SmartGrowth Submission on

Transforming the resource management system: Opportunities for Change
Issues and Options

December 2019
To:
Resource Management Review Panel
C/o The Ministry for the Environment
PO Box 10362
WELLINGTON 6143
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Date: 3 February 2020

Name of Submitter:
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c/- s 9(2)(a)

Submission:
This is a submission by the SmartGrowth Leadership Group on Transforming the Resource Management System: Opportunities for Change - Issues and Options paper. The content of the submission follows overleaf.

We appreciate the opportunity to provide comments on the paper. We are willing and able to provide additional advice, respond to questions, or to assist the Resource Management Review Panel with any further work on the Proposed RM system review.

Signed:

s 9(2)(a) SmartGrowth Leadership Group
1. Introduction

Thank you for the opportunity to provide feedback to this vitally important review of the resource management system. This submission is presented on behalf of the SmartGrowth Leadership Group (“SmartGrowth”), a joint committee of the Bay of Plenty Regional Council, Tauranga City Council, the Western Bay of Plenty District Council and Tāngata Whenua. The Leadership Group is responsible for overseeing the implementation of the SmartGrowth Strategy, a 50 year spatial plan for the western Bay of Plenty sub-region1.

The SmartGrowth Leadership Group is supportive of this review and its stated aim ‘to improve environmental outcomes and enable better and timely urban and other development within environmental limits’. This goes to the core of what the RMA seeks to do.

It is critically important to all New Zealanders that we get this right. As New Zealand continues to grow and change, it is important that our primary environmental statute stays up to date, is fit for purpose, and able to address existing and new challenges.

This review is timely, as it has become increasingly evident to us that the RMA is no longer an ideal statute to deal with contemporary resource-use issues. In particular, we support efforts to deliver better and more housing in urban areas, whilst ensuring environmental quality is retained. This submission reflects our extensive growth management experience in the western Bay of Plenty and advances some suggested improvements we consider are needed to ensure quality growth and development. Our particular concern is that the RMA system is failing to adequately respond to New Zealand’s housing crisis, whilst also struggling to respond to increasing pressures on our natural environment and environmental systems.

Based on our experience of coordinating growth management in the western Bay of Plenty, we have identified some potential changes to the RM statute and wider RM system. We seek to retain the overall purpose and principles contained in the RMA, but suggest some changes that will help provide for an

1 The western Bay of Plenty sub-region covers the territorial areas of the Western Bay of Plenty District Council and Tauranga City Council.
improved built environment that can address issues such as housing, whilst ensuring sustainable development here and in our rural and natural environment areas.

SmartGrowth is happy to assist the Resource Management Review Panel with any further work on the Proposed RM system review.

2. **Summary of Main Submission Points**

SmartGrowth’s submission makes the following key points:

- Have a single statute to deal with environmental management
- Develop new principles of sustainable management to be advanced in areas of natural environment, rural environment and built environment.
- Retain and enhance reference to the Treaty of Waitangi, including co-management provisions and transfer of functions. Incorporate te ao Maori concepts into principles relating directly to the natural and rural environments.
- Spatial planning should be mandated under the new Act, and be specifically directed to urban growth.
- Spatial planning provisions should include the identification of core parties required to be part of spatial planning - central government. Regional council, local councils, iwi, the infrastructure commission.
- Spatial plans should be ‘given effect to’ by lower order plans.
- Resource use decisions should devolve to local councils, but guided by national direction through national priorities for the natural, rural and built environments.
- Exclude the possibility of private plan changes that are contrary to the direction contained in any agreed spatial plan.
- Investigate the greater use of economic instruments including how they can be used to better allocate scarce resources.
- Advocate for a national conversation about New Zealand’s population and impact on our natural resources, special sites, and infrastructure.
3. The SmartGrowth Strategy

3.1 Western Bay of Plenty Context

The western Bay of Plenty sub-region encompasses both the Western Bay of Plenty District and Tauranga City. The sub-region is an area of rapid population growth. The population is projected to reach around 244,000 over the next 30 years.

The SmartGrowth Strategy was originally adopted by the partner councils (Bay of Plenty Regional Council, Tauranga City Council, and the Western Bay of Plenty District Council) in 2004. The goal was to prepare an agreed strategy for the western Bay of Plenty sub-region to make provision for sustainable urban and rural development, specifically for the next 20 years and generally for the next 50 years. The SmartGrowth Strategy was comprehensively reviewed in 2013 and has evolved from purely a growth management strategy into the spatial plan for the western Bay of Plenty sub-region, which recognises that planning for population growth is intricately linked to and influenced by the economy, the community, the environment and cultural factors.

SmartGrowth is an integrated and comprehensive long-term strategy which provides a unified vision, direction and voice for the future of the western Bay of Plenty. SmartGrowth brings together in partnership, Tauranga City Council, Western Bay of Plenty District Council, Bay of Plenty Regional Council and Tāngata Whenua. The SmartGrowth Partnership is supported by the New Zealand Transport Agency, the SmartGrowth Partner Forums and other sectors, agencies and groups in the community.

3.2 Strategy Focus

The SmartGrowth vision is that western Bay of Plenty is a great place to live, work, learn and play. Part of this vision is the implementation of an efficient and integrated planning process for growth management. SmartGrowth supports a fundamental shift in growth management away from focusing largely on accommodating low-density suburban residential development towards supporting a compact and balanced land-use pattern which emphasises the importance of a liveable urban environment and
provides a wide range of lifestyle choices to enable people to live, work, learn and play within their communities.

A key feature of the SmartGrowth Strategy is its integrated planning approach. This advocates that land use planning should be contemporaneous with infrastructure (physical and social) provision and equitable funding. The aim of this approach is to reduce the potential costs of growth on communities now and in future as the sub-region grows.

The SmartGrowth Strategy reinforces the importance of familiar issues like the location and types of housing and employment and the impact on transportation networks, other infrastructure, and the need to protect versatile land, air and water resources that provide a strong base for the sub-region’s economy. The Strategy highlights the need to address areas of concern that have not traditionally been part of growth management in the sub-region such as the provision of affordable housing.

4. Transforming the resource management system. Opportunities for Change.

4.1 General Comment
After these general comments, the subsequent submission points generally follow the structure of the discussion document. We have sought to focus broadly on planning for urban growth related matters, as this reflects our experience and knowledge. However, where appropriate we have raised wider RMA matters and processes, institutional roles and responsibilities. Where appropriate, the specific questions contained in the issues and options paper are addressed.

While the issues and options document contains some good suggestions, many of which we agree with, we have provided some additional thoughts and ideas that we suggest would significantly improve resource use and sustainable management into the future.
**Sustainable management**

The underlying purpose of the RMA remains relevant and should remain. It is how this plays out in resource use decisions and in particular the trade-off decisions that are made that need greater direction and help.

SmartGrowth considers that to support the purpose, and to help with trade-of decisions, there needs to be greater clarity about the principles and how/when they are applied. As principles are likely to vary according to where they are applied, the principles could be separately articulated for the three main environments - the natural environment, rural environment and built environment. This would aid subsequent sustainable management decisions.

**National Direction v devolved decision making**

Those who are most affected by resource uses should be the ones to make these decisions. However often these decisions can be difficult and the correct trade-offs hard to determine. Central government needs to have an increased role to outline priorities to be applied at the local level.

**Spatial Planning**

Spatial planning is already underway in a number of local government jurisdictions. Despite this, because it is not directly aligned to the RMA or LGA, its mandate is weak. This needs to be fixed and spatial planning become a core part of the RM regime.

SmartGrowth welcomes the greater emphasis on spatial planning articulated throughout this issues and options paper. For spatial planning to be effective, it needs to properly mandated and require lower order plans to deliver/implementation.

It will also be critical that the correct agencies participate in spatial planning, including infrastructure providers.

**Infrastructure Planning and Funding**
Councils around New Zealand are grappling with the difficulties associated with the planning and costs of providing infrastructure to support urban development. Infrastructure planning is hugely complex and involves a myriad of agencies. Integration is very difficult.

While we acknowledge that there are a number of workstreams underway looking at alternative funding mechanisms. There is an opportunity to address infrastructure planning by mandating it as a core part of spatial planning and ensuring infrastructure integration with land use is addressed at this point.

SmartGrowth considers that these are two inter-related issues that need to be considered and advanced in tandem.

4.2 Issue 1: Legislative Architecture

**Sustainable Management**
The purpose of the RMA is the sustainable management of resources. This concept of allowing resource use so long as it does not undermine environmental limits and sustainability needs to be retained. It is how this plays out and the trade-off decisions that are made that need greater direction and help.

There are better ways to address environmental management and land use planning than separating them into separate statutes. Multiple statutes dealing with different aspects of development and sustainability is likely to be overly complex and obstructive. SmartGrowth considers that a single statute is a preferable way forward, particularly if greater clarity about how these different functions play out is provided (see below).

**Targeting to different environments**
The sustainable management concept should apply to both the natural environment and urban areas (arguably rural areas is another category) but trade-off decisions should vary according to each environment. Implementation is difficult because councils are trying to implement ‘sustainable management’ across a range of areas using the same template. Separating statutory frameworks for
natural environment, rural, urban, plus providing some clear guidelines or national priorities to guide trade off decisions would help.

In addition, there needs to be a greater focus on the beneficial ‘outcomes’ that can be achieved, balanced against environmental parameters for each context.

**Recommendation:** have a single statute to deal with environmental management, with a similar purpose to the existing RMA but containing clear sections relating to sustainable management of the natural environment, rural environment, and urban environment. Resource use outcomes in each context will vary in degree but still be expected to meet sustainability parameters identified for each context.

### 4.3 Purpose and Principles of RMA

**Retain its purpose**
SmartGrowth considers that the ‘sustainable management’ purpose of the RMA is robust, inter-generational and accepted across New Zealand society. It should remain. However, it is how resource use is assessed and considered against this purpose that needs refinement.

**Redraft principles**
We suggest that while the purpose is retained, the principles of the RMA are redrafted to recognise three separate environmental contexts and clarify outcomes sought for each:

1. Natural environment
2. Rural environment
3. Urban environment

Retaining the purpose while redrafting the principles to reflect differing expectations in different environmental contexts would go a long way to improving resource use decisions. This would enable faster, more efficient consenting for quality housing developments, for example, in urban areas in need of housing supply. It could equally make it much harder for new intensive dairying to be consented in rural catchments where streams and rivers have excess nitrogen loading.
It would also enable more innovative thinking about how to include issues such as resilience, biodiversity populations, or rural carrying capacity in the appropriate contexts. This could either be done ‘top-down’ by Central Government through NPS etc, or possibly regional councils through regional plans and policy statements, setting environmental standards or other parameters.

**Identify outcomes**

The direction outlined above could also expand on the ‘sought after outcomes’ for each environment in the Act’s principles, to be balanced against the sustainable management purpose.

Tea o Maori could be interwoven into the revised legal framework. This could play out strongly in the natural environment context (protect mauri) and rural areas, but less so in the built environment.

**Recommendation**: retain the purpose of the RMA but redraft the principles to identify natural, rural and urban environments and to broadly identify outcomes sought for each environment.

### 4.4 Recognising the Treaty of Waitangi and te ao Maori

**Incorporating Te ao Maori**

SmartGrowth considers that incorporating the concepts associated with te ao Maori into the principles of the Act would set the expectation for greater participation by Maori agencies in the RM system.

**Partnership**

Partnership opportunities in Section 36B and S33 should be enhanced to allow councils to consider more seriously co-management and/or resource use powers with local iwi. Particular emphasis should be given to including Maori concepts of mauri and sustainability to be applied in resource use decisions in the natural environment and rural environment contexts.

**Recommendation**: retain strong reference to the Treaty of Waitangi and include enhanced provisions for co-management and transfer of functions. Incorporate concepts of te ao Maori into the principles relating to the natural and rural environments.
4.5 Strategic Integration across the resource management system

Land use and infrastructure integration

Land use and infrastructure planning represents one of SmartGrowth’s most challenging aspects of planning for the Bay of Plenty’s growth. Aligning growth aspirations, housing supply, housing typologies, quality urban form, and the supporting infrastructure has been extremely difficult.

SmartGrowth has been undertaking spatial planning for some time, but faces a number of constraints that have meant the result is less than optimum. These include:

- No legislative mandate for spatial planning, hence lower order plans do not need to specifically implement the direction contained in the spatial plan.
- The presence of a multitude of infrastructure providers and agencies and the associated difficulties of bringing them together to deliver infrastructure to an agreed spatial form.
- Infrastructure funding constraints for councils.
- Timing and sequencing difficulties in the delivery of infrastructure.
- Commonly held misconceptions that infrastructure to new greenfield developments are more cost effective than retrofitting or enhancing infrastructure in the existing urban area.
- The need to work across a range of statutory requirements (LGA, LTMA, RMA, etc) to achieve an agreed urban spatial form.

Successful spatial planning, particularly in high growth areas, has the potential to transform how we plan and deliver growth. It should be a formally mandated process for planning for urban growth in urban environments. To ensure its success, it will be critical to ensure all key players are brought to the spatial planning table.

Spatial planning is a very good mechanism for bringing together local authorities, central government, tangata whenua and other relevant agencies on an agreed direction through a co-governance model. This is already starting to occur in the western Bay of Plenty sub-region as part of the Government’s Urban
Growth Agenda. This joint planning arrangement is critical and has great potential to be developed further. Further guidance should be provided via a National Policy Statement on spatial planning.

In addition to spatial planning, there is a need for new tools to ensure the identification, planning, funding and delivery of infrastructure. The recent creation of the Infrastructure Commission is a good start to ensure more aligned and well considered provision of infrastructure. Should spatial planning be mandated, some form of infrastructure advisory group should be used to draw together the various infrastructure strands, including – identifying the infrastructure requirements, providing best practice procurement advice, and alignment of the delivery of infrastructure that is required to support urban form.

**Recommendation:** spatial planning to be mandated under the revised RMA to act as a high-level spatial strategy for growth and development in urban environments.

**Recommendation:** spatial plans to be focused at a sub-regional or regional level (cross TA boundaries) and developed collaboratively.

**Recommendation:** the process for the development of a spatial plan should collaborative across the following core agencies:

1. Central Government
2. Regional Council
3. Local Councils
4. The Infrastructure Commission
5. Iwi

**Recommendation:** Once adopted Spatial Plans should become binding on the core agencies and be ‘given effect to’ in subsidiary plans – Regional Policy Statements, Regional Plans, District and City Plans, etc and specifically enabled through funding in local Long Term Plans.

### 4.6 Issue 6: National Direction

*Devolution of decision making for resource use*
SmartGrowth considers that it is important that day to day resource use decisions are made by local communities, as it is these communities who are faced with the consequences of those decisions. They are also the best placed to understand local conditions and hence how best local resources can/should be used.

Greater national direction can play an important role in clarifying national priorities to aid local communities in making resource use decisions, in particular how best to make trade-off decisions about local resource use. If, for example, retention or enhancement of biodiversity is a matter of national priority, a local decision considering a subdivision that requires clear felling of native forest is less likely to gain consent. However, the ultimate decision should remain with the local community.

Greater national direction could be tailored for each of the three environments; natural, rural and urban. Each category could have specific priorities unique to that environment, thereby reducing local council trade off uncertainties.

**Recommendation:** retain devolved decision making at local level, but build in greater national direction through the development of national priorities for the natural, rural and urban environments.

4.7 Issue 7: Policy and planning framework

**Plan quality**
The quality of policy statements and plans throughout New Zealand vary, in part due to the extensive plan development processes that requires considerable consultation and engagement. This inevitably leading to compromised plan provisions. Greater national direction would go some way to put some steel in local council decisions on plan provisions.

**Spatial plans in planning hierarchy**
SmartGrowth agrees that there is an opportunity for spatial plans to set spatial direction which would then need to be given effect to in subsidiary plans and have effect across RMA, LTMA and LGA.
An ‘effects’ based statute is not ideal to enable urban development, as councils’ focus tends to be on preventing adverse effects and hence retaining the status quo rather than defining and enabling beneficial development/housing. This could be overcome through national direction for the urban environment identifying housing supply and quality urban form outcomes as national priorities in urban growth areas. This would not undermine the environmental approach, but would signal sought after outcomes to be given greater weight and carefully considered.

Similarly, once content and direction has been agreed to in a spatial plan, this same content and direction should not be able to be appealed in subsequent planning documents.

**Plan development oversight**

In keeping with the concept of devolution, SmartGrowth considers that local councils should be developing the policies and plans that impact on their communities. We acknowledge however the variability in resources and quality throughout New Zealand local government. However, additional resource is readily available through independent commissioners that are already used extensively to aid councils in RM related matters. We support the extended use of commissioners to ‘support and guide’ councils in developing robust and appropriate RM plans.

**Private plan changes**

SmartGrowth accepts the view that private plan changes have some potential for making plans more reactive to market changes. However, we consider that there is a corresponding downside in that the consideration of a private plan change that is at odds with the community agreed expectations of a plan, undermines the whole plan preparation process. It also feeds market uncertainty. Both the community and the development market deserves the certainty associated with a plan that is developed and publicly consulted on through the Schedule 1 process. The value of this publicly mandated plan is far greater than the value of flexibility.

For spatial planning to be effective, there should be no possibility of private plan changes that are inconsistent with the agreed spatial form agreed in the spatial plan. Auckland Council is currently facing this issue, it is required to respond to a myriad of private plan change requests that are inconsistent with
the Auckland Plan and Unitary Plan. This undermines the legitimacy of these plans, signals uncertainty to the development market, and leads to significant additional stress on council resources.

For other RM plans, private plan changes are less detrimental. SmartGrowth considers that while private plan changes should be excluded for spatial plans, they could potentially be included for other RM plans, where they do not affect the general policy direction, but address a minor inconsistency or rule.

In our view, the private plan change requirements should be changed so that they either have to take account of strategic or spatial planning documents or they are excluded if they do not meet the strategic approach contained in the relevant documents.

**Recommendation:** retain regional and local councils as the primary source of policy and plan development, but encourage the use of independent commissioners to aid and support councils in policy and plan development.

**Recommendation:** provide additional national direction as the primary means to improve the quality of resource management plans. Do this through:

1. Mandating spatial plans to provide high-level spatial strategy for growth and development in urban environments.
2. Exclude the possibility of private plans changes that are contrary to the direction contained in a spatial plan.
3. Provide national priorities for councils to address in natural, rural and urban environments.

**Recommendation:** where spatial plans have been developed, the high level direction and content of subsequent policy statements and district/city plans should be unable to be appealed by submitters, as this has already been decided through the spatial plan process.

4.8 **Issue 9: Economic instruments**
Complement regulation

It is our view that economic instruments are under-utilised in resource management. However, while they should be available as an additional set of tools, they should play a secondary, complementary role to regulation. Regulation to guide resource use should be clear and unambiguous, but within this regulatory framework there is scope for a range of economic instruments. They could, for instance, be particularly effective in helping councils make allocation decisions for a scarce resource – aquaculture, freshwater, etc (see Issue 10 below).

There is the opportunity therefore for a revised RMA to specify a range of economic instruments that could be applied hand-in-hand with regulation. The simplest example is a financial penalty regime, where for instance resource consent conditions are not being met. The money paid for not meeting the resource consent conditions can then be applied by the consenting authority to remedy or mitigate the adverse effects (as well as incentivising adherence to the consent conditions).

Similarly, economic instruments could be applied to find the most environmentally sustainable use of a scarce resource. Where there is excess demand, a resource user who can demonstrate best practice, environmentally sustainable use of the resource gets an allocation, whereas less sustainable practices miss out. This is a far more robust and sustainable process than the current first in first served approach.

Recommendation: the Panel should research a range of economic instruments that can be used to complement and support the regulatory approach contained in the revised RMA.

4.9 Issue 10: Allocation

First in first served insufficient

The ‘first in first served’ approach to allocating resources under the RMA is inappropriate. This is especially so, as more pressure is brought to bear on finite resources such as freshwater, space for aquaculture, minerals etc. Now is the time to consider a more comprehensive approach to resource use. In keeping
with the overall sustainable management purpose, allocation could be provided based on how sustainable a resource use will be.

**Incentivise the sustainable use of scarce resources**

Councils should be required to identify a ‘carrying capacity’ for scarce resources, this to determine how much of a resource can be allocated up to a sustainable level (at or below carry capacity). Aligned with this, an allocation system could operate where resource users who can illustrate a greater ability to care for the resource than other potential users, get a greater share of the limited resource. Resource users who can show a sustainable use of the resource, should have it allocated to them, before less sustainable practices. This approach could replace the first in first served allocation regime.

**Recommendation:** the Panel should consider introducing an allocation mechanism that is based on sustainability principles, not the first in first served approach.

**4.10 Issue 13: Institutional roles and responsibilities**

Throughout this submission, SmartGrowth has already identified where roles and responsibilities within the RM system might change or be refined. An additional area of concern was identified in the Parliamentary Commissioner for the Environment’s recent report ‘Pristine, popular... imperilled? The environmental consequences of projected tourism growth’ – December 2019. While this is focused on the environmental consequences of tourism growth, there are strong parallels with the increasing pressures on resource use throughout New Zealand.

In many places, ongoing and increasing pressure on resources is making sustainable management difficult. The relatively recent explosion in intensive dairying is a single example of this trend. But there are also increasing concerns about the state of our biodiversity, water quality, plus tourism pressure, infrastructure overload, etc etc. It is time we as a nation take stock of what we have, and how we want to develop into the future. Do we want, for instance to continue along an extractive path dependency approach, or can we identify a more enlightened pathway.
Population increases are adding to these pressures. We are in need of a national conversation about population growth and its impact on our natural resources, special sites, and infrastructure. Is a total population of 5 million enough, or ten million, or twenty million? And would better population management better protect our mauri, taonga and special areas?

A revised RM needs to clarify how resource allocation will occur in the future, how we deal with finite resources, and whether we are truly serious about sustainable management.

**Recommendation:** advocate for a national conversation about New Zealand's population, its impact on our natural resources, special sites, and infrastructure and its dispersal around the country.