Submission

Government issues and options paper on comprehensive review of the resource management system

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Via email: rmreview@mfe.govt.nz

To the Resource Management Review Panel

Submission on the Government's issues and options paper on comprehensive review of the resource management system

Wellington City Council (The Council) welcomes the opportunity to provide comment on the issues and options paper. The attached submission provides comments on each of the issue areas identified by the Panel.

The Council recognises that this is an initial phase of engagement and that further consultation will take place in the future on the Government's preferred direction for the Resource Management System. The Council looks forward to continuing to be involved in this process.

Yours sincerely

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Introduction

1. The following is Wellington City Council's (the Council) submission to the 'Transforming the Resource Management System: 'Opportunities for Change' issues and options paper, which has been released as part of the Government's comprehensive review of the resource management system.

2. The Council notes that the review is focused on the Resource Management Act 1991 (RMA), as well as its links to the Local Government Act 2002 (LGA) and Land Transport Management Act 2003 (LTMA). The RMA is one of the primary tools driving local government decision-making and planning. In terms of shaping the future of our built environment it is one of the most pivotal tools available to local government.

3. The Council recognises that the aim of this review is 'to improve environmental outcomes and enable better and timely urban and other development within environmental limits'. The Council considers the aim of the review should have a clearer focus on improving the guardianship of resources for future generations whilst allowing the current generation to meet its needs within ecological limits.

4. The Council provides the following comments on each of identified issue areas for consideration by the Panel. The Council's comments are informed by its experiences as a Territorial Authority functioning within the resource management system in a Wellington context. Wellington City today faces a number of environmental challenges due to the pressures of urban growth, including housing affordability and water quality, which have in part been not been adequately addressed by the Resource Management System over many years.

Issues 1 and 2: Legislative architecture and purpose and principles of the Resource Management Act 1991

5. The Council does not consider that the management of natural and built environments can, or should be, separated by different pieces of legislation. The Council notes arguments that the current integrated approach to resource management has led to poor outcomes for both natural and urban environments. The Council considers that these arguments do not recognise that the environment in its broadest sense is not constrained by an urban and natural distinction. Effects of land use activities in an urban environment (however defined) have direct impacts on the natural environment.

6. Turning back the clock to a pre-RMA approach of separate pieces of legislation for managing different parts of the environment is not supported. It is difficult to see how separating out the consideration and management of environments and effects into different pieces of legislation will allow a realistic and balanced approach to the management of resources. Separation of land use planning and environmental management is likely to cause greater conflict in the management of resources, where integrated management is fundamental.
7. The Council notes however that urban, rural and ‘natural’ environments do require different management approaches and experience different pressures. Legislation needs to be flexible enough to empower local authorities to manage the subtleties of their environments and the relationships between them, not force a division. Resolving conflicts and practice issues from changing to a separated legislative system would ultimately end up the task of the courts. Accordingly, there would be significant time delays settling disputes and determining best practice while pressure on the environment continues to grow.

8. While it has taken many years for integrated management approaches to work their way into the RM system, we are now starting to see these being adopted in RMA plans, for example, water sensitive urban design principles. The Council considers that slow progress embedding such approaches in plans is not driven by the RMA per se but by other barriers.

9. The Council generally supports the ‘sustainable management’ purpose of the RMA as set out in Part 2, section 5, as it recognises that the natural and urban environments require an integrated management approach. The Council considers that more clarity can be achieved through greater Government direction. This direction should be developed through in-depth engagement with local authorities and stakeholders to provide certainty in the management of specific resources with a focus in outcomes required to be achieved or environmental bottom lines. This could be achieved through principles targets set in legislation (eg as in the recent Zero Carbon Bill), or through more detailed national direction (eg, a national direction tool for each section 6 matter of national importance).

10. The Council questions whether the framing of resource ‘management’ is the correct way of viewing the environment in today’s context, and considers the review should examine a move towards a frame that protects natural resources for future generations and with a Te Ao Māori perspective. The Council considers that the concept of kaitiakitanga (stewardship) should be introduced alongside or instead of ‘management’. In doing so, the Council recommends that the Government moves from a purely effects-based regime (recognising the effects of activities will need to be assessed in resource consents) to one that sets out a complete set objectives supported by a strong planning regime. This planning regime would include environmental protection and the adequate provision of infrastructure and housing.

11. The Council considers that additional matters need to elevated within the decision making framework of the RMA, either as matters of national importance, or as a fundamental component of sustainable management to reflect current pressures on the environment. These matters are:

- mitigating and responding to the effects of climate change (particularly as a central component of section 5).
- the provision of affordable housing.
- the creation of quality urban environments.
- the development and operation of strategic infrastructure.

12. The Council refutes the continued rhetoric that the RMA is the single greatest barrier to the provision of housing, particularly affordable housing. Instead the Council considers that the high cost of housing in some parts of the country is instead driven by the collective effect of:

- Financial incentives (eg, security of property investment and access to capital).
- Developer incentives (eg, Maximising return by constructing limited numbers of high value houses where different typologies and higher yield could be achieved, land banking to keep prices high).
- High cost of building materials.
- Limited capacity of the construction sector.
Issue 3: Recognising Te Tiriti o Waitangi and te ao Māori

13. Many Māori groups frequently face challenges participating in the resource management system due to capacity and capability constraints. These constraints are not equal around the country, and vary between iwi depending on many factors including Treaty settlement status and financial capability to be involved. The Council is therefore uncertain whether tweaking the legislative framework for partnering with Māori in the resource management system will lead to better outcomes for Māori, without providing support and resource to do so.

14. The Council encourages the Government to work towards a consistent approach at a national level to the resourcing, education and succession planning for Māori input in resource management. For example, through a fund to assist training young Māori in resource management. Furthermore, the Council encourages the Government to take a broader approach which integrates principles and concepts of Māori resource management into the education system. The Council suggests that local government be enabled to recover costs on behalf of Māori when their input is sought on resource management proposals.

15. The Council suggests that a clearer RMA definition of ‘iwi authority’ would be beneficial. The present definition is broad and uncertain. A more specific definition would increase certainty for both local authorities and Māori who can be engaged when undertaking functions such as consultation, joint management agreements and Mana Whakahono ā Rohe agreements.

16. The definition of ‘sustainable management’, and any other legislative purpose, should explore holistic, indigenous approaches to kaitiakitanga over the environment. Recent national direction, such as the Draft National Policy Statement for Freshwater Management has pursued Māori resource management concepts in part such the concept of te mana o te wai.

17. The Council supports mana whenua having a greater role in decision making and governance of resource management, recognising there are tools in the RMA already, and requests further Government guidance on how this could be better achieved.

Issue 4: Strategic integration across the resource management system

18. The Council supports introducing requirements for spatial planning, and is already undertaking its own spatial planning exercise at the broad scope identified in the issues and options paper. The Council’s spatial plan addresses areas of protection and vulnerability (climate change and natural hazards) and the alignment of growth and infrastructure. This spatial plan will in turn inform the district plan review as also discussed in the paper. The Council suggests this is the correct scope of spatial plans. The Council is also involved in a regional spatial planning process. The Council considers that it is important for regional councils and territorial authorities work together at this level to ensure that the outcomes sought by their delegated functions are consistent (eg, in the management of effects of urban development on stream networks).

19. While supportive of the requirement to undertake spatial planning exercises the Council suggests the Panel undertake further analysis of the benefits of legally binding spatial plans and what this would mean in practice. The paper does not contain a level of detail for the Council to come to a position on whether spatial plans should be legally binding. The Council considers that the biggest benefits of current spatial planning processes is their
non-statutory nature, allowing flexibility for local authorities to resolve high level issues with the community and achieve buy-in to more detailed district plan processes.

20. The Council notes however that many other local authorities (particularly smaller and rural based councils) will struggle to resource the development of a spatial plan in addition to existing legislative requirements under the RMA. This pressure will only increase given the suite of national direction approaching implementation. The Council notes that the requirement to produce a Future Development Strategy under the National Policy Statement on Urban Development Capacity is akin to a high level spatial plan.

21. Including spatial planning within the RMA is supported over creating a separate spatial planning act. This is consistent with the Council’s position on the integrated management of resources, and will avoid more legislative complexity.

22. The Council questions whether difficulties aligning land use planning with processes under the LGA and LTMA are practice related (eg, due to operating in ‘silos’), rather than driven by legislation. There are many organisations with complementary functions at both central and local government levels that need to align to properly undertake spatial planning. The Council considers that the Government can take a more proactive role in spatial planning processes by working collaboratively alongside local authorities, iwi and infrastructure providers to develop tools on how to do this more effectively.

23. The provision of Government infrastructure is fundamental to leverage the opportunity of spatial planning processes, whether it be transport, health, or school infrastructure and is a critical input into how spatial plans and eventually district plans are configured. For example the size and scale of a new school proposal can signal the typology of housing a local authority should facilitate through district plan rules. A commitment to continued engagement is critical to ensuring successful spatial planning. The Council suggests that the Government can take steps to increase the visibility of its planning and infrastructure intentions over the long term, in the same way that local authorities will be required to.

**Issue 5: Addressing climate change and natural hazards**

24. The Council has joined hundreds of other cities around in the world in declaring a State of Climate and Ecological Emergency by accepting local and international scientific evidence that there remains around a decade to take urgent action to reduce greenhouse gas emissions in order to avoid disastrous consequences. The Council has taken action by recently committing to making Wellington City a zero carbon capital by 2050 through the Te Atakura First to Zero Strategy.

25. The Council supports using the RMA as a tool to address both mitigation and adaptation to climate change. This would mean the RMA is amended to enable consideration of both the effects of development on climate change, and the effects of climate change on new and existing development. The Council recommends that the Government considers how this would work in practice, who is responsible for decision making, and what flow-on effects there could be. For example, should the RMA be changed to allow regional councils to consider greenhouse gas emission in discharge consents, which is explicitly prevented under section 104E and 70A? Should the emission of greenhouse gases be a matter of consideration on all resource consents which is currently precluded under section 104? Removing restrictions to considering climate change effects such as these in the current decision making framework may be necessary to achieve the aim of Climate Change Response (Zero Carbon) Amendment Act. Producing reports on climate change effects may be difficult for applicants to resource and produce.
26. Being able to consider the effects of climate change in RMA plans and policy statements will enable councils to manage risk relevant to their regions, particularly around sea level rise and the broader effects of climate change. For such a change to achieve its intended effect, the Government would need to support local authorities by providing strong direction on how to consider climate change in its decision and plan making processes, and how to undertake these crucial conversations with the community so that it does not become another variable to be ‘balanced out’. This lends itself to being elevated within the decision making framework.

27. National direction on climate change should acknowledge how a just transition will take effect. The Council notes that the Te Atakura – First to Zero prioritizes the first 10 years of the implementation of the strategy to reduce greenhouse gas emissions.

28. The Council considers that the Government has a much greater role to play in responding to the effects of climate change, particularly ensuring a consistent response to sea level rise across the country, such as a national adaptation plan and national direction. Adaptation to sea level rise through land use actions such as managed retreat will require financial support from the Government.

29. The Council considers that the Building Act 2004 also has potential to be a lever to achieve positive environmental and resilience outcomes (particularly in relation to earthquake risk). This could be through encouraging measures such as green roofs and the use of materials that have less of an effect on climate change, as is done in other planning jurisdictions. The Building Act already places significant financial risk on local authorities in consenting structures. Pursuing innovative or novel approaches to dealing with climate change and natural hazards (particularly earthquakes) would accordingly add another layer of risk. Our Council alone currently expects to have to pay out around $150 million to resolve weathertight building issues. We consider Government has a critical role in helping avoid ongoing problems and liabilities to ratepayers and building owners.

30. The Council points towards Wellington’s well known vulnerability to seismic risk, a situation also faced and previously experienced by other local authorities, particularly Christchurch. The Council requests that seismic risk is prioritised in much needed national direction on the management of the significant risk of natural hazards. This national direction should provide clear direction to all (including to the courts) what level of risk can be tolerated in areas at risk of natural hazards, and accordingly what land use responses are most appropriate.

**Issue 6: National direction**

31. The Council supports greater direction and certainty from central government on the management of specific resources with a focus on outcomes required or bottom lines. Each section 6 matter of national importance (and any that are subsequently added through this process) should be accompanied by a national direction tool. Appropriate resourcing should also be provided by the Government to ensure timely implementation.

32. The Council has been concerned by the unresolved conflicts and a lack of integration in recent national direction, particularly the recent freshwater and urban development national policy statements. These conflicts push local authorities into the position of not being able to completely fulfil the intent of either national direction. Without clear direction, local authorities are required to make compromises, or trade-offs between these resources, which call into question the ability to recognise and provide for section 6 matters.
33. The Council’s submission on these documents has advocated for a ‘rational’ level of direction that does not deal with the minutia of plans. Rather, national direction must be clear about the outcomes management of nationally significant resources should achieve.

Issue 7: Policy and planning framework

34. The Council agrees that RMA plans take far too long to be made operative, which imposes significant costs on business and ratepayers. Initiatives to try and shorten this process are supported. In doing this the Council recognises the inherent tension of simultaneously truncating plan-making processes for efficiency gains, while preserving public participation and community expectations of the ability to seek legal review.

35. The Council notes that governments of all ‘stripes’ have consecutively chopped and changed plan making, notification and consenting processes in the interests of expediting decision making. These amendments have increased complexity at the expense of public participation.

36. The Council reiterates that plan making is best undertaken at a local level. This allows broad and meaningful community involvement that is hugely important so that a collective vision for the creation of quality urban environments can be developed and agreed. Doing so can give local authorities, the community, stakeholders, and decision makers confidence in a robust plan. The Council is currently reviewing how decision making arrangements function across the country. Releasing a draft plan is now commonplace in the plan making process in an effort to start engagement conversations early.

37. The Council notes that parties, particularly community scale organisations are not equally resourced to participate in the resource management system and that there is a need to look at further mechanisms to allow for greater participation, over and above existing mechanisms such as the environmental legal assistance fund.

38. The Council notes that currently only rules relating to historic heritage and natural resources have immediate legal effect in plan changes processes, and suggests that this may need to be re-examined.

39. It is suggested the Panel revisit the need for the ‘further submissions’ process (Schedule 1, clause 8) and examine what impacts this has on plan making timeframes.

Issue 8: Consents/approvals

40. During 2017/2018, the Council processed 837 resource consents, of which 827 (98.8%) were non-notified. 830 of these resource consents were processed on time (99.2%). However, this is highly reliant on the use of section 37 time extensions, usually with the applicant’s agreement.

41. Despite the above figures which suggest the consenting system is functioning effectively, the Council agrees that changes are needed to reduce complexity and increase certainty. These factors are frequently pointed out by applicants as leading to increased costs which are accordingly passed on through the system.

42. There is often a community expectation to be able to have a say on all consenting activities occurring in any given area which creates a tension given that most consents are non-notified. In the circumstances when resource consents are notified, communities can also feel like their views are not considered equally alongside expert advice. The review should give consideration to the weight given to non-expert evidence in hearings. Broad and
meaningful community involvement at the plan-making stage is crucial so that the community has input into the future of their community and as a result a clear understanding of the future of their neighbourhoods and city. This reduces the need for notification and re-litigation during resource consent processes.

43. Currently the notification process is fractured and split based on arbitrary factors such as activity class and type. Often applicants will withdraw their application or revise the proposal if Council indicates it will be notified. This often prevents bold projects proceeding at all.

44. The Council recognises that automatic notification of all resource consents is an option raised by the Panel. Further explanation of how the Panel considers this could work is needed for the Council to have a position on this matter. The Council notes this system is used in other jurisdictions and would be a fundamental shift in culture around notification. It could help to ensure that communities are aware of applications made in their local area, and would require nuancing to ensure resource consent processes do not become more costly or less efficient due to irrelevant or vexatious submissions by those not directly affected. One way of managing this could be by allowing anyone to make a submission, but limit appeals to only those genuinely affected.

45. The Council does often receive additional information from concerned citizens during resource consent processes (although they have not been determined to be adversely affected). These ‘submissions’ have no weight in the decision-making process, but information contained within them can sometimes provide useful background for processing planners. The planners need to consider whether the information provided is relevant and within the scope of matters of discretion (where the application has a controlled or discretionary restricted activity status). An approach that sees all resource consents automatically notified needs to account for the perspectives of developers and others who apply for resource consents.

46. The Council reiterates its support to restore the ability to notify resource consents and seek appeal on residential and subdivision resource consents with activity statuses other than non-complying, as was outlined in the Council’s submission on the Resource Management Amendment Bill 2019. The Council considers it crucially important that the community can have confidence in the administration of plan rules in the context of notification and approval of resource consents. The Council recognises that these decisions are made informed by a combination of case law, assessments of effects, national direction, plan provisions and ‘carve-outs’ in the RMA itself which a Planner must consider accordingly.

47. The Panel’s eventual recommendation should recognise the variation in relative complexity of consents and scale information requirements to suit, as opposed to a ‘one size fits all’ approach that we currently have. In the Council’s opinion, recent ‘boundary activity’ changes have been successful in reducing the burden of complete resource consent processes for simple breaches of plan rules. Changes to practice such as the use of ‘short form’ applications / reports for proposals with small scale breaches could present efficiencies. In addition, consideration should be given to whether complex consents should be allowed more time for processing to ensure that their implications are well considered.

48. The Council agrees that the case-by-case assessment of activities through individual resource consents has come at the expense of managing the cumulative effects of multiple consents. More guidance is needed how to assess this. One option the Council has identified in relation to permitted activities could be a change to practice to include more specific requirements, such as the preparation of management plans, for earthworks activities.
49. The Council supports initiatives to make plans more accessible to the community and is exploring digital solutions through the district plan review that will help increase participation and understanding. Such initiatives include the use of ePlans, as well as another tool the Council is developing that allows users to query development proposals against coded district plan rules.

**Issue 9: Economic instruments**

50. The Council notes that tools such as transferable development rights have been used in RMA plans, but are constrained to the purpose of managing environmental effects, rather than as mechanisms in a more general sense.

51. The Council considers there is a need for a broader nationwide review of both the funding and financing tools available to Local Government, which could be adopted in consultation with the community. This should consider how the national economic system could provide for more equitable distribution and application of economic tools / resources at a local level. Doing so would help ensure that local authorities have incentives to facilitate development and growth when value can be captured.

**Issue 10: Allocation**

52. The Council recognises that the options discussed in the paper are more relevant to Regional Councils.

53. Officers have reviewed an early draft of the Greater Wellington Regional Council’s response and support comments exploring a different basis for water allocation that focuses on prioritised resource uses (i.e. public water supply and efficient use).

**Issue 11 and 12: System monitoring and oversight and Compliance, monitoring and enforcement**

54. The Council notes that there are already independent oversight roles in the system, mainly through the Parliamentary Commissioner for the Environment (PCE), as well as through the Environmental Report Act which gives roles to the Ministry for the Environment and Statistics NZ. The main issue with system oversight has been fragmented or missing data sources. One solution to this could involve making better use of local authorities’ data sources, and increasing central government funding of data gathering.

55. The Council considers the main barrier to effective Compliance, Monitoring and Enforcement (CME) under the RMA is resourcing constraints. The Council is fortunate to have comparatively more CME resource than other local authorities, which the paper notes is non-existent in some districts.

56. The Council notes that the offence-making provisions can be clumsy to navigate, and with respect to the prosecution regime, what should be a quite simple prosecution matter (for example, breaching a condition of a resource consent) needs to be charged in a roundabout way, resulting in unnecessary evidence, a convoluted burden of proof, and peripheral matters taking precedence.

57. The Council notes that enforcement action is costly. In the event that an appeal against Council’s enforcement action is not upheld, full costs of the enforcement action and legal proceedings are never recovered. This could be examined in the review to ensure that ‘doing the right thing’ doesn’t cost Council, and environmental breaches are not considered
by offenders as part of the cost of doing business. Increasing fines could act as a disincentive to such behaviour.

58. The Council supported recent changes in the RMA Amendment Bill to empower the EPA to take enforcement action, in the same way that local authorities can.

Issue 13: Institutional roles and responsibilities

59. The Council does not consider that MfE needs a bigger operational role in the RM system. Instead the Council considers MfE should take a much greater leadership role in the provision of national direction that is clear, resolving trade-offs and conflicts upfront.

60. Furthermore, MfE should assist local authorities in a funding and resourcing capacity to implement national direction and providing support and funding for local government initiatives / systems to streamline the consenting / district plan drafting process.

61. The Council again notes that city shaping and plan making must remain the responsibility of local authorities who are best placed to hear the desires of and work alongside their communities to deliver resource management plans.

Issue 14: Reducing complexity across the System

62. The Council notes that the RMA is an easy target to blame for rhetoric around costs, delays and uncertainty.

63. While the Council agrees that RMA processes can take time, this can often be caused by deficient resource consent applications which lack information necessary to fully consider the implications of activities and land use change. In these circumstances applicants are required to provide further information which they may not have anticipated or costed. Pre-application meetings between applicants and local authorities can help set expectations on information that will need to be provided.

64. A number of legislative tools have been developed to remove the complexities of current RMA processes. While there has been an initial focus on improving consenting for nationally significant projects, councils continue to face challenges in progressing locally significant programmes of work. To remedy this imbalance, there is a need for a standardised approach between both levels of government.

65. The Council encourages central Government to consider partnership between local authorities and crown entities in cases where those crown entities are granted additional powers to circumvent aspects of the planning process (for example Kāinga Ora under the Urban Development Bill). This could enable the delegation of powers to local authorities in undertaking development, utilising an in-depth understanding of local issues when delivering projects that serve both local and national interests.