3 February 2020

Resource Management Review Panel
Ministry for the Environment
PO Box 10362
Wellington 6143

Email: rmreview@mfe.govt.nz

Tēnā koutou rā,

Bay of Plenty Regional Council Submission: Transforming the resource management system: Opportunities for change.

Thank you for the opportunity to comment on the issues and options paper for Transferring the Resource Management System: Opportunities for Change.

By way of context, the Bay of Plenty Regional Council (BOPRC) comprises of two high growth areas (the Western Bay of Plenty district and Tauranga City) and also includes vast natural areas and a significant stretch of coastline. In terms of demographics, the region includes an estimated 307,000 people including a proportionally high number of Māori (26%).

BOPRC supports many of proposed changes to update the Resource Management Act 1991 following almost 30 years of amendments and in response to a wide range of issues that have emerged since the RMA was enacted. From a regional perspective, the Council is engaged in a wide range of planning issues relating to the Treaty of Waitangi, climate change, urban growth and capacity, environmental degradation, loss of productive soils, freshwater and natural hazards.

At a national level, the Council welcomes more national direction for scoping and guiding plan making processes and support for our regulatory functions. However, it is hoped that inherent tensions between the objectives of the various National Policy Statements are guided by overarching policy directions and less so through legal processes. Opportunities to necessarily limit grounds for appeal, particularly vexatious appeals and wider use of independent hearings panels are also supported.

The Council also supports spatial planning and the alignment of infrastructure legislation to support not only urban growth but other pressing issues such as on-going environmental degradation, climate change and natural hazards.

The following feedback focuses on the Council’s regional functions and key issues within the region to complement feedback from the other local authorities. We look forward to the viewing feedback from the wider resource management community and future opportunities to engage in this review process.

Objective ID: fA1153353
BOPRC feedback on the RMA issues and options paper

Please contact on 0800 884 881 or for any queries or questions relating to these comments.

Nāku noa, nā,
BOPRC feedback on the RMA issues and options paper

Issue 1: Legislative framework

Should there be separate legislation for land use and natural resource planning or the status quo combined approach in the Resource Management Act 1991 (RMA) continued?

BOPRC Comments:

- Strongly support an integrated planning approach to manage natural and physical resources with appropriate linkages to related implementation legislation;

- At a national level, the Council welcomes more national direction to provide more certainty for plan making and regulatory functions and, for scoping and guiding plan making processes. The latter could be achieved through additions to the National Environmental Standards for National Planning Standards;

- Support strengthening national directions (including future Government Policy Statements) and other non-RMA statues (LGA\(^1\), LTA, CCRA and other infrastructure legislation) to deliver integrated outcomes to support spatial planning and climate change responses;

- While the Council supports National Planning Standards, they do not address the unresolved tension in balancing priorities under Part II of the RMA. If this tension remains unresolved, or planning intervention does not effectively intervene in the market, the pressures of growth and its demands on our natural resources are likely to further compromise our natural habitats and indigenous biodiversity.


Should the purpose of the Resource Management Act be amended?

Options include providing new statements for environmental values, urban development issues, and Te Ao Māori, and reframing sections to clearly provide for maintenance and enhancement of the environment, outcome based planning, provision of urban development capacity and climate change.

BOPRC Comments:

- To reflect current planning challenges in Part II of the RMA, a greater emphasis is sought on the following matters:
  
  (i) Te Mana o te Wai;

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\(^1\) Local Government Act, Land Transport Act, Climate Change Response Act.
(ii) climate change;
(iii) infrastructure;
(iv) urban development capacity;
(v) spatial planning; and
(vi) good quality urban design.

Otherwise, the existing hierarchy of priorities outlined in Part II is supported. Comments relating to section 8 of the RMA (Treaty of Waitangi) are addressed under Issue 3 below.

- While the Council welcomes clearer national policy direction, the critical issue is a lack of direction regarding the hierarchy of planning priorities in Part II. This is because ‘sustainable management’ is a subjective term which can ultimately undermine the hierarchy of planning priorities set out in sections 6, 7 and 8 of the RMA.

To this end, the Council suggests clearer direction be given to the hierarchy of planning priorities as guided by the anticipated Government Policy Statement and the various existing and forthcoming national policy statements.

- The natural environment is significantly more degraded now than when the RMA was enacted. BOPRC supports invoking a similar ‘net gain’ in biodiversity approach to the UK’s draft Environment Bill 2019.

- Good urban design could be added to section 7 of the RMA to promote the need to design urban areas in a strategic and considered manner. Despite the NZ Urban Design Protocol there has been relatively little progress in this space with growth cities still significantly spreading outwards without achieving good urban design and the benefits that come from compact, well designed urban spaces.

**Issue 3: Recognising Te Tiriti o Waitangi/the Treaty of Waitangi and Te Ao Māori**

Options include strengthening the section 8 reference to the Treaty, removing barriers to increase uptake of joint management arrangements (section 36B) and transfer of powers (section 33), clarifying the meaning of iwi and hapū authorities in the RMA and consultation processes, providing funding to support participation, monitoring councils’ performance in relation to Treaty requirements, and providing capacity and a role for other bodies (e.g. Independent Māori Statutory Boards).

**BOPRC Comments:**

A third of all iwi in New Zealand are located in the Bay of Plenty region. To date, there have been 19 treaty settlements in the region and BOPRC is engaged in
three co-governance forums. Further settlements and co-governance arrangements are imminent.

- BOPRC supports changes to elevate and reflect the special *treaty-based partnership* relationship between the iwi/hapū and the Crown in a resource management context. The Council supports amendments to make explicit reference to key treaty principles to guide resource management processes and decision making.

- Successful local implementation of post settlement co-governance/co-management arrangements and, Te Mana Whakahono ā-Rohe agreements are contingent on technical expertise and adequate resourcing but above all, adequate funding.

While this is not strictly a RMA issue, the Council supports the introduction of funding models as a means of forecasting and providing for the implementation costs associated with treaty settlements. Further, such modelling is essential to enable a transfer of powers and/or joint management arrangements however, the ‘efficiencies test’ under the Local Government Act requires further consideration.

- The term *kaitiakitanga* is inherently linked to section 6(e) and section 8 of the RMA - clearer wording in future drafting is needed to reflect this. Overall, the Council would welcome national policy statement guidance on:
  
  (i) the meaning of sections 6(e), 7(a) and 8 and the relationship with other parts of the purpose of the RMA; and

  (ii) Te Tiriti o Waitangi and resource management processes and decision making.

### Issue 4: Strategic integration across the resource management system

How can spatial planning be best provided for?

Options include creating an overarching strategic planning statute, providing for spatial planning within existing legislation, or improving legislation linkages. Legal weight and integration with other planning documents requires consideration, with possible options including provision at a regional level only, when triggered by legislation, or for growth areas only.

**BOPRC Comments:**

Spatial planning is already an effective growth planning tool which can be legitimately included within district plans. The upcoming National Policy Statement – Urban Development is expected to require spatial planning in high growth areas.
BOPRC feedback on the RMA issues and options paper

• Spatial planning also presents a further opportunity to consider prioritising the protection of ‘green infrastructure’, natural hazards, climate change mitigation and adaption, and rural land use change in high growth areas. This provides for an integrated overview of planning issues outside of the limitations of statutory plan making processes. It is also a useful tool for engaging on issues with tāngata whenua, stakeholders and the wider public.

• BOPRC supports spatial planning as a wider pre-structure planning tool to align infrastructure provision priorities with land use to inform future urban growth and form in the region.

• BOPRC supports strategic planning functions sitting with regional council as a means to centralise decision making on growth issues, particularly in high-growth areas.

• As part of any spatial planning work, consideration should be given to:
  
  (i) linkages and influences of other districts and regions;
  
  (ii) better linkages and provision within the Local Government Act, RMA and the Land Transport Management Act to ensure better integration with funding and planning considerations;
  
  (iii) spatial planning should only be required for urban centres identified as experiencing medium or high growth pressure; and
  
  (iv) spatial planning should require collaboration on land that is on or adjacent to, land registered under the Te Ture Whenua Māori Act 1993.

• The Council considers spatial planning should give appropriate weight to environmental protection and restoration, natural hazards, climate change mitigation and adaption, and rural land use change to ensure planning opportunities are not missed.

• To assist with the delivery of integrated outcomes using spatial planning, the Council supports the further strengthening of these terms in national directions (including future Government Policy Statements), regulatory frameworks as well as linkages to other non-RMA statues (LGA\(^2\), LTA, CCRA and infrastructure legislation).

Issue 5: Climate change and natural hazards

Should the RMA be used to address climate change mitigation, and what changes are required to address adaptation and natural hazard management? How should the RMA be amended to align with the Climate Change Response Act 2002?

Options include adding climate change as a Part II matter, developing a greenhouse gas NES, creating national direction for development in high risk areas, and clarify changes required for existing use rights in the context of managed retreat.

BOPRC Comments:

The BOPRC has resolved to acknowledge climate change as a serious issue for the region.

The impacts of climate change are pervasive and while the RMA provides for managing effects associated with climate change (s.7), it is becoming increasingly clear that local authorities and their communities have a vital role in providing for adaptation planning and mitigation as a response to climate change.

The issue of greenhouse gas emissions should be revisited as the emission trading scheme has not proved to be an effective mechanism for addressing the effects of climate change. As such, the Council seeks that the Panel consider the following:

- long term planning approaches to managing risk alongside hazard planning;
- a national environmental standard that regulates greenhouse emissions;
- compact quality urban design delivered through good spatial planning;
- a mechanism for the Climate Change Response Act 2002 to locally respond to the National Climate Change Risk Assessments and changes to the National Adaptation Plan. It is still unclear as to how these national assessments/plan translate into action at the regional level;
- national guidance on natural hazard risk that addresses clarification of hazards that pose a significant risk in a RMA context, guidance on appropriate mitigation as well as risk assessments; and
- further guidance on managed retreat as a significant portion of the Bay of Plenty region’s coastline is developed.
Issue 6: National direction

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

Options include making greater use of NES, requiring a mandatory suite of national direction including direction on the Treaty, and further developing national planning standards.

BOPRC Comments:

- BOPRC supports more national environmental standards and national policy statements to provide greater efficiencies nationwide. This could be achieved by a national planning standard for urban design that identifies specific development controls. For example, most provincial residential areas are very similar in character and amenity and such controls could be standardised through the national planning standard.

- Further consideration could be given to the use of district plan templates for specific topic areas which are supported by parameters to achieve more consistent outcomes in terms of local landscapes, storm water, cumulative effects etc. Where appropriate, the Council also supports outcome-based plan content especially for natural science related resource management topics.

Issue 7: Policy and planning framework

How can plan contents and process certainty be improved?

Options include requiring regionally combined plans, reconsider the functions of regional and district councils, move towards outcome based plan content, provide step and timeframe flexible plan making processes, adopt a single stage plan making process, and expand or restrict the ability to apply for private plan change.

BOPRC Comments:

- BOPRC supports a more flexible plan-making process so that minor plan changes can be progressed using a streamlined process. Existing gaps or shortcomings in regulatory plans are generally not addressed until a wider plan review/change is undertaken as the costs are often prohibitive.

- There are some overlapping functions for regional and district councils which could be more efficiently managed with a minor review of functions. Transferring responsibilities from district councils to regional councils for matters such as flood protection assets and contamination would be efficient.
Further content to clarify the implementation of the NES on planning standards would be helpful.

BOPRC supports a robust single stage hearing process for plan making, the use of independent panels with wider powers, greater government oversight and expansion of the powers to restrict private plan changes.

**Issue 8: Consents/approvals**

How can consent processes be improved to enhance outcomes whilst preserving public participation opportunities?

Options include simplifying activity statuses and processing tracks, removing the need for AEEs for some minor consents, establish a separate permitting process for residential activities with localised effects (e.g. boundary activities), and simplifying notification decisions by notifying all activities and removing automatic hearing and appeal requirements, requiring plans to specify notifiable activities, or clearly defining who is an affected party or when special circumstances apply.

**BOPRC Comments:**

- The Council supports:
  
  (i) mandating online systems to improve efficiencies to reduce costs and reduce paper waste;
  
  (ii) separating consent pathways for nationally significant proposals and common minor applications\(^3\) for cost and time reasons;
  
  (iii) national guidance on what constitutes ‘special circumstances’ under section 91 of the RMA;
  
  (iv) removing the non-complying activity status as the tests have become indistinguishable from a discretionary activity (section 104D);
  
  (v) delegating notification thresholds to local councils to simplify notification processes; and
  
  (vi) reviewing Schedule 4 (Matters to be considered in an Assessment of Environmental Effects) and updating to reflect case law\(^4\).

- The Council opposes notifying all activities due to the complexity of dealing with submissions that may not have a legitimate resource

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\(^3\) Infringements relating to development controls

\(^4\) For example, Schedule 4 states that an assessment of the activity against Part II matters must be included and yet recent case law suggests this is not always required. Schedule 4 also requires an assessment against relevant objectives and policies (for all resource consent applications) and this may serve little purpose for controlled activities.
management basis (i.e. trade competition and vexatious submissions). However, notifying activities within certain specified activity status and removing automatic hearing and appeal rights could expedite the consent process and increase transparency.

**Issue 10: Allocation**

Should the RMA guide resource allocation, and should the use of resources such as water and coastal space be dealt with under the RMA or separately? (pg.42)

*Options include retaining or modifying the ‘first in first served’ principle, providing new allocation tools at national or local level, modify consent duration, change consent renewal basis, and giving more or less power to authorities to cancel or vary consents.*

**BOPRC Comments:**

- The Council supports the integrated management of coastal marine space and water to be retained in the RMA.

- Some aspects of mineral and fisheries allocation are already possible under the RMA. If there are other aspects that are not possible, but considered desirable by central government (such as resource rentals/royalties) the RMA could be amended accordingly.

- The BOPRC supports national policy direction to provide the basis for a consistent approach to local decision making about resource allocation of take, discharge and occupation resources.

- The Council supports the resolution of outstanding treaty issues relating to the Marine and Coastal Area (Takutai Moana) Act 2011 before progressing any optioneering around allocation of coastal space.

**Issue 12: Compliance, monitoring and enforcement**

What changes are required to improve compliance, monitoring and enforcements, and who should deliver, oversee and bear the cost of these? (pg.45)

**BOPRC Comments:**

- The Council supports the options proposed for discussion in the paper, in particular:

  (i) strengthening statutory powers and penalties where non-compliance is linked directly to commercial gain; and
additional mechanisms for cost recovery of compliance, monitoring and enforcement functions in relation to non-consented activities (e.g. permitted or prohibited). The latter is consistent with the principle of “polluter pays”, which helps to ensure that the wider ratepayer base does not unreasonably bear the cost of monitoring specific activities, particularly where they are commercially driven.

- Adequate resourcing of the Ministry for the Environment’s recently established centralised oversight unit to improve accountability from regional and local authorities is a key issue in implementing the Regional Sector Strategic Compliance Framework.

**Issue 13: Institutional roles and responsibilities**

Are changes to the functions and roles of institutions exercising authority needed, can existing bodies be rationalised or improved, and are new bodies required?

Options include expanding EPA functions, pooling central and local government planning resources, providing for combined territorial and regional decision making processes, expanding the role of Environment Court Judges and commissioners to other bodies (e.g. Independent Hearing Panels), establishing a water or resource management commission, establishing a National Maori Advisory Board on Planning and the Treaty, and creating accountability mechanisms within larger councils.

**BOPRC Comments:**

- The Council supports:

  (i) greater direction and clarity to be provided to Environment Court judges so as to strike out vexatious and wide ranging appeals and, to expedite appeal and mediation proceedings to reduce time and administrative costs;

  (ii) expanding the functions of the Environment Protection Agency including enforcement where is doesn’t compromise the regional council’s enforcement functions;

  (iii) independent hearings panels;

  (iv) the development of a mechanism to monitor targets on nationally significant issues such as housing targets, water quality and allocation etc; and

  (v) establishment of an advisory board on the Treaty of Waitangi.
BOPRC feedback on the RMA issues and options paper

Issue 14: Reducing complexity across the system

BOPRC Comments:

- As greater integration of central and local government has been signalled, the Council welcomes simplified processes that do not compromise the delivery of core regional council functions under the RMA; and

- The Council supports appropriate linkages between the RMA, the Land Transport Management Act 2003, the Local Government Act 2002 and related infrastructure acts to support implementation.