3 February 2020

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Tēnā koutou

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

Ngāti Whātua Ōrākei is kaitiaki of significant areas of the Auckland Isthmus and surrounds, including the city centre. Ngāti Whātua Ōrākei is also a significant land owner within the Auckland Region, as well as ancestral land and interests in sites of significance across the wider Auckland isthmus.

1. Introduction

Ngāti Whātua Ōrākei welcomes the opportunity to provide input to the Resource Management Review Panel (the Panel) on the issues and options paper for transforming the resource management system. Our comments are not just from a perspective of protecting Māori interests, but in terms of a partnership approach intended to promote better land use and environmental planning outcomes for all.

The issues and options paper identifies and addresses a significant number of issues with the resource management system in New Zealand. Ngāti Whātua Ōrākei considers that the key issues relate to Māori participation and engagement and spatial planning. In particular:

- The Resource Management Act 1991 (RMA) currently provides a good base of provisions relating to the Te Tiriti o Waitangi, protecting Māori interests and Māori engagement, partnership and participation. However, more could be achieved through enhanced opportunity for involvement and the legislative framework should recognise and give effect to the relative strengths of the hapū/iwi relationships in any given area. In addition, the current and any future functions in the legislation won’t be utilised appropriately unless adequate support is provided to iwi. This is necessary to build the capacity and capabilities for meaningful partnerships and engagement.

- We consider spatial planning to be of paramount importance in addressing many of the issues identified in the issues and options paper and in reforming the resource management and planning system. Spatial planning provides a good opportunity to move towards a forward thinking and proactive regime and needs to be a central focus for the panel in progressing with the reform process.

We have set out below an initial response to the paper, structured by way of answer to the questions posed. Our position is preliminary, reflecting that kanohi ki te kanohi engagement is required on the review and that our proposals below may evolve in response to that engagement with the Panel.

2. Issue 1 – Legislative Architecture

Although much has changed since the RMA was first introduced, it does represent a body of work and thinking which we believe shouldn’t be thrown out altogether but rather should be used as a baseline for improving the resource management system. In reforming the legislative architecture,
we support an integrated and streamlined statute with a clear purpose and principles that addresses outcomes for both urban areas and environmental management in a coherent and integrated manner, although we are neutral as to whether the existing RMA fulfil this role alone or as one piece of a fabric of related legislation. The Panel will need to consider the significant complexities in determining what should be dealt with under each legal framework and how to manage the priority of competing land use planning and environmental interests if addressed in separate pieces of legislation. We prefer the reform of the legislative architecture to take a holistic approach to planning practice in New Zealand. Ngāti Whātua Ōrākei considers the distinction drawn between “natural” and “urban” environments to be artificial and unhelpful\(^1\) – the natural environment carries the built, and they should not be separated although this can be achieved through one piece of legislation or through taking a fabric of legislation approach.

Ngāti Whātua Ōrākei strongly encourages the Panel to review and consider international approaches to resource management which could offer a new way of legislating land use and the built and natural environment. We consider it important to find an appropriate balance in the resource management reforms and see the review process as a good opportunity to draw on and utilise the best bits of different approaches in a new ‘RMA’ scheme whilst keeping in mind the unique social, environmental and cultural context in New Zealand.

Central to reforming the resource management system is that resource management legislation needs to be more strategic and outcomes focused. The RMA’s “effects bases approach” currently leads to a reactive approach to planning, focussing primarily on effects rather than outcomes. A “plan-led” system is required whereby consenting decisions follow a clear strategic vision and policy direction. In our view the legislation needs to be framed in a way that considers and fosters positive change in the natural and built environment. The RMA legislation should continue to set bottom lines, but it should do so in a more proactive, positive and outcomes focused manner – this would be better achieved via policy direction (i.e. NPS) rather than embedded in the statute itself to enable agility in response to emerging issues. The Role of the Act should be to establish the statutory weight of the policy statements.

In addition, s9 of the RMA, with its presumption in favour of development, is overly onerous - it requires plans to consider every possible outcome and therefore directly results in lengthy and complex plans. We believe that the presumption of s9 of the RMA should be changed to favour the use of land where it is in accordance with the spatial plan, regional plan and district plan. We consider that requiring compulsory spatial planning providing the policy lead, with strong legal weight over environmental management, land use plans, and consenting decisions is key to ensuring a more strategic forward-thinking focus is taken within land use and environmental planning.


The purpose and principles are critically important to the foundation of the legislation. Ngāti Whātua Ōrākei supports amendments to the purpose and principles in Part 2 which would promote strategic outcomes and encourage positive change in the natural and built environment, rather than the current focus of striving to maintain the status quo.

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

\(^1\) New Zealand Productivity Commission, Better Urban Planning, 2017
Ngāti Whātua Ōrākei is of the view that there are two key issues with the principles of the RMA set out in s6 and s7. The first issue is while many of these matters remain highly relevant, particularly the matters of national significance listed in s6, there are other significant matters that are not addressed including urban growth, housing supply and infrastructure development. There are also matters listed in s7 such as “the maintenance and enhancement of amenity values” which are completely out of date in urban centres which are having to accommodate rapid population growth.

To overcome this issue Ngāti Whātua Ōrākei supports a two-prong approach to setting the guiding principles of the Act with bottom lines being set in response to matters where outcomes sought remain consistent over time, and then introducing a more responsive approach to setting guiding principles for fast paced issues to accommodate changing priorities. In our view there continue to be environmental, cultural and heritage matters which are of national importance and which significant weight needs to be afforded to within the planning framework.

However, recent experience has also seen the emergence of many dynamic and fast-moving issues such as the response to earthquake disasters, climate change, water quality and supply, population growth, housing supply and infrastructure development where priorities shift rapidly to keep up with the pace of change. Ngāti Whātua Ōrākei is of the view that it is not appropriate to “lock in” bottom lines for the lifetime of a piece of legislation in relation to these types of issues. Legislation by its nature is not designed or built to change as rapidly as required to keep up with these types of significant issues and changing priorities. Therefore, Ngāti Whātua Ōrākei encourages the Panel to investigate how national outcomes which relate to dynamic issues such as those listed above can stay relevant within legislation.

One possible approach may be to address such matters via National Policy Statements. Another may be to introduce an alternative process or mechanism that would allow the review of the guiding principles in relation to dynamic and fast paced issues every 3-5 years. This approach could involve a requirement to undertake national reporting to measure the relevance of these issues and the priority that should be afforded, as well as whether the planning system is well placed to deliver outcomes in response to the given issues. We would suggest looking at how international examples of legislation enable guiding principles while providing flexibility to reflect changing priorities.

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

4. Issue 3 – Recognising Te Tiriti o Waitangi/ the Treaty of Waitangi and Te Ao Māori

Recognising Māori interests is important not only within the RMA but within the wider planning framework. Ngāti Whātua Ōrākei supports strengthened references to Te Tiriti o Waitangi and the spirit of partnership in the legislation. We welcome new approaches to support greater Māori partnerships and participation in the resource management system and are strongly of the view that the principles of Te Tiriti o Waitangi, most notably partnership, need to be “mainstreamed” and embedded throughout the legislation and planning system, not just in Part 2 of the Act.

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

In addition, there should be a requirement for the transfer of powers to iwi on ancestral Māori land and Treaty settlement land, rather than this function being an optional mechanism available to local authorities; this would foster more joint ventures and collaboration by giving iwi a greater stake. However, there needs to be a machinery of support provided by local authorities so that they hold a ‘duty of care’ function to support iwi who do not have the capacity to utilise these powers alone. Ngāti Whātua Ōrākei considers the Urban Development Authority model provides a useful basis for how this transfer of power to iwi for Māori land could work. This type of model will allow iwi more authority for streamlined planning and development with appropriate checks and balances but could enable iwi to receive support from Councils over more technical issues such as the issuing of building consents. Ngāti Whātua Ōrākei encourages the Panel to explore this opportunity further.

Paragraph 76 of the issues and options paper identifies difficulties in consultation processes particularly where there are multiple iwi, many hapū and overlapping rohe, which can cause delays, expenses and frustrations for councils, Māori, and applicants. Ngāti Whātua Ōrākei agrees this is a significant issue which needs to be addressed in the RMA reform. The issue has recently been considered in the Environment Court which issued a decision on 14 November 2019 on the responsibilities of RMA decision makers to consider “the relative strengths of the hapū/iwi relationships in an area affected by a proposal…” regardless of the complexity of that exercise. Accordingly, we consider that what ‘relationship’ means in the RMA needs to defined and demonstrable with evidence, building on s6(e) of the RMA. While Ngāti Whātua Ōrākei strongly supports the need for improvement, we recognise the difficulty of how to practically translate this into the legislation. Further work is required in this space and Ngāti Whātua Ōrākei would like to be involved in future discussion on this issue, however some potential solutions for consideration could include:

- Providing greater clarity in the legislation, including in the definitions section.
- A National Policy Statement.
- Council policy.

Ngāti Whātua Ōrākei is also of the view that there should be a requirement for spatial plans with strong legal weight to be developed in partnership between local authorities and iwi. This will enable Māori values, aspirations and interests to be clearly identified and provided for through the framework of RM plans and decision making, including spatial cultural landscape matters. We consider that involvement in spatial planning that has statutory weight will be more effective at promoting Māori values and interests than elevating reference to iwi management plans within the purpose and principles of the Act.

5. **Issue 4 – Strategic integration across the resource management system**

Ngāti Whātua Ōrākei is of the view that requiring compulsory regional spatial plans, with strong legal weight over environmental management and land use plans, is key to ensuring a more strategic focus is taken within land use and environmental planning. Requiring Spatial Plans with strong legal weight is potentially the most powerful of all things that could be done to improve planning in New Zealand. Properly undertaken spatial planning could be the core solution to address many of the current problems, inequalities and inefficiencies identified in the issues and options paper.
Spatial plans should be required to be developed at a regional and district level ensuring that local authorities are forward thinking and proactively anticipate the changes that need to occur to allow communities to thrive, rather than simply reacting as issues arise. Spatial plans are essentially strategic statements of regional policy and therefore could sit within and be the core of Regional Policy Statements from which regional and district plans would directly filter. Ngāti Whātua Ōrākei supports timeframes for the development and mandatory review of spatial plans being set in the legislation to ensure these plans are delivered efficiently and remain relevant focusing on the appropriate priorities. We acknowledge that the issues being faced in major growth centres will result in more complex spatial plans and the mandatory process and timeframes should be reflective of this (i.e. there needs to be proportionality of the planning response and sophistication of the spatial plan to the complexity of issues faced in any particular area).

In order to maximise the true potential of spatial plans, we strongly contend that spatial planning as part of a plan lead system needs to consider at least place making, urban design, urban growth, infrastructure, environmental issues, iwi aspirations, transport, protection of heritage and funding. We commend the Auckland Plan as a good example of a spatial plan which successfully integrates a broad scope of matters. We also note that the Auckland Plan took only two years to produce despite its wide scope, participatory design process, and the fact that Auckland Council itself had only just emerged from the upheaval of local government reorganisation. This suggests that spatial planning has the ability to respond and adapt quickly to changing circumstances – this ability needs to be central to any future planning system.

Crucially, spatial planning provides an ideal vehicle to enable a true partnership approach to planning, fulfilling local authorities’ obligations under Te Tiriti o Waitangi and giving effect to its principles. Ngāti Whātua Ōrākei sees active and meaningful engagement in spatial planning, undertaken with a true partnership approach, to be fundamental in enabling a step change in Māori participation. It is essential that spatial planning is required to be undertaken in a fully participatory manner lead by central or local government if a partnership approach in line is to be realised. In addition, the cultural landscape and Māori world view should be deeply integrated and embedded into spatial plans at a broad level.

Participation in spatial planning should be mandatory for Local Authorities and statutory infrastructure providers. There may be a role for government agencies (EPA or MfE) in facilitating the process. Spatial plans will also need to provide a clear lead for a number of other sector specific plans, such as Land Transport Management Plans and Council Long Term Community Plans. There may need to be consequential amendments to relevant legislation to establish the hierarchy of plans.

6. Issue 5 – Addressing climate change and natural hazards

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

Ngāti Whātua Ōrākei considers climate change needs to be significantly elevated in the RMA to support the influence planning can have from a land use and development perspective. Ngāti Whātua Ōrākei considers that there is potential for strategic elements of climate change to be incorporated into an integrated statute, although the matters may well be best addressed via National Policy Statements. The RMA should be used as a tool to assist in climate change mitigation, alongside other central government processes and initiatives, and could be amended to dovetail into the CCRA 2002.

Ngāti Whātua Ōrākei considers that to use the RMA as part of the package of tools to address climate change a number of amendments should be considered, including:
Retention of s7(i), with either expansion to this section, or an amendment to s7(j) to include the requirement to have regard to the benefits of climate change mitigation;

Amendment of S31 to include mitigation of effects of climate change as a function of territorial authorities, allowing direct consideration of climate change mitigation through plan making and resource consent processes;

An NPS or NES on climate change and natural hazards.

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

We know that many local authorities are looking at climate change adaptation strategies. We consider that central government should consider funding mechanisms for climate change adaptation, as options such as managed retreat or extinguishment of existing use rights are considered. S85 of the RMA may require amendment to better address scenarios where extinguishing existing use rights are proposed, with regard to reasonable use of land and compensation.

More generally, we note that the options and issues paper focuses on natural hazards that are impacted by climate change and effects, particularly coastal hazards. There is little commentary on other natural hazards that may or may not be climate change related. These natural hazards are experienced NZ wide, and an approach to their management and mitigation would also benefit from central government policy direction.

In addition, Ngāti Whātua Ōrākei considers central government direction to provide for clearer planning restrictions for development in areas with high hazards is required. This is an area where smaller councils in particular will struggle to get support from their communities (for example, recent storm events affecting coastal settlements on the West Coast) if not supported by central government mandate.

7. Issue 6 – National Direction

Ngāti Whātua Ōrākei supports the use of national direction and the role it has to play. The role of statute (i.e. the RMA) should be to set clear legal requirements for development and implementation of National Policy Statements. We consider that it should be a requirement for central government to deliver national direction which provides strong, clear direction and gives effect to a revised purpose of the Act. The review of the legislation should be used as an opportunity to consider how greater use of national direction instruments which are directive and can more quickly effect change can be used to addressing pressing issues.

The current suite of national direction under the RMA doesn’t align and integrate well together and is not always easy to interpret. It is not clear how the different NPSs are meant to work together or influence each other. In addition, the format and structure of national direction varies, adding to confusion for local authorities in giving effect to it. These issues are becoming more pronounced as more national direction is being introduced to address particular issues. Careful consideration is needed as further national direction is introduced in terms of competing interests, format and structure and how the different pieces of national direction work together. A potential solution could be use of a single, integrated and coherent piece of national direction (a National Direction Plan) addressing all NPSs and NESs and the relationship between them. This would ensure:

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

8. Issue 7 – Policy and Planning Framework

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

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

Structure of Plans and Regional and District Plan Functions

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

Ngāti Whātua Ōrākei is also highly supportive of combined plans and sees little need to retain the approach of having separate regional policy statements, regional plans (including regional coastal plans) and district plans. Having separate plans has resulted in hundreds of plans across the country. There is unnecessary variation between district plans within regions as Councils often roll over “tried and true” provisions rather than drafting provisions that respond directly to the Regional Policy Statement. While the National Planning Standards assist with the style and structure of plans there is still a lot of room for a significant degree of variation within the plan content. The breadth and complexity of planning issues is increasing, and plans are becoming more expensive to prepare. The common approach of having separate regional and district plans is inefficient. Iwi and other stakeholders struggle with limited time and resources to meaningfully engage and input on the development of separate plans.

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

Ngāti Whātua Ōrākei is strongly of the view that plans should be focused on achieving positive outcomes with plan drafting occurring in an activities/outcomes-based style.
Plan Making Process
The current plan making process is overly cumbersome and doesn’t enable Councils to undertake responsive planning that keeps up with increasingly fast paced issues facing communities. Ngāti Whātua Ōrākei is highly supportive of reforming the current Schedule 1 processes to enable a more streamlined process for minor plan changes and a ‘single stage’ process for plan review and significant plan changes.

In Ngāti Whātua Ōrākei’s view a ‘single stage’ process for plan review and significant plan changes should utilise an Independent Hearings Panel. Automatic rights of appeal on merit should be removed as appeals add significant costs and delays to the plan making and plan change process (for clarity, rights of appeal on point of law should be retained). To enable the removal of appeal rights the Independent Hearings Panel for a plan review should be chaired by an Environment Court Judge and the panel be made up of highly experienced commissioners who have undertaken further training (and not just the current "Making Good Decisions" course). The Independent Hearings Panel for significant plan changes should be chaired by a Commissioner from a pool of highly experienced and qualified commissioners. The hearings process should also provide for cross examination of expert witnesses, should the Chair see this as of value. Compulsory mediation, expert conferencing, and mediated direct discussions with submitters over property specific issues should be utilised to narrow issues prior to a hearing. Finally, findings of the Independent Hearings Panel should be binding on Council.

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

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

Private Plan Changes
The ability to apply for private plan changes should be retained only where these align with the strategic outcomes sought in the regional spatial plan. Plans need to be changed and updated in order to stay relevant and respond to changing needs and priorities, particularly in fast changing urban areas. Councils are not in a position to initiate all plan changes and will tend to prioritise more strategic plan changes of greater community benefit. This can lead to private stakeholders, community groups or developers having to work with a planning framework that is no longer appropriate.

Status of Iwi Management Plans
The issues and options paper suggests that greater status could be given to Iwi Management plans in Part 5 of the RMA. Ngāti Whātua Ōrākei sees some difficulty with this, as greater statutory weight would have to be concomitant with more rigorous process requirements (i.e. a “schedule 1” type of
set up) – this would remove flexibility and self-determination from iwi to determine the content and purpose of their plans. Ngāti Whātua Ōrākei is of the view that a requirement to develop spatial plans in partnership with iwi will more effectively provide a vehicle for iwi to ensure that their aspirations, values, and issues are addressed.

The role of Central Government
The issues and options paper raises the issue of whether there should be increased central oversight of plans and policy making, including a possible approval function. Ngāti Whātua Ōrākei firmly believes that the subsidiarity principle should apply – national government policy should be set out in National Policy Statements, whilst local democratic decision-making should be respected. That said, there may well be a useful role for central government in facilitating spatial plan-making processes (for example where multiple local authorities and/or statutory agencies cannot agree a common direction).

9. Issue 8 - Consents/Approvals
Ngāti Whātua Ōrākei is supportive of taking a comprehensive approach to reviewing how the consent process can become more efficient while enabling quality decision making with appropriate opportunities for iwi and public participation.

Categories of Activities
Ngāti Whātua Ōrākei is of the view that the categories of activities could be streamlined. There is potential in the urban environment to shift away from defined permitted activity envelopes towards an approach that offers more flexibility. This would require more use of discretionary activities, but with the proviso that s.9 embeds a presumption in favour of development in accordance with the strategic plan. Concomitant to this would be a need to rethink the current balance of cost burden – the current “user-pays” philosophy may need to be balanced with an element of public-good funding (see also below re Issue 9).

Process for Minor Consents and Residential Activities with Localised/Minor Effects
We consider that while assessment of effects should be completed for all consent applications, the scale and level of detail of the assessment and the process for obtaining consents needs to be proportionate to the scale of the activity. Ngāti Whātua Ōrākei supports establishing a separate permitting process and dispute resolution pathway for minor consents and residential activities with localised/minor effects. Central to establishing a separate permitting process will be determining what constitutes a minor consent and quantifying this within legislation. The legislation needs to be specific regarding what activities benefit from and can be subject to a simpler consenting pathway. Currently different Councils around the country are using bespoke pathways to streamline the consents process resulting in ad hoc approaches throughout New Zealand. This review provides the opportunity to build upon some of these ideas and formalise some processes which are proving to be successful and role these out nationwide. This will provide a level of comfort for Councils and greater certainty for applicants as to when and where a different streamlined application process can be applied.

Simplify Notification Decisions
From our perspective the current notification provisions lead to a more lengthy and costly consenting process. Furthermore, the current threshold for deciding if a person needs to provide written approval is very low as a person is considered affected by a proposal if the effects of the activity are “minor”. Ngāti Whātua Ōrākei supports revising the approach to notification so that a more appropriate balance is struck between public participation and enabling quality decision making while providing more certainty to applicants. This review provides the opportunity to promote a new approach to notification. If the Panel decides to retain the current system, Ngāti Whātua Ōrākei considers that, at the very least, the thresholds for affected parties be increased from “minor” to “more than minor”. It is important to note that changes to the legislative architecture will ultimately affect the approach to notification particularly if earlier comments in this submission are adopted.
leading to an outcomes-based approach rather than the current more reactive effects-based approach.

We see benefits to the first suggested approach within the issues and options paper for simplifying notification decisions. This option appears to be based on the UK model where applications are notified to all immediate residents in the area who have a set timeframe to submit concerns. Within the UK developments over a certain threshold will be heard by a Council Committee. It is up to the Council to determine these thresholds with some basing the threshold on the number of submissions with other Councils basing the threshold on the scale of the project or infringements.

This approach has clear benefits as it is very transparent and provides certainty to applicants in relation to applications. As hearings and appeals add a lot of time and cost to the application process the key to this approach being successful in the New Zealand context will be limiting the hearings and appeals to large complex applications where the decision maker requires the ability to hear and question experts. It should be possible to define specific criteria based on the scale of the proposal whereby the requirement for a hearing is triggered.\(^2\) If setting a threshold for when a hearing or appeal right is triggered then this should be based on the proposal itself rather than the number of submitters. This is because even though an application may attract a lot of community opposition it does not mean it will result in adverse environmental effects or that the activity is unanticipated. An example being that applications for social housing can often attract a lot of unsupportive submissions because of perceived social issues.

**Māori Involvement**

We consider that a clear process for Māori involvement in the consent process should be established. In addition, the legislation (whether in and of itself or through an NPS or other mechanism) should provide guidance and clearly set out which iwi are to be consulted on consent applications in any given area to recognise and provide for the relative strengths of the hapū/iwi relationships in any given area.

**Designations**

Designation provisions need to be updated to ensure designating authorities’ objectives for a project achieve the ultimate goal of sustainable management (or the goal of the reformed legislation). Ngāti Whātua Ōrākei considers that designations should be required to align with the strategic direction of the spatial plan and tied to cultural outcomes in s176.

**10. Issue 9 – Economic Instruments**

The RMA could be an appropriate place for economic instruments particularly where it is tied to resource allocation and environmental impacts, however this will require further exploration.

In addition, planning is at heart an intervention in private property rights for the benefit of the public good. Yet in New Zealand the processing of resource consent applications and private plan changes is based on an entirely user-pays fee structure. This is compounded by the generally hourly basis of accumulation of council fees, and the lack of certainty at the start of the process as to what the final fee may be. We consider that a balance needs to be struck in terms of fees and would urge consideration of alternative funding structures for resource consent processing, for example fixed fees with the balance funded from general rates or taxation. This would remove a lot of difficulty with planning-cost barriers.

**11. Issue 10 - Allocation**

\(^2\) For example, the UK regulations on Environmental Impact Assessment include detailed criteria (thresholds) as to which development proposals require EIA. A similar approach may be used to set hearing thresholds.
Allocation is currently a significant hole in the RMA and Ngāti Whātua Ōrākei supports reforms that improve how allocation is addressed in the legislation. In principle we support greater use of economic instruments, especially with allocation of public resources, such as water and aquaculture rights, under environmental legislation. A Treaty compliant legislative framework should address identification and allocation of a "cultural share" in land, water, and other resources including taonga to the relevant iwi and hapū interests that exercise ahi kā and kaitiakitanga. That cultural share could then be the subject of an NPS, followed by regional (or district) rules that identify allocation in context of individual plan changes or resource consent applications (or their equivalent). Allocation is a complicated issue that will require further exploration. Ngāti Whātua Ōrākei considers that spatial planning will be key to responding to allocation in terms of addressing resource availability and allocation and planning for scarce resources and strongly suggests that the Panel explores the role spatial planning can play.

12. Issue 11 – System monitoring and oversight

There is currently insufficient monitoring of the performance of resource management plans due to an insufficient evidence base and poor data collection of consents. The lack of evidence base affects the ability to make robust decisions and improve the performance of the system. We support changes to the legislation that will better enable and strengthen monitoring, data collection and use. For example, the sharing of resources between central and local government and iwi will better enable each region to ‘plan’, set visions, and prepare for future growth. In addition, Ngāti Whātua Ōrākei considers that an outcomes monitoring system should be developed that is culturally appropriate and recognises mātauranga Māori.

13. Issue 12 – Compliance, Monitoring and Enforcement

Compliance, monitoring and enforcement (CME) is essential to the RM system. Ngāti Whātua Ōrākei agrees with the issues and options paper in that investment made in legislation, plan-making, and consent processes is undermined when the rules and conditions imposed through decision-making are not upheld. We are supportive of the suggested options and potential improvements for CME outlined in the issues and options paper. Additionally, there is an important educational component to CME and we consider that more emphasis on educating the individuals who process consents to ensure they have a greater understanding of the system and relevant plans as a holistic whole is required (together with education of consent holders).


We agree that many of the issues identified with the RMA are a direct result of insufficient capacity and capabilities to fulfil the tasks, roles and functions expected. The options presented for reform discussed above will require sufficient capabilities and capacity within institutions to ensure we do not continue to see some of the same problems being experienced now in the future.

Ngāti Whātua Ōrākei supports in principle the concept of a National Advisory Board on Planning and the Treaty to assist with roles and responsibilities in the planning system to promote and protect Māori values but this board would need to be impartial and independent which could be difficult to establish. As an alternative option, Ngāti Whātua Ōrākei recommends the Panel explore whether there is an opportunity to expand the role of the Waitangai Tribunal rather than establishing a separate advisory board.

15. Issue 14 – Reducing complexity across the system

It is broadly accepted that the current planning system in New Zealand is overly complex. Ngāti Whātua Ōrākei agrees with this assessment. The planning system needs to be accessible and fit for purpose, and this is plainly not the case at present.
Ngāti Whātua Ōrākei strongly supports a refresh and reform of the resource management system in order to facilitate an integrated piece of legislation which has a clear purpose and is proactive and outcomes focused. We consider that central to the resource management system is legislation with a clear purpose and set of principles based on a forward-thinking spatial planning approach which provides clear direction for that purpose and subsequent vision for communities is to be achieved.

16. Conclusion

Ngāti Whātua Ōrākei supports reforms to the resource management system. In order to address the range of issues identified, we recommend the following key changes of paramount importance in having a significant positive impact on the future resource management system:

- The legislative framework having a clear purpose and principles which addresses both urban areas and environmental management (which is strategic and outcomes focussed) whether within one piece of legislation or a related fabric of legislation;
- The introduction of mandatory spatial plans at the regional level; and
- Tiriti o Waitangi principles, notably partnership, being “mainstreamed” into the planning system with iwi supported to foster and enable meaningful partnership and participation.

We thank the Panel for the opportunity to provide feedback on the issues and options paper and look forward to further engagement.

Noho ora mai

Ngāti Whātua Ōrākei Trust