information and tools.

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1 *Focusing Aotearoa New Zealand’s environmental reporting system, Parliamentary Commissioner for the Environment, November 2019.*
2.10 How to best, or most efficiently and effectively, address the complex interactions between economic, social, cultural and environmental factors within increasingly complex resource management systems is a challenge. The development of new solutions or approaches needs careful and detailed consideration. It is clear we need better information around environmental impacts and better tools to measure and address these impacts. However, enabling economic productivity and human wellbeing should remain a core focus. An appropriately informed, effects-based approach provides the opportunity to focus planning and regulation on the important objective of human wellbeing, while addressing the impact of activities on resources.

2.11 A strong theme across the options paper is the need to amend the RMA to ensure appropriate development capacity for housing, and to enable urban land markets to operate effectively within environmental limits. While housing and housing affordability are important for wellbeing, having such a singular focus, or reshaping a hefty piece of legislation like the RMA to focus delivery on this narrow objective, misses the mark. Comprehensive RMA reform must be just that, comprehensive, while balancing and appropriately considering the impacts of all activities, and not just a ‘knee-jerk’ response driven by the ‘issue du jour’.

2.12 With the beginning of the new decade comes an opportunity to review how well the foundations of the RMA have stood the test of time, what structural and technical changes and supporting information and tools are needed to shape our resource management system into the future. In our view, this cannot just be yet another attempt to try to address New Zealand’s housing crisis, it must be a whole of system review, focussed on delivering efficient and effective legislation across all resource management issues.

2.13 Into the future, climate change and access to food will be two key issues for not only New Zealand, but the world to address. This has been acknowledged within the Paris Climate Agreement itself, both in the preamble, which makes specific reference to “safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change”, and also within Article 2.1, which mentions the importance of protecting food production while reducing emissions. New Zealand’s primary sector has a key role in this, and we urge the Panel to keep an open mind to the consequences of an overly restrictive approach to land management to address one problem, at the peril of creating a future crisis. Synthetic food may be a part of our futures, but in the interim, quality local farmed produce is still required for the majority of New Zealanders and for our international markets and economic wellbeing.

2.14 Preferences: Federated Farmers considers that:

- Appropriate acknowledgement must be given to the full range of problems associated with environmental management. The focus currently seems to be providing for urban concerns, while focussing on rural resource use.

- The PCE report recommendations for our environmental reporting system must be appropriately addressed alongside changes to the RMA;
• Any reform must be truly comprehensive and not just focussed on the ‘crisis of the day’. Today’s fix, may be tomorrow’s problem;
• It is noted that the primary sector plays a key role in New Zealand’s future food security and supply, and overall wellbeing, and this should be recognised through any reform of the RMA.

3 ‘CHALLENGES FACING THE RESOURCE MANAGEMENT SYSTEM’

3.1 We agree that New Zealand’s natural environment is unique and special, vital for our wellbeing and a key part of our identity as New Zealanders.

3.2 We also agree that our environment is facing numerous challenges – including climate change, a reduction in biodiversity, an increase in our threatened species, population spread further into the natural environment, and both soil and water quality and quantity issues. There are also systemic interactions between these matters; they are in many ways intrinsically linked.

3.3 That said, we caution that significant workstreams are already under way in each of these regards. In some instances, these reflect years of work, research, evidence and collaboration. Alongside these planning processes, there’s been a groundswell in local catchment and community processes across the country. The gains that will come from these ground-up, constructive, community-based approaches are immeasurable.

3.4 In many cases, these processes are responding to issues that have only relatively recently been delineated. While the work continues, the planning processes involved are often only recently determined and in many cases are yet to bear fruit. An important focus of these groups is to encourage local and individual understanding of issues, and the part that can be played in solutions. This will ultimately be key to driving sustainability and behaviour change. Water quality is an example of where this is working at catchment level, but the framework could be tweaked to support these efforts.

3.5 An overly heavy handed red-tape and big stick approach to regulation may well address issues arising from ‘the laggards’ or worst-performing resource users, but it also risks ostracizing the leaders, innovators and fast-adopters and the majority who’re already committed to working on solutions, and who provide an important avenue for encouraging and embedding further behaviour change and solutions amongst resource users. An overly heavy-handed approach is also at odds with human nature. We do best when supported, empowered and treated with trust and respect, not when treated as ‘guilty until proven innocent’.

3.6 That is not to say that we consider the status quo sufficient in and of itself, we simply say that further changes or moves away from a path people have committed to, comes with risks. If not well managed, it can jeopardise existing progress and improvements, and potentially lead to perverse, unintended consequences or worse environmental outcomes.
3.7 The options paper refers at paragraph 29, to rapid changes in rural land use increasing pressure on our ecosystems. It is then noted that between 2002 and 2016, there was a 42% increase in farmland used for dairying, alongside higher stock rates and greater intensification. Under existing regional and district plans, and considering new market and pricing realities, there is simply not the same risks for further dairy intensification. The area of land in dairying has stabilised since 2014/15 and the number of dairy cows has reduced. We expect this trend to continue with stable, if not falling, land area in dairy farming and a likely drop in dairy cow numbers going forward, with potential for change to other primary land uses such as forestry or other product markets.

3.8 Again, we consider better understood environmental limits, and a better understanding of or modelling of impacts of land use (including land use change) on environmental values a better, effects-based approach to addressing the risks of significant trends in land use change.

3.9 Preferences: Federated Farmers considers that:
- It should be noted that considerable workstreams are underway, including at local catchment-level, to address problems with our water, biodiversity and climate.
- Reform must be sufficiently reflective of the existing regulation and planning processes underway, and the potential for improvements as a result of these processes.
- Reform should focus on ensuring resource users sufficiently understand their potential impacts on the environment, that they are responsible for their environmental footprint, and are supported, to enable good decision making within established parameters.

4. ‘REASONS WHY THE SYSTEM HAS NOT RESPONDED EFFECTIVELY’

4.1 We agree the RMA has not provided the protection of the natural environment originally intended. However, we caution that many of these inadequacies have been historic. Over the past few years, second-generation RMA plans have provided a step-change in environmental management and regulation. These plans are generally refined and resolved following substantial input from a range of stakeholders through council processes and then Environment Court mediation and/or hearings.

4.2 We acknowledge, however, that there are issues in how to address the management of cumulative environmental effects. This is a challenging and complex matter and will not be straight-forward in either regulating or implementing.

4.3 At paragraph 35 of the paper, it is noted that “decisions made through the resource management systems have favoured existing users and uses”. This is a cornerstone of New Zealand property law, and while property rights are not absolute and do not
extend to the point they should be regarded as a right to pollute, there must be some equity and fairness when it comes to restricting or revoking previously legitimate activities and landholdings legitimately purchased and established in good faith, in compliance with the laws of the day. Early adopters generally took the risks associated with exploring new technologies, markets and resource-use and should not be unduly penalised simply because subsequent users want equal opportunities to access what may have subsequently become resources nearing or at full-allocation.

4.4 Investment in environmental mitigation and enabling of economic productivity requires investment certainty, and this certainty is in turn enabled through a clear understanding of ownership. It is also wrong to point to 'use rights' as a mechanism to poor environmental outcomes, when use rights can clearly link effects to those responsible for resource use. Use and responsibility go hand in hand under an appropriately administered and informed effects-based regime.

4.5 There are issues with individual resource users adversely impacting the environment, as there is with public infrastructure and public decision making adversely impacting the environment. However, the impacts that property rights or clearly defined resource allocation have in terms of providing economic and social outcomes should not be ignored.

4.6 Any proposed reform should not render land incapable of reasonable use or place an unfair and unreasonable burden on the land owner’s legitimate activities. Where this does occur, landowners must be adequately compensated or redressed. Section 85 of the RMA set out a means of approaching such redress, but in reality, provides very little protection of that. Given the myriad restrictions facing landowners under a range of proposed regulations, there is a need to reconsider how best to respond to this challenge. Ultimately, such redress or compensation may provide the best win-win, where the public gets appropriate environmental outcomes, and the landowner is provided with a means to survive any such unreasonable restrictions. This is particularly the case where an environmental issue has been driven by poor regulation rather than individual decision making. In our view, Section 85 needs a thorough revamp to align more successfully with its original purpose.

Plan Integration

4.7 Lack of planning integration has been a major issue for our members. Too often, multiple consents or permissions are required from a range of agencies for the same activity. This increases costs, inefficiencies, time-delays and ultimately the uncertainty around the regulatory requirements for activities. It leads to duplications and inconsistencies in council responses, but also gaps, where one council assumes another is addressing the matter. Another matter is integration between planning instruments such as between regional plans and district plans. A case in point is increasing restrictions on farmers arising in regional air plans, where new restrictions are introduced to curb occurrences of ‘offensive or objectionable’ air discharges from day-to-day rural activities (such as silage making, or open burning of vegetation) from impacting on nearby rural lifestyle subdivision which has been approved in rural areas under district plans. Using one type of planning instrument to ‘bandage over’ the
consequences of poor implementation of another planning instrument is not integrated planning in our view. We agree that there needs to be better integration across the resource management system.

4.8 We particularly agree with the conclusion that the current resource management system is unnecessarily complex, uncertain and costly. More often than not, current planning processes end in the Environment Court (or higher). Furthermore, no longer is straightforward mediation between a few key parties an option, with often considerable numbers of appellants and interested parties joining the process. This leads to lengthy, expensive and time-consuming mediation and caucusing, ultimately resulting in survival of those with the deepest pockets, not those who are likely to be most impacted by the decision at issue or those with the ability to provide practical input into the options and implications for improved environmental management.

4.9 A further issue is that multiple parties now believe they have a rightful say in matters that should be strictly between the applicant and council. Those seeking a say now extend well beyond those classified as ‘affected parties’, adding unnecessary delays, costs and restrictions on activities for no greater environmental gains.

**National Direction**

4.10 It is noted at paragraph 41 of the options paper that a lack of national direction has been a key problem with the RMA. It is acknowledged that since 2013, there has been a considerable increase in the number of national direction instruments, including National Policy Statements, National Environmental Standards and National Planning Standards.

4.11 Given the substantial volume of proposed national direction in recent years, we do not consider that it is the amount of national direction at issue, but more its lack of cohesion, or potential duplication. We highlight challenges with both protecting high class soils, while providing for urban development as a recent example at a national level. Another example could be the encouragement of increased forestry under the government’s One Billion Trees initiative, while also flagging issues with sedimentation, water yields and fire risk in other national measures.

4.12 A lack of strategic direction over national regulation frustrates both implementation and outcomes.

‘Weak and slow policy and planning’

4.13 At paragraph 47 of the Paper, it is noted that many plans are not clear or unambiguous enough, and that this is often due to poor drafting and design, and inadequate attention to cumulative environmental effects. We agree with this conclusion. Similar problems have been identified in Productivity Commission reports on inquiries into Local Government Regulations (2013), Regulatory Institutions and Practices (2014), Better Urban Planning (2017) and most recently, into Local Government Funding and Financing (2019).
4.14 In our view, there are realities that have led to this poor planning drafting, design and clarity, which need to be carefully acknowledged and addressed in any RMA reform proposals, that being:

- The fundamental lack of information, modelling and monitoring data previously discussed;
- The fact that many councils have limited resources and personnel. Capacity and capability are a real issue for councils with small ratepayer bases and/or large geographic areas. This is particularly so given the heavy volume of national direction forced upon councils by central government, all at a similar time and often out of step with budgets and work programmes set down within a council’s long-term plan. What might be easy for Auckland Council, will not be for Westland District Council for instance;
- Often the government of the day has a policy platform or agenda that ultimately is pushed down on local government to implement or regulate, yet no commensurate financing is provided. This places additional pressures on already stretched local coffers;
- Often certain aspects of local regulation are determined through mediation, or subsequent court decisions. This throws all-of-plan cohesion out the window or forces an agenda from the court onto council that is out of step with the direction the original plan had intended.

4.15 It is noted within the options paper that there has also been “unnecessarily complex rules that have caused problems in urban areas”. We agree that this is an issue. However, we question why this unnecessary complexity is only acknowledged to have created problems in urban areas. We have been given multiple examples from our members of straight-forward farm activities with no environmental impact, or worse, a planned positive environmental impact, which have been frustrated with costs, bureaucracy and time delays. A recent example is of a farmer wishing to restore a significant wetland on their property. To do so, they needed to remove a drain put into the wetland by a prior owner. As this would effectively alter the level of the wetland, a discretionary consent was required, with an indicated cost of $50,000. It ultimately discouraged the landowner from continuing. Other examples are of consents required to put in small farm sheds, or of significant costs and consenting requirements for putting in artificial wetlands, sediment traps or other nutrient filtration.

4.16 At paragraph 48 of the options paper it is noted that local authority plan making has been too slow. We agree that this is a real issue. Not only for the reasons we’ve highlighted above, but also because of other issues such as an increase in Environment Court appeals, an increase in concerned participants seeking input into plan and decision making.

Compliance, Monitoring and Enforcement

4.17 We disagree with the conclusion at paragraph 51 of the options paper that the devolution of CME functions to local government has created a fragmented system leading to weaker outcomes. We consider the Panel has an opportunity to improve CME, and that this can be done comprehensively and successfully without going to the measures recently proposed in the Resource Management Amendment Bill.
4.18 For reasons we noted in our submission to the Select Committee in that regard, we are very wary of the proposed strengthening of the Environmental Protection Authority, which proposed enabling that entity to initiate or intervene in local enforcement actions. Any such intervention must be at the request of the council, must still involve local input, and must be based on sound and fair principles and respect for resource users.

4.19 It would be more effective and efficient for the EPA to instead focus on ensuring better information and options, and supporting local planning processes, rather than ‘doing’ these themselves.

4.20 Preferences: Federated Farmers considers:

- That while the management of cumulative effects is an issue, this will not be easy to regulate or implement efficiently and effectively, and real caution must be exercised in this regard;

- Any proposed reform should not render land incapable of reasonable use or place an unfair and unreasonable burden on the land owner’s legitimate activities. Where this does occur, landowners should be adequately compensated or otherwise redressed.

- There needs to be better integration across the resource management system, with a focus on efficiency.

- While the volume of national direction is not at issue, a lack of strategic direction over national regulation frustrates both implementation and outcomes.

- Unclear or ambiguous plans are often due to a lack of quality information, modelling and monitoring data;

- Issues with capacity and capability at Council planning level need to be carefully acknowledged and addressed. Increases in central government demands and expectations on local government are seldom matched with the financing necessary.

- Unnecessarily complex rules cause problems in both rural and urban areas.

- Impacted landowners need full opportunity to be involvement in planning processes impacting them.

- The education component of CME is vital. Issues with CME are often due to council capacity and capability. Any intervention from a central agency such as EPA should only be at the council’s request. It would be more effective and efficient for the EPA to instead focus on ensuring better information, advice and options, and supporting local planning processes, rather than ‘doing’ these themselves.
PART B: WHAIWHAKAARO

5 ISSUE 1: LEGISLATIVE ARCHITECTURE

Question 1: Should there be separate legislation dealing with environmental management and land use planning for development, or is the current integrated approach preferable?

5.1 Federated Farmers supports the retention of the RMA as an integrated statute, with enhanced principles for land use and environmental management. We consider the retention of the RMA’s integrated ideology can be successful. It also ensures the greatest likelihood of seeing the fruits from recently developed council planning processes, and in respect to water quality existing landowner led catchment level processes recently adopted and underway.

5.2 We do not believe the RMA’s integrated approach itself has led to poor outcomes. Rather, we consider issues have resulted from its implementation and a lack of sufficient information to inform good decision making, particularly as a result of myriad and piecemeal amendments over the past 30 years. We disagree with the Productivity Commission’s recent comments\(^2\) suggesting the need for distinct management approaches for built and natural environments. In our view, the likely outcome would be for the built environment to be purposed around development and change, while the natural environment, including working farms, would be under much tighter environmental management, regulation and restrictions.

5.3 We also consider there would be fundamental difficulties, uncertainty, duplication, contradiction and confusion in trying to demarcate the natural from the built environments, likely resulting in substantial litigation.

5.4 Alongside its retention we support the need for improved information around environmental impacts and the cumulative effects of activities, including resource ‘tipping points’, and better tools to measure and address these impacts.

5.5 Preference: Federated Farmers prefers the retention of an integrated statute, with enhanced principles for land use and environmental management.

6 ISSUE 2: PURPOSE AND PRINCIPLES OF THE RMA – WHAT CHANGES SHOULD BE MADE TO PART 2 OF THE RMA

6.1 Getting Part 2 right is crucial in as far as providing for legislative and planning certainty. It should be high level but provide an important steer for decision-making. Remarkably, despite 30 years of significant change in environmental management, Part 2 of the

RMA has pretty much stood the test of time without the degree of amendment and interference other areas of the Act have experienced.

6.2 In our view, Part 2 should not be subject to a complete re-write. Instead, the primary focus should be on minor amendments and better implementation of what is already there, not wholesale change of existing contents. This may include consideration of recent case law and guidance around interpretation.

**Question 2: Does section 5 require any modification?**

6.3 We consider section 5 should largely remain as it is.

6.4 The purpose of the RMA (sustainable management of natural and physical resources) is a crucial cornerstone of the legislation. Section 5(2) appropriately acknowledges that alongside environmental objectives and expectations, there should be provision for social, economic and cultural wellbeing (and health and safety). It reflects the need to provide for value-based judgements when it comes to balancing competing values, as not all matters will be black and white.

6.5 Section 5 also acknowledges the reality that sustainable management involves people – both through their actions and inaction – and that our starting point is established society, not pre-human environmental utopia. People and society have social, economic, cultural and other wellbeing needs and realities, and these can be satisfied and co-exist alongside and support/drive environmental objectives. A balanced view on resource use and benefits does not forestall aspirational and long-term goals for improved environmental outcomes.

6.6 We note the suggestion at paragraph 73 of the options paper that a positive obligation to maintain and enhance the environment could be added into section 5(2). We express caution around how this is approached. Placing any such requirements around enhancement of the environment comes with risks and in many cases will simply not be achievable, necessary or manageable. Enhancement should as a rule be encouraged and supported, rather than required. Providing there are bottom-lines below which activities cannot go in specified circumstances, the focus should be on how to otherwise lead to enhancement and restoration.

6.7 Preferences:

- **Part 2 should not be subject to a complete re-write.** The focus should be on appropriate amendments and better implementation, including consideration of recent case law and guidance around interpretation.

- **Section 5:** the purpose of the RMA (sustainable management of natural and physical resources) is a crucial cornerstone of the legislation. We support its acknowledgement of social, economic and cultural wellbeing (and health and safety) needs, alongside provision for value-based judgements. We caution against including a requirement to enhance the environment in the regulatory way proposed.
Question 3: Should sections 6 and 7 be amended?

6.8 We support the overall focus of Section 6 being on specified matters of national interest and the need to recognise and provide for these. The focus on the protection of the specified matters of national importance from inappropriate subdivision, use and development is also supported.

6.9 As discussed above at 3.6 to 3.11, we support the effects-based approach within the RMA remaining. While outcomes-based planning approaches have a role, this should be focussed on priority resource management issues and co-exist with the current effects-based approach, not replace it.

6.10 At paragraph 73(d) it is asked whether Part 2 should be strengthened to more explicitly require environmental limits or targets to be set. To a degree, section 6 does provide a set of ‘bottom lines’ and we support such a retention.

6.11 We support the concept of a “bottom line” as such. Clear and justified bottom lines will set clear expectations as to what outcomes below that point are unacceptable, and the more certainty and evidence around justifying this point the better. The bottom-line should work alongside other overall visions and objectives for environmental improvements, sustainability, drivers for behaviour change and incentives. A focus should be on specified bottom-lines, focussing on over-allocated resources and those resources nearing full-allocation, where there is sufficient certainty and evidence to support this ‘limit’ being identified. There may also be a case to consider ‘tipping points’, for example where based on ecological monitoring a prompt intervention is justified. Bottom lines of this nature will not work in all such cases, particularly where the matters are arbitrary or subjective. They will also not be required in all cases – for matters below that of national significance or where there is currently insufficient information, a balanced approach will be more important. To try to define and identify bottom lines for all matters would be inefficient and ineffective, and likely lead to endless litigation, where nobody, least of all the environment, would benefit.

6.12 Our critique of the current matters within section 7 is that it is overly subjective in many cases, and results in significant disputes in both council and court processes. This is particularly the case with matters such as ‘amenity’, which is highly variable between individuals. We take particular exception to Section 7(h) and strongly urge its deletion. There is no justification for particular regard to be had to the habitat of trout and salmon. Such matters are adequately addressed elsewhere in Part 2, particularly if greater emphasis is given to water quality within section 6 as proposed.

6.13 In our view, separate reference to the protection of trout and salmon habitat must be repealed. They already have protection by proxy elsewhere in the RMA, and within the Conservation Act and Freshwater Fisheries Regulations. There are no logical reasons as to why these are singled out over indigenous fish species, or other exotic fish species. This is particularly the case given the predatory nature of trout. It is firmly accepted that where there are trout, there are likely to be significant issues with local indigenous fish survival.
6.14 We note at paragraph 73 of the options paper, a suggestion that housing affordability, development capacity and other urban planning objectives could be recognised and provided for. While we agree that these considerations need to be addressed, we express real caution as to how this is done. We do not want the fixing of today’s problem to be tomorrow’s crisis. We also do not want an approach whereby the urban environment is provided carte blanche to develop without the same considerations around environmental expectations and bottom-lines, when more balanced options (for example, urban infill and brownfields development) can provide more effective and balanced outcomes under a wellbeing approach. Environmental wellbeing is important in urban areas, particularly given the reduction in environmental values in many built environments and broader issues, for example efficient infrastructure provision and productive soils.

6.15 Recommendations:

- **Section 6:** We support the focus on specified matters of national interest and accept that these may need updated. The focus on the protection from inappropriate subdivision, use and development is also supported. Any further focus should be on specified bottom-lines, focussing on over-allocated resources and those resources nearing full-allocation, where there is sufficient certainty and evidence to support this ‘limit’ being identified.

- **Section 7:** is currently overly subjective in some respects, resulting in significant disputes in both council and court processes. For instance, ‘amenity’ is highly variable between individuals. We seek deletion of Section 7(h) (trout and salmon habitat) as such matters are adequately addressed elsewhere in Part 2. We express real caution with extending matters to housing affordability, development capacity and other urban planning objectives. The urban environment should not be provided carte blanche to develop without the same considerations around environmental expectations and bottom-lines.

**Question 5: Should the relationship or ‘hierarchy’ of the matters in sections 6 and 7 be changed?**

6.16 We agree that it is not sufficient to just set bottom-lines and ‘see what happens’. We support a clear delineation between matters of national importance and ‘other matters’. There needs to be a prioritisation of resources, considerations and efforts. We cannot realistically protect everything and everyone, we need to appropriately reflect capacity and capability. Matters in section 7 will require a stronger balance between environmental, social, economic and cultural wellbeings.

6.17 On that basis, we consider the hierarchy must remain. There needs to be clear prioritisation as to both protection and efforts. However, matters within section 7 should be reviewed to provide more clarity, and succinctness, and reflect both current/future objectives and provide for the retention of previous valuable case law commentary and decisions on key aspects of the Act.
6.18 Preference: Federated Farmers supports the hierarchy remaining between sections 6 and 7. There needs to be clear prioritisation as to both protection and efforts.

**Question 6: Should there be separate statements of principles for environmental values and development issues (particularly re housing and urban development) and if so, how should these be reconciled?**

6.19 See commentary above. We express real caution with trying to delineate matters in this way, or to provide greater freedom for urban development at the expense of the rural or natural environment, and other values. We consider priority matters are best addressed through clearer national direction, such as that currently proposed through National Policy Statements for Urban Development.

6.20 Preference: Federated Farmers expresses real caution with trying to delineate the built (urban) from the environment, or to provide greater freedom for urban development at the expense of the rural or natural environment, and other values. We consider priority matters are best addressed through clearer national direction.

**Question 7: Are changes required to better reflect te ao Maori?**

6.21 We support the existing NPS Freshwater Management inclusion of Te Mana o te Wai, and we equally support a strong commitment for councils and other parties to meaningfully engage and work with tangata whenua throughout planning processes. However, we are cautious as to how this is recognised within Part 2 of the Act, particularly given the option paper references the proposed amended version from the Essential Freshwater package in 2019, not the existing Te Mana o te Wai contents.

6.22 As highlighted within our submission on the Essential Freshwater proposals, we have real concerns with the significant shift that results from the hierarchy of obligations proposed – to waterbody health and ecosystems first, then to the essential health needs of people, and only thereafter for other uses. We consider it to be potentially inconsistent with years of case law, that has reinforced a reasonable judgment and balancing of values approach is needed.

6.23 We are also cautious with the inherent uncertainty in the application of the newly proposal Te Mana o te Wai hierarchy. Within the Essential Freshwater Package, at clause 1.5 of the draft National Policy Statement for Freshwater Management it is acknowledged that the hierarchy “may be interpreted differently by different people in different contexts”. This opens the way for substantial litigation, and we consider any changes in this regard must be very carefully worked through.

6.24 Preference: We support a strong commitment for councils and other parties to meaningfully engage and work with tangata whenua throughout planning processes.
ISSUE 3: RECOGNISING TE TIRITI O WAITANGI AND TE AO MAORI

Questions 9 and 10: Are changes required to section 8, including the hierarchy with regard to sections 6 and 7? Are other changes needed to address Maori interests and engagement when decisions are made under the RMA?

7.1 Federated Farmers supports the retention of the Act’s provisions specific to Maori and the Treaty. These include:

- section 6(e) the relationship of Maori and their culture and traditions within their ancestral lands, water, sites, wahi tapu, and other taonga” as a matter of national interest;
- Section 7(a) requires decision makers to have particular regard to kaitiakitanga
- Section 8 requires decision-makers to take into account the principles of the Treaty of Waitangi;
- Other provisions – such as joint management arrangements, iwi management plans, Mana Whakahono a Rohe agreements, consultation and more. (e.g. sections 33, 36B, 39, Part 5 of Schedule 1; Subpart 2 of Part 5 and Parts 8-9)

7.2 There are acknowledged difficulties in plan consultation processes where there are multiple iwi, hapu and overlapping rohe. Capacity issues also can impact processes, with delays, additional costs and frustrations for applicants, councils and iwi. We agree with the comment within paragraph 76 that greater clarity around consultation processes could alleviate these concerns.

7.3 We also caution that a requirement to reflect Te Mana o te Wai and Treaty settlements require sufficient cultural, legal and technical knowledge, resourcing and experience in very complicated matters, and it should be done meaningfully, respectfully and appropriately. Undergoing good process in this regard takes time, and there are risks of compromising meaningful consideration and engagement as a result of a sense of urgency and haste.

7.4 At para 81 of the options paper, options are advanced for reform of provision for the Treaty and Maori interests and engagement in the RMA, including (at b.) the removal of barriers to the uptake of opportunities for joint management arrangements in s 36b and transfer of powers in s 33. Federated Farmers considers that one of the strengths of the RMA is that decisions made under it have historically been made by democratically elected authorities, or by entities that are directly accountable to democratically elected authorities, and so those making the decisions are accountable to the public. Federated Farmers would strongly oppose any reform of the RMA that led to the democratic principles by which the RMA is administered, and indeed the democratic principles on which the country is based, being undermined.

7.5 We fully support upholding Treaty settlements, and determinations developed since the RMA was first enacted being enshrined in any reformed RMA. We anticipate this will provide for greater iwi engagement in the resource management system.
7.6 Preferences:
- Federated Farmers supports the retention of the Act’s provisions specific to Maori and the Treaty;
- We support the RMA review upholding any treaty settlement agreements and determinations;
- We caution that if unrealistic or overly hasty requirements are set in this area, there are real risks of compromising meaningful iwi input, consideration, engagement and outcomes.

8 ISSUE 4: STRATEGIC INTEGRATION ACROSS THE RESOURCE MANAGEMENT SYSTEM

8.1 Federated Farmers agrees there is currently poor alignment between the LGA, the LTMA and the RMA, and that there is a need for better integration between the Acts. That said, we would not support the RMA taking on tasks that should be appropriately managed within those other Acts. For instance, we consider a comprehensive approach to the three waters and land transport should remain addressed outside the RMA. This may require amendments to the LGA and LTMA, but the lines between the purpose of each Act should be maintained and clear. The linkages can come through better aligned national direction.

8.2 Over recent years, Federated Farmers has frequently raised concerns with the LGA becoming too enabling and trying to take on too many functions outside core council business. Similarly, a major issue with the RMA over the past 30 years is that it has tried to be all things to all people. This has led to it becoming unwieldy and confusing.

8.3 In our view, The RMA should remain the effects-based core to New Zealand’s planning system. We consider it preferable to use spatial planning, and national direction under the RMA to provide necessary alignment between the three Acts.

8.4 While we are open to further discussion around what a consolidated Act (outside the RMA) may look like, we do not support the suggestion at paragraph 87(a) for establishing a separate overarching strategic integrated planning statute elevating aspects of Part 2 of the RMA and sitting above it.

8.5 Preference: We consider the RMA must remain distinct from the LGA and LTMA. But there needs to be better integration and use of national direction to provide linkages.
Question 12: What role should spatial planning have in achieving better integrated planning at a national and regional level?

8.6 High-level spatial planning is important to ensure appropriate cohesion and alignment between central and local planning and regulations. We have no firm position on whether such spatial planning should be based within the RMA, or within the LGA – provided sufficient and appropriate statutory linkages between the Acts exists.

8.7 We do not support a strict requirement for spatial planning for all regions. This will not always be necessary or appropriate. Given the considerable onus already on local government as a result of a raft of central government expectations and requirements, we prefer instead a trigger point within the legislation as to when spatial plans should be required. For instance, this might be when high urban growth or housing shortages are indicated as likely problems for the region. To require all councils to undertake the same level of spatial planning simply takes the focus and resources away from projects that could be more relevant or crucial to their region.

8.8 We support further discussion around the opportunity to rationalise some aspects of regional and local planning, with high-level policy matters jointly decided through spatial planning processes. This could more clearly define whether matters are a district or regional council matter, or whether a combined plan across the region could work. This would reduce the number of plans, planning processes and make consenting and compliance more logical, clear and succinct for applicants. It would also avoid unnecessary duplication, inconsistencies and reduce costs for councils and parties.

8.9 Preferences:

- That better spatial planning is important to ensure appropriate cohesion and alignment between central and local planning and regulations;
- That spatial planning should not be a requirement for all regions – rather it should be based upon a trigger point as to need – such as high urban growth or significant housing shortages
- That spatial planning should not extend into environmental matters already addressed within existing regional strategies and RMA plans.
- We support spatial plans rationalising some aspects of regional and local planning – defining ‘who’ does what and whether combined plans could work.

Question 13: What role could spatial planning have in achieving improved environmental outcomes?

8.10 Spatial planning is a powerful tool to enable the system and authorities to have good data to make sound decision and run robust analyses. But having spatial planning should not be the outcome. On the information available we are not convinced there should be spatial planning over and above matters already provided for. For instance, we are wary of spatial planning extending into matters such as environmental
protection, restoration, climate change mitigation and adaptation or rural land use change, as suggested at paragraph 87(4) of the options paper.

8.11 There are existing structures in place, both at council plan level, and within existing strategies required under national direction, such as Regional Biodiversity Strategies, or Regional Pest Management Plans, that address these concerns.

8.12 Preference: That spatial planning not extend unnecessarily into environmental matters already addressed within existing regional strategies and RMA plans.

**Question 14. What strategic function should spatial plans have, and should they be legally binding?**

8.13 In our view, spatial plans should be jointly developed through collaborative and co-operative processes, in a similar way to that used for Regional Biodiversity Strategies. This approach should bring in a range of relevant viewpoints and considerations, suggestions and visions. This is a useful and important time for iwi input.

8.14 We do not consider spatial plans should be legally binding. Their function should be instead focussed around strongly influencing decision-making to ensure greater alignment and co-ordinated planning around long-term objectives, needs and visions. Making matters within spatial plans legal requirements would likely simply narrow the vision and scope of what spatial plans would contain, with councils ‘playing it safe’ to ensure they could satisfy legal requirements into the future.

8.15 Preferences:
- Spatial plans should be collaboratively and jointly developed;
- They should not be legally binding – their function should instead be a vehicle for long-term planning, visions, objectives, funding avenues and regional needs.

**Question 15. How should spatial plans be integrated with land use plans under the RMA?**

8.16 Spatial plans could provide a separate avenue for aligning land use and infrastructure planning processes under the RMA. These could provide a means for addressing cumulative environmental effects, and complex and interacting issues like climate change.

8.17 The approach to integration should be through alignment with other RMA plans. It should not seek to duplicate or supersede them.

8.18 Preference: That there be alignment between land use plans under the RMA and spatial plans. Spatial plans should not seek to duplicate or supersede land use plans.
9 ISSUE 5: ADDRESSING CLIMATE CHANGE AND NATURAL HAZARDS

Question 16: Should the RMA be used as a tool to address climate change mitigation, and if so, how?

9.1 Federated Farmers agrees that climate change and natural hazards are important considerations and issues for New Zealand’s future. The Climate Change Response Act (CCRA) is the main framework for mitigation and adaptation, and this should remain the case. The RMA should not be used to duplicate, contradict or replace these functions. Instead the RMA could better align with the CCRA to ensure our resource management framework and functions support, rather than acting at odds with the mitigation and adaptation provided for within the CCRA.

9.2 We do not accept that the RMA should be used as a tool to address climate change mitigation in and of itself. This again extends the remit and role of the RMA too wide, and risks derogating from its key purpose and functions. We also do not accept the suggestion at paragraph 92 of the options paper that the RMA could provide a more permissive regulatory approach for specified activities, such as forestry or renewable energy, which are noted as being “necessary to move New Zealand towards a low emission economy”. A further concern we have is with the RMA being used at regional and/or district council plan level to prevent the use of technologies which have the potential to deliver significant climate change mitigation benefits, such as with genetic editing or engineering, particularly where these concerns are better addressed at a national level via existing legislation.

9.3 The RMA is an effects-based framework and sustainable management is core to that. To pick ‘activities du jour’ or chosen favourites to address one problem, could well lead to worse overall environmental outcomes. For example, while forestry is an important industry, it does come with environmental risks that need careful management. Similarly, renewable energy in New Zealand, particularly ‘hydro energy’ comes at an environmental cost in-stream and for other water users. These resource management consequences should not be ignored under the RMA in an endeavour to address climate change concerns.

9.4 We oppose using the RMA to control specified emissions-intensive activities as proposed at paragraph 92 of the options paper.

9.5 Preferences:

- That the RMA is not used as a climate mitigation tool in and of itself. This should remain the core role of the CCRA.
- The RMA should not be used to provide an easier path for chosen activities, or to force greater controls on others. The RMA should remain an effects-based environmental statute.
Question 17: What changes to the RMA are required to address climate change adaptation and natural hazards?

9.6 The RMA was amended in 2004 to require councils to consider the effects of climate change, and in 2017 to provide a stronger framework for managing natural hazards.

9.7 As New Zealand’s knowledge base and information around climate change adaptation and natural hazards improves, we are moving towards better plans and plan implementation. While matters are increasingly being considered and addressed within RMA and land use plans, issues remain with the lack of integration between planning responses. On that basis, a further change in this area could be a requirement for district and regional councils to work more closely together through better sharing of information and data, and appropriate spatial planning.

9.8 Climate change adaptation and natural hazard management are accepted as crucial for New Zealand into the future. Considerations in these regards are increasingly becoming core to decision-making across the legislative system. As knowledge and understandings improve, so too will the quality of RMA plans.

9.9 Preferences:
- Consideration must be given to whether ‘gaps’ are in implementation and knowledge understandings, or actually within the RMA.
- Changes must not be made for change-sake.

Question 18: How should the RMA be amended to align with the Climate Change Response Act 2002?

9.10 There should be no amendments where these duplicate, contradict or circumvent the CCRA. Any focus should be on alignment.

9.11 Within recent RMA plans, climate change and natural hazards are issues increasingly being considered and addressed. It may, however, be appropriate to escalate climate change mitigation into Part 2 of the RMA, in a similar way to that previously done for natural hazards.

9.12 Alignment beyond that should be via spatial planning and clearer national direction. This may entail updating relevant National Policy Statements, such as that on Renewable Energy. We agree with the suggestion at paragraph 94(d) that conversations will need to be had as to how to address existing use and property rights in the context of any future managed retreat to address climate change adaptation and natural hazards.

9.13 Preference: There should be no amendments where these duplicate, contradict or circumvent the CCRA. The focus should be on alignment and better use of national direction.
10 ISSUE 6: NATIONAL DIRECTION

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

10.1 Under the RMA, national direction can take the form of National Policy Statements, National Environmental Standards or National Planning Standards. Until the last decade, these were infrequently used. However, over the last couple of years we’ve seen a large number of proposed matters of national direction, with an increasing ‘top-down’ approach taken by government.

10.2 It is noted at paragraph 96 of the options paper that “many argue that the main problem with the RMA has simply been a lack of national direction”. This comes back to what the ‘problem’ is, and ‘at what point in time’ we’re assessing it. There is no debate that our environmental performance as a country could be better and that our water, our biodiversity and our landscapes all merit better outcomes. However, most commentary on the environment is as to its state, rather than the trend or the direction it is heading. Often figures are historic, for instance ‘over the period 2000 to 2016’. It can be often be difficult to get current or real-time environmental statistics. The need for greater monitoring and data has been flagged in the PCE Report\(^3\) previously quoted within point 3.4 above.

10.3 There are two primary frustrations for Federated Farmers in this regard. Firstly, it is known that environmental change and improvements generally cannot occur overnight. An activity with negative impacts might be ceased, or a positive action may be commenced, but environmental improvements are unlikely to show up immediately, particularly in regard to biodiversity. This doesn’t mean the action or inaction is inappropriate, futile or misguided. It is often simply because there hasn’t yet been enough time to see gains. That is not to say we support sitting on our hands, and simply hoping better outcomes will happen. It is more that we urge caution before seeking change prior to previous actions having had the chance to bear fruit. A change of course might not only derail potential progress, but also undo or waste the time, energy and resources, not to mention individual and community buy-in or goodwill previously invested into solving the problem.

10.4 Secondly, significant effort and resources have gone into the formulation and adoption of second-generation RMA plans. Generally, this has occurred over a period of years, with substantial involvement from the Crown, local government, environmental groups, primary sector representatives and other concerned individuals or groups. Planning processes typically now extend beyond council processes, into lengthy caucusing and mediation through the Environment Court, with agreements typically reached, and then ratified as appropriate by the Court through Consent Orders.

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\(^3\) Focusing Aotearoa New Zealand’s environmental reporting system, Parliamentary Commissioner for the Environment, November 2019
10.5 A real risk with an overly top-down approach, is that it derails buy-in and commitment to solving problems at the ground level and restricts the ability to provide bespoke local solutions to local issues, which is where the real change and progress will occur.

10.6 We acknowledge the concerns noted that some councils have been slow to give effect to prior matters of national direction. However, in most cases, councils that have been slow to respond are those with small ratepayer bases and resources, or large geographic areas. This is not helped when multiple matters of national direction come at them simultaneously to address, with no accompanying financial support or resources.

10.7 On that basis, Federated Farmers agrees that historically, there was a lack of national direction under the RMA. However, we dispute that this remains the case. In our view, issues are now with a lack of coordination, alignment, consistency and clarity within the overall government programme of national direction. We consider there is a place for greater clarity and certainty through defined additional matters of national direction, and greater coherence and consistency between existing matters, but that is not to say we support an influx of additional direction. It is about getting the programme itself right, rather than an inundation of new matters.

10.8 We are open to further considering the Environmental Defence Society’s suggestion for the set of national policy statements to be delivered through a single Government Policy Statement. We agree that there is potential for this to enable strategic direction across the programme and better enable councils to translate these into lower level planning instruments.

10.9 Priorities should go into providing accompanying guidance for councils as to how to best give effect to existing matters of national direction, and the financial and any resourcing assistance required to enable them to respond within expected timeframes.

10.10 Preferences:
- That an urgent need is the provision of guidance material for councils as to how to give effect to existing national direction, alongside sufficient resourcing and financing (where required) to enable responses within suitable times;
- That often a lack of gains from prior national direction is due to time-lags between activities and outcomes; we caution against changing course prior to gains being made;
- That current issues with national direction are no longer as to volume, but instead the lack of coordination, alignment, consistency and clarity with the overall government programme of national direction;
- We are open to considering the EDS suggestion for a Government Policy Statement.

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ISSUE 7: POLICY AND PLANNING FRAMEWORK

**Question 20: How could the content of plans be improved?**

11.1 As discussed above, we are concerned with comments such as those in paragraph 102 of the options paper around previous reviews finding insufficient protection for the natural environment, and “unnecessary land use regulation in urban areas”. We agree that while historically that may have been the case, second-generation RMA plans are considerable steps forward from past thinking. Significant collaborative input and years of development has gone into their creation, with Environment Court appeals typically beyond that. We disagree that recent plans do not provide for sufficient environmental protection.

11.2 We consider a key issue with RMA plans to date has been poor quality and inadequate Section 32/32AA evaluation reports and cost-benefit analysis. This has resulted in councils either pre-determining options (backfilling ‘justifications’ after clearly deciding which way they want to go) or putting cost-benefit of options into the ‘too-hard’ basket or suggesting this gets done “through the submission process”. An urgent need is greater guidance and more strenuous expectations in this area.

11.3 We agree with the options paper comment at paragraph 103 that processes for RMA plan-making tends to be slow, complex and litigious, particularly at the ‘back end’ of planning processes (submissions, hearings, appeals and court processes). In our view that is generally because notified plans are either inadequately drafted, lack the scientific or economic rigour required, or rushed to meet planning timeframes. Consequently, most planning processes now extend into the Environment Court, which extenuate costs, resource implications and delays. In short, there is an inefficient use of time at the ‘back end’ of the planning process, which more rigorous, better directed and informed plan development could forestall. That said, it should be noted that long and complex processes are to a degree, largely inevitable when it comes to significant issues that require substantial evidence and collaborative input.

11.4 As commented above we consider spatial planning at a regional scale may alleviate some concerns in this regard. This could be through better planning integration, provision for regional and district councils to better define roles and responsibilities, refine plans and consenting requirements through greater use of combined plans. We’ve seen this successfully work in the Marlborough District. It makes the system easier for resource users to navigate and provides greater economies of scale given councils’ limited resources.

11.5 We express extreme caution with any wide-spread progression of planning processes like those in Auckland and Christchurch (as suggested in paragraph 105 of the options paper). While we support the objective of improved, and more efficient and effective, planning processes, we have real concerns with how any such fast-tracking would work in practice. Both the Auckland and Christchurch processes were relatively unique given the significant resources available (in Christchurch, extenuating post-earthquake resources and circumstances were involved), alongside a sufficiency of resourcing and experts within city boundaries and large ratepayer bases from which to fund
requirements. Both processes occurred at distinct times and therefore helpfully, were one of only a few planning processes taking place at that time. This would not be the case if single-stage planning was required by every council for all matters, given the highly variable (and often inadequate) resources many councils and stakeholders have at hand.

11.6 The Christchurch City Plan was an example of a fast-tracked planning process that resulted in considerable concern and confusion. Through the process, the council lost good-faith and trust with its community with notified provisions often rushed and badly consulted on. With the only ability to appeal decisions being to the High Court on errors in law, planning outcomes there have in many instances remained less than ideal.

11.7 A real risk of streamlined planning processes, is inadequate capacity and capability across both councils, and participants, across the country. However, if streamlining was retained for less technical or complex matters, it may be both appropriate and successful. We caution that this will not be the case for complex, technical and scientific matters such as freshwater planning. For these processes, large amounts of information (scientific, economic, cultural and other) and sophisticated decision-making tools are required. There is a limited amount of people in New Zealand with a mix of skills that address specialist RMA, legal, tikanga Maori and scientific/technical skills. These would all be in demand concurrently as regional councils grapple with the same needs, within the same timeframes. There is also a need for a solid understanding of adaptive management as good science and best practices change over time, and a good understanding of local nuances and issues, that could be lost in an endeavour to streamline and simplify processes.

11.8 The RMA is built on public consultation, and this should remain a core element of planning processes. In our experience, Auckland and Christchurch streamlining planning processes resulted in comparatively very little individual input. Those who started faded out and couldn’t match the intensive level of input and resourcing required across the processes. It is simply outside the costs and expertise of most submitters, and ultimately becomes overwhelming.

11.9 If the RMA planning system was amended in a similar way to that proposed within the Resource Management Act Amendment Bill’s for freshwater planning, it would entail considerable front-loaded requirements to provide evidence, be subject to cross-examination, rebuttal and to partake in mediation, pre-hearing meetings and caucusing. The Bill had proposed costs of these processes to be recovered from regional councils who would have no input as to what aspects of these processes take place or at what cost or intensity, given such determinations would be made by independent hearing panels. Regional councils therefore would have no control as to any cost blow-outs associated, and ultimately ratepayers (of whom farmers pay significant proportions) would pay the price.

11.10 We oppose the suggestion at page 37, and as suggested in the RMAA Bill, that the Minister for the Environment should appoint members of any independent hearing panel. Appointments to any such panels must reflect local input, understandings and knowledge.
11.11 Preferences:
- That second-generation RMA plans are carefully considered as to sufficiency of environmental protection and management. These already contain considerable step-changes from first-generation plans.
- That a key issue with RMA plans is poor quality and inadequate Section 32/32AA evaluation reports and cost-benefit analysis. An urgent need is greater guidance and more strenuous expectations in this area.
- That spatial planning could provide for better plan integration, provision for regional and district councils to better define roles and responsibilities, or the use of combined plans.
- That thorough, sufficient and in-depth consideration is given to the pros and cons of single-step or streamlined planning processes.
- That streamlined planning processes are only provided for minor plan changes.

Question 21: How can certainty be improved, while ensuring responsiveness?

11.12 We fully support any increase in certainty for plan and resource users. However, we are cautious with the comments within paragraph 106 of the options paper, which suggest that a shift to an outcomes-approach may better achieve this. The effects-based nature of the RMA is at its heart, and for reasons discussed earlier, we oppose a move away from this.

11.13 Our members benefit most from planning processes that are certain, but sufficiently flexible to appropriately consider local or individual needs (within reason). While an overly prescriptive approach may provide certainty as to what can and cannot be done as of right, this comes at the cost of flexibility and the ability to respond to individual circumstances. A careful balance needs to be struck in this regard.

11.14 We oppose the suggestion at paragraph 105 that there could be greater oversight of local plan quality if central government was required to approve any plans prior to notification or the plan becoming operative.

11.15 Certainty and consistency as to planning quality should come from a greater provision of guidance and support by central government to local government. It should not come from central government dictating the final product of local government plans, beyond considering whether appropriate effect has been given to matters of national direction, and central government agencies exercising their ability to submit to local council planning processes. It is our understanding that this is already required under most National Policy Statement provisions.

11.16 Preferences:
- That care is taken in considering any trade-offs between certainty and flexibility;
• That any central government input in this area should be to ensure implementation of national direction, rather than directly being required to approve plans prior to their notification or operation.

**Question 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?**

11.17 As discussed above, we prefer the retention of the effects-based approach, over a move to outcomes-based determinations. We also support considerations of the use of more combined plans, and greater integration and spatial planning between councils.

11.18 We consider public participation is vital, but this should be at a scale commensurate with environmental risks and impacts. As stated above, we support consideration of streamlined planning processes for simple matters but consider significant thought must be taken before considering streamlining plans for complex, technical or scientific matters such as freshwater planning.

11.19 There are often good reasons for private plan changes being applied for. For instance, where council planning timeframes are not sufficient, where council resources don’t support the matter being progressed internally, or where council supports the process but is unable to continue due to alternative priorities. Councils often encourage applicants to go down this line, as it reduces the costs and burdens on councils and ratepayers but enables the matter to progress. We support a reconsideration as to how these processes could be expanded or restricted to better facilitate outcomes.

11.20 **Preferences:**

• That the RMA’s effects-based approach is retained;
• That greater use of combined plans and spatial planning is explored;
• That public participation is at a scale commensurate with the environmental risks and impacts
• That there is careful consideration as to whether it is appropriate for private plan changes to be expanded or restricted.

**Question 23: What level of oversight should there be over plans and how should it be provided?**

11.21 As discussed above, we oppose the suggestion that the Minister or central government approve and authorise draft plans before these are notified or made operative.
12 ISSUE 8: CONSENTS AND APPROVALS

Question 24: How could consent processes at the national, regional and district levels be improved to deliver more efficient and effective outcomes while preserving appropriate opportunities for public participation?

12.1 At paragraph 109 of the options paper it is noted that there are approximately 40,000 resource consent applications lodged each year, and that most of these are approved. Three points to consider in this regard: firstly, under more recent regulatory proposals most, if not all, farmers in New Zealand will need a consent to continue farming into the future. That quoted number of 40,000 will increase exponentially, as will the burden that falls on councils to administer and consider these. Secondly, while on paper a majority may be granted, this generally occurs after lengthy and costly ‘toing and froing’, often with the applicant undertaking and providing a range of additionally required details – including extensive background information, ecological or hydrological data and cultural approvals. Any final farming consent that is approved generally has had to satisfy considerable hurdles to get there – particularly in regard to water use. Thirdly, are the hidden costs of proposals not proceeding (and never getting to the formal consent application stage) due to the real or perceived cost of the process and concern with them being refused or placed under onerous conditions.

12.2 A key consideration for the review panel will be how to best strike the balance between providing for efficient and effective outcomes and processes, and where it is appropriate or of benefit to the process to involve public participation. We do not consider it appropriate for consent applications to be notified in all cases. In fact, this should be limited to those cases where the activity is significant enough, or its effects significant enough, to benefit from additional viewpoints and information. Too often, opposition by the public is ideological or political, or from a ‘not in my backyard’ attitude.

12.3 We agree with the options paper conclusion at paragraph 112, that beyond distinguishing significant from minor activities, there is a firm need to reduce the complexity and cost that surrounds consenting processes. This can be done while still maintaining sufficient scrutiny of activities with adverse environmental or other effects.

12.4 Preferences:

- A careful balance needs to be struck between reduce complexity and costs of consenting, and providing opportunities for public participation where this is warranted;

- We support a streamlining of consenting processes, with public notification only occurring when a threshold of impacts is passed;

- We support a simplification of consenting activities and streamlining of requirements for minor applications.
Question 25: How might consent processes be better tailored to the scale of environmental risk and impact?

12.5 Currently, an assessment of environmental effects is a key requirement for consent applications. In many cases, these assessments are unnecessary, or irrelevant, and as a result are sub-par. There should be a simplification where activities with only minor effects, and other activities delineated and specified within a plan, can be streamlined. This will be enhanced if councils electronic consent processing systems were required to be sufficient and appropriate. We note in this regard, a recent investigation\(^5\) into the Otago Regional Council consenting processes carried out by Mitchell Daysh Limited that holds some pertinent observations.

12.6 The focus for the notification of consent applications should be on those activities with a likely more than minor environmental effect and for which public input will be on benefit to decision-makers. We support the suggestion at paragraph 114(e) of the options paper whereby there could be a removal of automatic rights to hearings and appeals for some of these activities; with only some activities able to be notified; and greater clarification on who is an “affected party”.

12.7 We oppose the suggestion at paragraph 114(g) that all applications and consents should be issued electronically and publicly available. This suggestion raises serious concerns around privacy and risks to commercial interests. At the most, there should be a specified subset of consents made publicly available. This should not extend to all such consents.

12.8 Preferences:

- There should be a simplification where activities with only minor effects, and other activities delineated and specified within a plan, can be streamlined.
- Councils should have adequate and sufficient electronic consent processing systems.
- The focus for the notification of consent applications should be on those activities with a likely more than minor environmental effect and for which public input will be on benefit to decision-makers.
- We support the removal of automatic rights to hearings and appeals for some of these activities; with only some activities able to be notified; and greater clarification on who is an “affected party”.
- We oppose the suggestion that all consents and applications should made publicly available.

Question 26: Are changes required for other matters such as the process for designations?

12.9 Another matter that needs review is the use of Water Conservation Orders (“WCOs”). Federated Farmers’ Senior Policy Advisor Peter Mathch has carried out extensive research in this area. He has provided the below comments and recommendations from 12.10 through to 12.22.

12.10 WCOs’ advent as planning instruments pre-dates the RMA. They were first introduced in 1981 (in an amendment to the former Water and Soil Conservation Act 1967) to enable broad conservation measures for high-value freshwater resources in selected catchments. The historical context for this was a reaction to the New Zealand Government’s involvement in ‘think big’ hydro infrastructure development projects in the 1970s. Thereby the original intent of WCOs was as an early form of check and balance against major development proposals affecting waterways. WCOs were subsequently transferred into the framework of the RMA under which environmental decision-making was devolved to regional and local councils.

12.11 WCOs are only one of several planning tools available to manage water. WCOs are subject to Part 2 of the RMA in the broadest sense but focus more sharply on the protection of outstanding in-stream or conservation values. Regional policy statements and regional and district plans have a broader focus than WCOs, and reflect various functions assigned to regional and district councils respectively. Even so, these planning instruments must not be inconsistent with a WCO. Even national environmental standards cannot be more liberal than a WCO.

12.12 Regional plans also regulate water quantity and water quality and there is a strict plan evaluation procedure that must be applied when proposing such provisions under section 32 of the Act, to ensure these plans meet the purpose and principles in Part 2 of the Act. There is no similar rigorous level of scrutiny required when a WCO is proposing to restrict abstraction of water to achieve minimum flow or maximum contaminant concentrations. This dissimilarity means that water restrictions can be more easily imposed in WCOs than in regional plans.

12.13 Given that WCOs involve a more-pervasive exercise of power, it is fitting that the circumstances under which such power is exercised should be appropriately limited to where the water body is truly outstanding, to minimise significant inequities between users. Under the current RMA statutory framework, a WCO (that is defined by a narrow scope of applicant interest) can be used to simply ‘wade in’ and intervene in regional plan water management processes in a catchment. The WCO application process may demands extensive community/submitter resource to respond to. It is equally as onerous to have seek to overturn a WCO once established. This situation carries an in-built assumption that top-down planning instruments should trump more integrated planning instruments. This is outdated thinking in an age where water resource use may involve many interrelated factors and many resource users, in complex ways.

12.14 In this regard, the RMA’s provisions for WCOs have largely remained static over the 30 years since the Act was first enacted, whereas other local planning has progressed
considerably in understanding and requirements over that time. Much has been learned about how to fine-tune environmental resource management within NZ’s multi-level governance system. This has occurred alongside a growing understanding of what makes for successful planning instruments under the Act. Various reports from the Parliamentary Commissioner for the Environment and the Productivity Commission continue to bear witness to this evolution of planning processes.

12.15 The efforts of central Government in more recent years, especially in producing the NPSFM, have seen regional councils moving to manage freshwater resources in more coherent and nationally-consistent ways. The NPSFM is a national-level planning policy and objectives framework, albeit one that is anticipated to help local communities improve their regional planning tools. It anticipates a multi-level governance framework for integrated freshwater resource management, in which a mixture of ‘top-down’ and ‘bottom-up’ planning techniques converge to enable increasingly consistent practices for allocation and use of freshwater, in practical ways that individuals and communities are collectively capable of achieving.

12.16 The negative consequences of using the wrong sort of planning tool can far outweigh any benefits. A WCO, as a top-down planning tool, can be highly inappropriate to the task of managing freshwater in a catchment. It can easily be highly restrictive and oversimplify the issues. The Environment Court has previously said\(^6\) that where there is a choice, regulatory frameworks should err on the side of a ‘less restrictive regime’ where the purposes of the Act and the objectives of the plan can be so met.

12.17 As the use of WCOs has grown, their role within the RMA’s multi-level planning framework seems to be becoming increasingly blurred vis-à-vis other types of plans. This is problematic because:

- There is increasing misalignment in the Act’s statutory framework between WCOs and regional plan tools, where the latter has lagged behind the evolution of the former (alluded to earlier).
- There is a fundamental tension between planning by edict (‘top-down’ planning) and planning by consensus (‘bottom-up’ planning), which needs to be addressed in ever-greater degrees of specificity, to deal with increasingly complex allocation issues arising from increasing intensification of resource use where there is a large group of diverse resource users;
- The time and resource required to promulgate a WCO, and the equally resource-hungry process involved in revoking a WCO once it has been made, has a significant drain on community resources that could be put to better use in more-appropriate types of planning. This is dysfunctional for stakeholder engagement.
- The RMA’s provisions for WCOs do not contemplate any process for codifying innovations into WCOs that may occur within other planning frameworks, particularly under the NPSFM and regional plans. Short of amending the RMA to enable such integration, the only way to be unshackled from a WCO is to revoke it.

\(^6\) (following the principle in Royal Forest and Bird Protection Society Inc v Whakatane District Council [2017] NZEnvC 51 at [59]).
12.18 For WCOs there is a general assumption that implementation is a simple matter of conformance. Yet, the environment in consideration may not be a simple system. It may encompass a range of qualities, from relatively pristine headwaters, to heavily modified peri-urban and urban areas, with farmland (including general agriculture, silviculture, viticulture and horticulture) in between. A WCO may not achieve any practical or useful environmental outcomes if it does not address the range of planning issues in the catchment related to freshwater use.

12.19 By comparison, regional policy statements and plans are developed in a much more strategic context. Where many people are involved in water resource use, local innovation needs to be fostered to help solve problems in ways that are within local community capability to achieve.

12.20 Furthermore, the timeframes involved in WCO applications can produce dysfunctional outcomes in relation to freshwater planning where there are many users of a resource. It is not unusual for a WCO application to take many years to progress. The Ahuriri River Order was approved in 1990 after 7 years’ deliberation, the Buller River Order took 13 years and the Mohaka River Order took 17 years. Such timeframes reflect the extensive considerations involved in each application and the significance of resource management issues that are at stake. But it also has significant consequences in diverting community capability, resource and investment from other processes to prepare resource management policies and plans. This is not only an inconvenience when considering an application to make an order, it is also an equal imposition when removing an order. Section 216 of the Act provides for water conservation orders to be able to be revoked after two years of being put in place, however, any revocation must, in effect, go through the same extensive process in reverse, as the process which is used to make the order in the first place.

12.21 Even though WCOs can be revoked or varied if they are no-longer relevant, the Act does not tie this to any benchmark of achievement in the quality or outcomes of regional plans. This is problematic where local communities, who must invest heavily in preparing regional plans, come up against a top-down imposed WCO, the contents of which are promulgated by a relatively narrow scope of applicant interest, especially if the WCO is subsequently found to have been a poor instrument.

12.22 In view of all of this, we strongly urge a review and reconsideration of how WCOs fit within the wider RMA system.

12.23 Preference: For reasons discussed at depth above, we strongly urge a review of WCOs and how they fit within the wider RMA system.

**Question 27: Are changes required for other matters such the review and variation of consents and conditions?**

12.24 This is a complex matter, and involves real issues of certainty, equity and fairness. The RMA currently only provides for consents to be reviewed in exceptional cases, for example when there has been an unforeseeable change of circumstances. Changes
enabling councils to widely review or vary consents have the potential to undermine confidence in the resource consenting system, and indeed in the resource management system generally.

12.25 Federated Farmers understands that the RMA is unclear as to whether regional councils can consider the effects of multiple consents at the same time. We note that the Resource Management Act Amendment Bill proposed to make explicit that conditions of multiple existing resource consents (including regional land use consents) could be reviewed concurrently, for example on a catchment by catchment basis, and that this could occur as soon as the relevant rule was operative (even if other parts of the plan were under appeal).

12.26 As noted within our submission on the Bill, farmers are happy to be part of water sharing agreements and community processes but are generally unhappy to have consents called in for review, given the significant capital costs and coordination required to fund water sharing infrastructure.

12.27 In our view, an exception to this could be in circumstances where there is a valid, scientific and evidential justification for doing so, for example when a resource is approaching over-allocation or an environmental ‘tipping point’. In these cases, there is a balance required. If existing consent holders are given priority consideration where a new environmental bottom line applies, that may in part address the issue.

12.28 We are aware that a primary driver for the Bill’s proposed change was to provide an ability for councils to address the build-up of cumulative effects in situations where a number of resource consents have been issued, most likely at different times, and where the cumulative effects of the activity enabled by those resource consents may not have been adequately considered.

12.29 We acknowledge that there are issues with the cumulative effects that can occur when multiple consents are issued in relation to the same resource and that a review of this matter is required. However, we caution that this is a matter that should only be considered for priority environmental issues, and even then, still requires very careful consideration and full public input and feedback.

12.30 Preferences:

- That any changes proposed in area will be complex, and involve real issues of certainty, equity and fairness.

- That before any review into the need to provide for a review or variation of consents to address cumulative effects requires careful and thorough consideration and full public input and feedback.
Question 28: Are changes required for other matters such as the role of certificates of compliance?

12.31 Our members are facing increasing uncertainty as to whether they will be subject to third-party enforcement action under the Environment Court. This generally occurs where a farmer considers, or is given advice, that their actions are consistent with a plan’s permitted activities, but a third party takes a different view. Ultimately, irrespective of the outcome of the action, these actions result in significant costs, delays and stress. To avoid landing in this situation, some farmers have opted to avoid the stress of the unknown and instead apply for a certificate of compliance. These have informational requirements as rigorous as that for a resource consent but provide certainty as to the legality of activities undertaken.

12.32 Permitted activities are those that council planning processes have determined are sufficiently appropriate as to not require resource consent, provided the activity complies with any specified requirements, conditions, and permissions. Where confusion generally occurs, it is where there is external disagreement that the plan rules adequately manage the effects expected (including cumulative effects). This comes down to the need for more effective plan writing, particularly in the area of permitted activities.

12.33 We support the use of certificates of compliance, but we oppose the need to resort to them simply to avoid the risks of enforcement action initiated by third parties. Even where those actions are ultimately shown to be devoid of reason, the costs, stress and delays accumulate regardless.

12.34 Preference: That while certificates of compliance are useful tools, given the lesser environmental effects of permitted activities, their use should be an optional exception not required as a rule, given the costs, delays and resourcing required.

13 ISSUE 9: ECONOMIC INSTRUMENTS

Question 29: What role should economic instruments and other incentives have in achieving the identified outcomes of the resource management system?

13.1 Economic instruments in the environmental space come in a range of shapes and sizes, and from a range of sources. The notion of resource rentals has been subject to heavy debate in recent times, with pros and cons to their use, and real concerns with equity, fairness, ownership and where any money accumulated should go. We express real caution that internationally, this has not been well landed, and New Zealand should tread carefully before trying to pave the way for such use. There are real risks of perverse economic and environmental outcomes if these are not well landed. This is a political hot potato.
13.2 While economic instruments may, at face value, be an ‘efficient way’ for private sector interests to internalise their negative externalities or move resources to their ‘most efficient’ use, economic instruments are only truly efficient and effective where they are used in a ‘functioning market’, which in turn requires:

13.2.1 Ease of Market Entry and Exit; particularly no barriers to entry.

13.2.2 Absence of Significant Monopoly Power; a functioning and competitive market where no one ‘actor’ has significant pricing power or can restrict participation opportunities for smaller participants.

13.2.3 Widespread Availability of Information; all parties in a market are well informed in order to allow them to make effective decisions, and there are no barriers to information.

14.2.4 Absence of Market Externalities; both the costs and benefits are sufficiently accounted for, including the ‘externality’ or ‘downstream’ economic costs and benefits.

14.2.5 Achievement of Public Interest Objectives; the market achieves ‘public interest objectives, for example food production’.

13.3 Where these criteria are not sufficiently met, market inefficiencies result. These in turn can undermine the ‘efficiency’ and ‘equity’ goals of any economic instruments. It is hard to account for the downstream economic benefits of primary production, processing, transport, retail and servicing, as well as broader benefits to food security etc. It is also hard to define a ‘cost’ for many resources uses. As a result, ‘setting a price on a resource’ may not be efficient or effective, and the costs, including setting up and implementing any such proposals, may often outweigh the benefits. This is particularly the case for ‘small’ markets.

13.4 In addition, as we have seen in respect to water rentals in Australia, individuals and firms can underestimate the long-term value of a resource in their short-term decision making. Selling the right to a resource allocation to ‘get through’ a short-term economic shortfall can often result in costs that are beyond marginal, undermining the long-term feasibility of an otherwise beneficial business.

13.5 The implications or resource rentals are particularly concerning where the ability to purchase ‘environmental resources’ is simply the result of a greater level of funding (that is, market control or market dominance) rather than the resource moving to ‘best use’.

13.6 While we support further consideration into the use of incentives to drive environmental enhancement, we note that there are potential trade repercussions to this conversation. The use of any such incentives must be rigorously researched and discussed with both industry and trade officials. As a country reliant on overseas markets, we cannot afford to jeopardise the tenuous market position we currently hold.

13.7 Since the economic reforms of the 1980s New Zealand’s agricultural subsidies have been by far the lowest in the OECD. The OECD estimates that New Zealand’s Producer Support Equivalent is only around 0.5 percent of gross farm income, with
some countries higher than 50 percent\(^2\). New Zealand has long advocated against trade distorting subsidies which tilt the playing field against our agricultural exporters.

13.8 Subsidies are not created equally, and New Zealand needs to ensure that if there is to be a change in policy on payments to farmers that any payments are not considered by overseas markets to be trade distorting. Payments for public services to support environmental and climate change goals are considered less distorting than those linked to market prices or to encourage higher production so there should be scope to move in this direction provided the payments are well-designed.

13.9 New Zealand holds a relatively unique international position of being a country with a strong market-driven primary sector, along with a pure, clean-green pasture-based reputation. Retaining both aspects is both possible and necessary. However, there is not a never-ending money-tree that private land users can access, and any deployment of economic instruments needs very carefully assessed and consulted upon.

13.10 Resource users are already subject to considerable economic impact just in complying with current and proposed RMA plans and satisfying consenting requirements. Stretching beyond this could lead to business failure or perverse outcomes. Generally, additional money is better spent on environmental improvements on-farm, rather than being filtered into central government coffers.

13.11 Recommendations:
- Great care needs taken in this regard as the use of economic instruments is a complex matter bearing great risks if it is not thoroughly assessed, consulted on and managed.
- Both trade and market risks need to be thoroughly assessed and considered in relation to the use of incentives.
- Landowners are already subject to considerable costs associated with using resources, and any additional funds are generally better reinvested back into the property, and into environmental outcomes, rather than filtering into the wider tax system.

**Question 30: Is the RMA the appropriate legislative vehicle for economic instruments?**

13.12 We believe the best opportunities for economic instruments fall outside the RMA. For instance, greater environmental outcomes can come through sufficient additional funding to the NZ Landcare Trust (to support and facilitate community catchment processes), the QEII National Trust (to support and manage privately owned covenanted land) and through sufficient funding for the Department of Conservation to ensure it can undertake its good-neighbour responsibilities around pest and weed management and reducing unnecessary fire risk. It could be argued that while the

\(^2\) [https://www.oecd.org/newzealand/producerandconsumersupportestimatesdatabase.htm](https://www.oecd.org/newzealand/producerandconsumersupportestimatesdatabase.htm)
RMA has an important role in protecting indigenous biodiversity, a significant factor for success is the amount of resources invested in plant and animal weed and pest control.

13.13 Further, there is still a lack of clarity and consistency around rates remissions for privately owned land covenanted through either the QEII Trust, or Nga Whenua Rahui. This likely entails amendments to the Local Government Act to provide sufficient clarity and certainty. We urge that this is a priority, with benefits well exceeding any reduction in rates income.

13.14 In our view, the best use of economic instruments will come through their use as incentivisation to enhance, restore and undertake other improved environmental outcomes. This needs to occur outside regulation. As noted by the Biodiversity Collaborative Group\(^8\) “while law and regulations set important boundaries for human actions... other initiatives are equally important. Complementary and supporting measures (to regulations) are required”.

13.15 **Recommendations:**

- The best opportunities for economic instruments fall outside the RMA;
- We strongly support increases in funding to the NZ Landcare Trust, QEII Trust and to enable DoC to undertake its core land management functions – the benefits of this investment well exceeds any costs;
- We strongly urge amendments to the LGA.

### 14 ISSUE 10: ALLOCATION

*Question 31: Should the RMA provide principles to guide local decision-making about allocation of resources?*

14.1 The RMA already provides a mechanism for the allocation of resources via resource consents and permits. Developing further principles around the allocation of resources is an extremely complicated manner, particularly if discussions go into trading, transferable rights or auctioning. These matters go well beyond ‘who gets what’, and ultimately will need to address a range of other considerations, including:

- How such allocation should occur;
- What certainty surrounds the measure of the resource being allocated;
- At what level should decisions around allocation be made (catchment, regional, national or other);
- What weight community views should be given, or whether national viewpoints should override these;

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\(^8\) Report of the Biodiversity Collaborative Group (2018) at page 86
• What mechanisms are needed to allow for the transference of ‘rights to use a resource’ to ensure efficient use (and associated equity and market cost concerns);
• The suitability of existing mechanisms for measuring and allocating resource use;
• Implications for central governments’ obligations to Iwi under the Treaty of Waitangi.

14.2 We are aware that further work around the allocation of nutrients for instance, is on the government work programme for 2020, as is a consideration around Maori rights and interests in freshwater allocation. This will be a complicated discussion, and as above, be multi-faceted. Clear conversations need to be had as to whether such principles should sit under the RMA (or national direction beneath it) or instead be provided in guidance material outside the RMA, to ensure local government can adequately respond to the challenges down the line, reflecting local needs and considerations.

14.3 In Federated Farmers view, there needs to be a nationally consistent high-level framework, but allocation decisions must remain at the local or regional level, and be based on ‘need’, not national rules. Regional and district economies differ significantly, and as a result the implications of any decisions over a range of resources on economic and social wellbeing also differ significantly. Our concern is that any national principles will not be sufficiently ‘granular’ to reflect these variances, to the detriment of smaller communities. Any principles provided for under the RMA must be sufficiently flexible to enable local government to respond to the needs of both the environment, and the community at issue, and in the first instance we would favour a more directive approach to economic cost benefit analysis.

14.4 Preference: As allocation is a multi-faceted and complex matter, there needs to be a nationally consistent high-level framework of principles in this area, but that actual allocation decisions must remain at the local or regional level and be based on ‘need’ and ‘urgency’.

**Question 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?**

14.5 In Federated Farmers view, the implications of any differences in approach will be very much context dependent, including both the costs and benefits provided by these rights, and the costs of any differing regulatory regime. These matters are complex, and any changes or distinctions between the three require greater discussion and assessment.
Question 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 to address regulatory issues?

14.6 We consider these are ultimately matters that should sit within the RMA, to ensure plan cohesion and consistency, from consultation through to implementation and enforcement. Where there are specific, significant issues resulting from these issues, they can be addressed through the provision of greater direction under the RMA framework. By requiring these considerations to happen as part of a separate process, there is increased risk of uncertainty, confusion and unintended outcomes.

15 ISSUE 11: SYSTEM MONITORING AND OVERSIGHT

Question 34: What changes are needed to improve monitoring of the resource management system, including data collection, management and use?

15.1 Federated Farmers strongly supports an improvement in both the monitoring, and collection and reporting of data and information on the state of New Zealand's environment. Too often the cart is put before the horse, with all too often central and local government policies and plans not based on robust, consistent or reliable national data.

15.2 Before planning processes attempt to resolve 'how' to fix a problem, sufficient information is needed at the outset to identify what the problem exactly is. This depends on quality science and actual data. Too often, vagaries and assumptions or out-of-date data are relied upon. We are not suggesting that a lack of perfect data means we shouldn't do anything, but the current incomplete and inconsistent data is weakening our overall planning responses.

15.3 The PCE Report (previously referenced) highlighted that this is a real area of weakness in New Zealand's resource management system. The poor evidence makes it difficult to assess whether actions to improve outcomes are working, or whether changes in approach may be needed.

15.4 We support the recommendations within the PCE Report being adopted and committed to. These include:

- amending the Environmental Reporting Act 2016 purpose;
- the production of State of the Environment (synthesis) reports every six years, and extending them beyond pressures, states and impacts, to include drivers and outlooks, and commentary on five overarching themes (land, water, biodiversity, pollution and waste, climate change and variability;
- replacing domain reports with specific theme-based commentaries;
- adjusting the responsibilities of the Secretary for the Environment to the production of the above synthesis reports, and for the Government statistician to have an approval function;
- establishing a standing science advisory panel
- providing for a shift from passive to active information gathering
- Requiring the government to formally respond to the synthesis reports;
- Developing a comprehensive environmental monitoring system;
- Developing a nationally mandated strategy to progressively fill in known data gaps.

15.5 A further issue is that in many cases, there are appropriate levels of collection of data, but these are not well collated, shared or consolidated. Information that could be invaluable to local government remains in central government databases, and vice versa. This may require additional investment by government to ensure monitoring, collection, management and use of data is sufficient.

15.6 Preferences:
- That system improvements and greater central government investment are committed to.
- That the recommendations within the PCE Report⁹ be adopted and followed.

**Question 35: Who should have institutional oversight of these functions?**

15.7 Federated Farmers has no firm views in this regard, given the lack of information as to how this would be undertaken, depending on options for the role.

15.8 However, whoever has such institutional oversight should equally be responsible for ensuring sufficiency of local resources to undertake commitments, and to ensure collation is facilitated and simplified. We support the Parliamentary Commissioner for the Environment being provided with a strengthened oversight and review role.

15.9 Preferences: We wish to have further input into such considerations once more details, options, and information on how this might be undertaken. We support the PCE having a greater role in oversight and review in this area.

16 ISSUE 12: COMPLIANCE, MONITORING AND ENFORCEMENT

**Question 36: What changes are needed to compliance, monitoring and enforcement functions under the RMA to improve efficiency and effectiveness?**

16.1 Federated Farmers agrees that compliance, monitoring and enforcement (CME) is an essential component of the resource management system. It helps provide necessary checks and balances and ensures outcomes match those that were intended through what is typically fairly intensive plan-making and consent-approval processes.

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16.2 In our view, the review should retain the devolved system, but central government should provide stronger support, guidance and performance monitoring. This could extend to the EPA, upon request by Council, providing resourcing and support to the council to sufficiently undertake its CME functions, as discussed further below.

16.3 It is noted in paragraph 128 of the options paper that resources and tools for CME operations across the country are highly variable and many consent conditions are not monitored. A primary reason for this variability is wide-ranging capacity, funding, resourcing and capabilities readily available to different councils. Large well-functioning councils are often held up as the example, yet their higher levels of achievement are typically due to economies of scale, large ratepayer bases from which to draw funds and smaller comparative geographic areas. That is not to say that we consider CME functions should be removed from local councils and passed to a central agency such as the Environmental Protection Authority (“EPA”).

16.4 The recent Resource Management Act Amendment Bill proposed to empower the Environmental Protection Authority (“EPA”) to undertake investigation and enforcement actions under the RMA, ostensibly to enhance accountability and to provide support for those currently responsible for RMA enforcement. The Bill contained various provisions, which combined to amount to a quasi-revamp of the enforcement regime in the RMA.

16.5 The EPA currently has no enforcement functions under the RMA. The premise for the revamp was that some councils lacked capability in regard to their CME functions. It was noted within the Bill, and we assume similar concerns are behind the basis for necessary change in the options paper, that a concern of government (and NGOs) is that not enough enforcement action is taken. We understand this concern is disputed by councils. In our view, concern that ‘not enough prosecutions are taken’ disregards that a reduction in enforcement action is more likely due to an improvement in resource users’ understanding of issues, and a wider adoption and adaptation of good management practices. This view also ignores the existence of intermediary intervention by councils, which may be more efficient and effective, and relative to the specific breach.

16.6 We consider a preferable approach would be for the EPA to be resourced to provide assistance and support to those councils who need it, upon their request. We oppose full and total powers being provided to the EPA, particularly where this extends into intervention and the taking over of council enforcement actions.

16.7 A focus for reform should be increasing local decision making, and we note this was a key purpose of the Bill’s overarching objective. Any proposal to centralise CME functions takes away local powers and erodes local decision-making.

16.8 We note at paragraph 115, section 5.1 of the Impact Summary: Additional Proposals for proposed bill to amend the RMA 1991, that LGNZ has some concerns with the proposal, in particular the EPA’s power to direct action without the support of the council concerned. We wholeheartedly share those concerns.
16.9 The RMA sets up a hierarchy of enforcement provisions, ranging from a simple word of advice, through written advice, infringement notices, and abatement notices, through to Court proceedings in the form of enforcement orders, and formal criminal prosecution.

16.10 Federated Farmers considers it entirely proper that those who make the rules should be entirely responsible for ensuring those rules are effective, in terms of promoting the purpose of the RMA, and by using the enforcement provisions that are appropriate to the circumstances of their own local authority area. There is no way in which a central government agency can properly apprise itself of the circumstances that are relevant to the CME of each district and region in the country.

16.11 In our view, the EPA should be able to become involved in enforcement only at the request of the relevant local authority.

16.12 We note the suggestion at paragraph 132(b) of the options paper that there could be provision for strengthened statutory powers and penalties. Federated Farmers is already concerned with the criminal prosecution regime in the RMA, particularly given it is based upon “strict liability”. In our view, the Panel should consider establishing a civil pecuniary penalties regime that local authorities can use, in place of the criminal prosecutions’ regime. Such a civil pecuniary penalties regime could retain the strict liability threshold and provide for the same monetary penalties as is provided for in the current criminal regime.

16.13 We caution against strengthening penalties without full consideration and consultation as to impacts. We note that the RMA Bill proposed to increase the current 6-month statutory limitation period which applies for a person to file charges for certain offences under the RMA to 12 months. We opposed this proposed increase in the statutory limitation period. We considered it neither appropriate nor necessary, in that agencies should be able to determine whether or not enforcement action is appropriate within the existing 6 months period.

16.14 In our view, resource users are entitled to promptness and timeliness in the consideration of complaints against them, and the consideration of issues that may arise in the course of routine monitoring. In the Bill’s Regulatory Impact Statement, it was noted that the proposal could result in councils taking more time than was required to determine whether to prosecute, reducing uncertainty for resource users.

16.15 We also have concerns with a broad increase in infringement offences, many of which were only set in 2017. As infringement offences are absolute, those facing the penalty are found guilty automatically, with no chance to query or challenge the matter. We note that the Legislation Design and Advisory Committee (LDAC) recommends generally having a maximum of $1,000 for infringement fees.

16.16 Beyond that, it should be noted that any fines directly reduce a person or company’s ability to fix the problem. In many cases, the money would be better spent on actual solutions, versus a financial punishment. We are open to the suggestion for a role of restorative justice in enforcement processes. Restorative justice focuses on redressing
the harm done, while also holding the offender to account for what they have done. We agree, however, that if it can be shown that non-compliance resulted from a motivation for commercial gain, a stronger hand could be taken.

16.17 At paragraph 132(c) it is suggested that there could be provision for improved cost-recovery of CME functions, including permitted activity monitoring and investigation of unauthorised activities. Federated Farmers is generally in support of user-pays for council activities. However, we have concerns in this area. We prefer a direct link between who is benefiting from a council activity and who is paying. In many cases, there will be no benefit to the resource user of any such monitoring. It is often simply to provide peace of mind to the general public. The justification for requiring landowners to pay for monitoring when complying with permitted activity standards is questionable. What might work for large scale forestry under the NES Plantation Forestry, where significant permitted standards exist and can be monitored concurrently, is unlikely to be able to work at farm scale level across New Zealand. Similarly, what might be affordable for a large forestry company, may not be for a small farming business.

16.18 Preferences:
- Retention of the devolved CME system, but that central government should provide stronger support, guidance and performance monitoring. This could extend to the EPA, upon request by Council, providing resourcing and support to the council to sufficiently undertake its CME functions.
- That consideration is given to establishing a civil pecuniary penalties regime that local authorities can use, in place of the criminal prosecutions’ regime. Such a civil pecuniary penalties regime could retain the strict liability threshold and provide for the same monetary penalties as is provided for in the current criminal regime.
- That the provisions in the RMA Bill proposing a doubling of time in which enforcement action can be undertaken, and a doubling of infringement fines is rejected.
- We are open to the suggestion for a role of restorative justice in enforcement processes.
- That permitted activity monitoring charges are only used in exceptional cases, not as a rule.

**Question 37: Who should have institutional responsibility for delivery and oversight of these functions?**

16.19 In our view, and as discussed above, this should remain with local councils. However, this could extend to the EPA, upon request by Council, providing resourcing and support to the council to sufficiently undertake its CME functions.
16.20 We also invite consideration as to a strengthened review and oversight role for the Parliamentary Commissioner for the Environment, in line with our previous recommendation on data management, collation and reporting.

16.21 Preferences:
- That institutional responsibility for CME remains with local councils.
- That consideration is given to a strengthened review and oversight role for the PCE in this area.

**Question 38: Who should bear the cost of carrying out compliance services?**

16.22 As discussed above, this should remain with local councils. However, additional funding and support should be provided by central government where there are real gaps in resources available to councils with small ratepayer bases and/or large geographic areas.

16.23 Federated Farmers is generally in support of user-pays for council activities. However, there should be a direct link between who is benefiting from a council activity and who is paying. Where there is no benefit to the resource user of CME, it should not be them who bears the cost.

16.24 Preference: This should remain the remit of local authorities, but with additional funding and support available to councils, upon request, where they have small ratepayer bases and/or large geographic areas.

17 **ISSUE 13: INSTITUTIONAL ROLES AND RESPONSIBILITIES**

**Question 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?**

**Question 40: How could existing institutions and bodies be rationalised or improved?**

17.1 We wholeheartedly agree with the comment at paragraph 133 of the options paper, that many of the identified problems with the RMA have simply been due to insufficient capacity and capability in central and local government to fulfil the roles expected of them. We would add, however, that two crucial considerations are a lack of appropriate financing and resourcing of these roles, and the mass of increasing expectations, burdens and regulatory onuses placed on local government as a result of central government’s national regulations. We consider a priority being to adequately resource local government when additional regulatory and planning burdens are placed upon them.

17.2 The Department of Conservation is a regular submitter on planning processes and plays a significant role in many council and Environment Court appeal processes. This
is within its remit and legislative mandate. We also see other central government agencies playing a more hands-on role in local planning processes. Currently however, there is no central government ‘voice’ in planning processes for the primary sector, and we consider extending the remit of the Ministry for Primary Industries to similarly participate, when necessary, in local planning processes has merit.

17.3 As discussed in sections above, we do not support the EPA taking a greater hands-on role. Its role should be in oversight, support and monitoring/reporting, rather than more active on the ground involvement. We consider there is more scope for the independent PCE having a strengthened role in oversight and review of both environmental data, collation and reporting, and to that in relation to CME.

17.4 There may be merit to a pooling of planning resources from central and local government in some high priority, complex and resource-intensive processes. This could enhance capacity and capability and should be further explored.

17.5 There are some region-wide matters for which both regional councils and territorial authorities have interest and a remit. We support the reform providing for combined decision-making in specified matters. This will ensure less duplication or inconsistencies in final decision-making and be both more cost-efficient and effective for councils and applicants/submitters alike.

17.6 Preferences:
- That it is a priority for central government to adequately resource local government when additional regulatory and planning burdens are placed upon them;
- That there should be consideration into extending the remit of MPI to participating in planning processes in a similar capacity to other government agencies;
- That the EPA’s role should remain with oversight, support, monitoring and reporting, rather than a more hands-on, on the ground involvement;
- That the PCE should have a strengthened role in oversight and review of both environmental data, collation and reporting, and to that in relation to CME;
- That there could be merit to a pooling of planning resources from central and local government in some high priority, complex and resource-intensive processes;
- That reform provides for combined decision-making in specified matters.

**Question 41: Are any new institutions or bodies required and if so, what functions should they have?**

17.7 At paragraph 138(d) there is a suggestion for establishing a new agency to appoint and provide administrative support to Independent Hearing Panels. We support further considerations in this regard.
17.8 We note suggestions at paragraph 138 of a potential for the establishment of a Water Commission, broader Resource Management Commission and a National Maori Advisory Board on Planning and the Treaty. There could be merit in these proposals and we welcome the opportunity to both hear more, and to provide input into the specifics of proposals.

17.9 Recommendations:
- That further considerations are given to the establishment of a new agency to provide administrative support to Independent Hearing Panels.
- That wide consultation is undertaken prior to any further considerations as to the establishment of a Water Commission, broader Resource Management Commission or a National Maori Advisory Board on Planning and the Treaty.

ENDS