12 February 2020

Ministry for the Environment
Resource Management Review Panel

Email: rmreview@mfe.govt.nz

Tēnā koe,

Waikato Regional Council Submission on the Resource Management Reform Issues and Options discussion paper.

Thank you for the opportunity to submit on the Resource Management Reform Issues and Options discussion paper. Please find attached the Waikato Regional Council’s (the council’s) submission regarding these documents. The submission was formally endorsed by the council’s Strategy and Policy Committee on 11 February 2020.

Should you have any queries regarding the content of this document please contact s 9(2)(a), Submission - Resource Management System Issues and Options.docx, Integration, directly on s 9(2)(a).

Ngā mihi nui,
Submission from Waikato Regional Council on the Resource Management Reform Issues and Options discussion paper

Introduction

1. We appreciate the opportunity to make a submission on the Resource Management Reform Issues and Options discussion paper.

2. Waikato Regional supports a comprehensive review of the resource management system with a view to improving environmental, urban and other development outcomes.

3. We agree with the observation that underlying causes of poor outcomes are wide ranging and include both the legislation, how it has been implemented and how institutions are arranged. We also agree that that constant tinkering has added complexity and generated uncertainty, making it more difficult to interpret and implement. So, it is with some disappointment that we note the discussion document is almost exclusively focused on fixes to the Resource Management Act 1991 (RMA).

4. While a number of the proposals may have merit – we are of the view that the review programme should have a wider field of view befitting of a truly comprehensive review of our resource management system.

5. For this reason, our submission is more general and high-level in nature and responds only briefly to some of the specific questions raised in the discussion document.

6. We look forward to future consultation process to incorporate the proposed amendments into relevant statutes and would welcome the opportunity to comment on any issues explored during their development.

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Scope and focus of the review

7. The discussion document’s focus on RMA legislative fixes is too narrow for it to be considered a strong starting point for a comprehensive review of the resource management system.

8. We would welcome a wider starting point for such an important review that takes a first principles approach and explicitly considers among other things:
   - the over-all outcomes sought by our resource management system
   - whether to maintain an ‘effects based’ approach
   - the roles and functions of central, regional and local authorities, iwi authorities, post-treaty settlement entities and the courts
   - system capacity and capability – including funding and financing
   - the interplay between central, regional and local interests in providing policy direction, setting regulation, making funding decisions and ensuring implementation
   - how the treaty partnership is best given effect to.

9. To promote integration across activities currently managed under separate legislation, this review should examine the wider environmental, natural resource, land use and infrastructure planning and investment activities of central and local government that together comprise our ‘resource management system’.

Wellbeing as an objective of our resource management system that facilitated strategic integration across the system

10. As above, we are of the view that the outcome sought by our resource management system should be explicitly considered by the review. Moreover, while sustainable management may be a suitable frame of reference for decisions related to the allocation of natural resources, we consider that a more wholistic wellbeing approach may be better suited to the system as a whole as described above (see Figure 1 below).

11. This could assist in the strategic integration across the resource management systems and be given life through the development of integrated spatial wellbeing plans developed at a regional or sub-regional scale. Plans for environmental and natural resource management, land use planning, network, community and social infrastructure would then be charged with giving effect to this plan. We note that The Environmental Defence Society in their document “Reform of the Resource Management System – the Next Generation” (February 2019) suggested as an option that a “Spatial Planning Act” could be introduced which would mandate the creation of spatial plans, with the intention of them guiding integrated decision-making under the RMA, Local Government Act, Land Transport Management Act, and the spatial components of other statutes. WRC supports this concept.

12. We note that government continues to grapple with how to design and deliver the services it provides in a way that meet local needs – in particular social and public health services. These services could form a key component of a regional (or sub-regional) wellbeing plan.
**What to do with sustainable management**

13. If ‘sustainable management’ continues to guide natural resource allocation, more specific environmental goals should be set. In recent years we have observed the effect of the Vision and Strategy for the Waikato River – a policy statement which is extremely clear about its environmental goals – to restore and protect the health and wellbeing of the Waikato river. By being more explicit, our experience is that it is easier to interpret what is required, and what it means in practice for those undertaking activities that may impact on the River.

14. There is much criticism that the RMA has failed to adequately protect our environment. It is our view that one reason is the inadequacy of an effects based regulatory framework that relies on environmental effects being clearly and easily identifiable. This is not the case for the most significant of environmental issues (water quality, biodiversity, that suffer the cumulative effect of activities over a long time – for example the diffuse discharges of contaminants from farming.

**Climate change**

15. We are of the view that wider systemic changes that need to occur in order to combat climate change, for example through the use of economic instruments or incentives for the use of renewable energy, or low emissions technologies etc should remain in the hands of central government.

16. There is also an opportunity to ensure proper regard is had to climate change matters when making land use decisions.

17. We continue to observe the development of new and expansion of existing urban areas that will be dependent on private motor vehicles because they cannot be economically be serviced by frequent public transport and are distant from employment, social and community services. An explicit requirement to consider the impacts on climate change when making decisions on urban form (including through Spatial Planning) would reflect the powerful role that councils have in influencing urban form and development outcomes for example by planning for places where people can live, work and play and are able to limit their need to travel, or by making it easy to walk, cycle or take public transport to destinations.
18. Land is also put to urban or agricultural uses with no regard to carbon emissions from peat oxidation or lost opportunities for carbon sequestration.

19. In spite of the magnitude of climate impacts that may result from land use decisions, it is a factor that is unable to be properly considered under the RMA. This is a significant limitation and something that should be remedied.

20. In respect of the effects of climate change on land use, we acknowledge that this is a field that has been the subject of much guidance and debate and is among the matters being examined by The Deep South National Science Challenge.

21. We would encourage you to consider the emerging findings of this and previous work which has called for, among other things:
   - Clearer national direction on planning for sea level rise and climate exacerbated natural hazard risks.
   - Removing the split in local government responsibilities for planning for the effects of climate change in favour either of regional or territorial authorities.
   - Providing compassionate equitable pathways for managed retreat with meaningful central government support and involvement.

Recognising Te Tiriti o Waitangi and te ao Māori

22. The administration of our planning system under the RMA suffers badly from procedural inefficiencies, particularly in the planning sphere.

23. This has been exacerbated by change to the RMA and required by treaty settlement legislation that introduce new procedures that provide for iwi engagement in plan making and varying levels of decision making and governance structures. In the Waikato, where we operate with over 30 iwi groups and under several post-treaty settlement co-management arrangements our experience is that this is becoming unwieldy and a wider resource management systems approach to giving effect to the treaty partnership is required rather than introducing further complication to the current processes.

24. We refer you to our submission to the productivity commission inquiry on local government funding and financing where we made particular note of this issues.

25. To that ends the following should be considered:
   - If it is decided to better reflect te ao Māori in the resource management system, then it should be done by embedding te ao Māori principles into the purpose and principles of the Act, rather than via new or additional processes;
   - A system-wide approach to iwi partnership in resource management system governance and decision-making should be developed. Any such system should avoids overlap between core legislative prescriptions (e.g. procedures under the under the RMA) and locally derived solutions (e.g. under treaty settlements). It would be WRC’s preference that localised arrangements including those resulting from treaty settlement prevail.

System oversight

Custodianship

26. Under current arrangements over-all system custodianship has been weak. What oversight has existed has generally focused on the timeliness and cost of decision making with little attention paid to the quality of decision making, undertaking of functions that are not easily measured
numerically. Functions, such as compliance with central government policy direction, the quality of decision making, and adequacy of resourcing of compliance monitoring and enforcement have not been directly scrutinised.

27. We appreciate that this may stem from a desire to avoid placing additional pressure on a local government sector that has significant capacity and capability challenges – however system custodianship need not be punitive and could instead could be provided in a constructive and collaborative manner whereby solutions to system failures are developed collaboratively.

Compliance monitoring and enforcement

28. We are of the view that the current model of the regional sector delivering CME functions is improving. There are several projects that are underway or recently completed that demonstrate development and maintenance of best practice, striving towards consistency and being more accountable and transparent with CME functions. It is our view that institutional responsibility should remain where it is enabling this continuous improvement to evolve.

29. Improvements to the compliance and enforcement regime that we have previously raised with Ministry officials and we understand are being considered are:
   - Increasing the cost of infringements.
   - Distinguishing between corporate and individual offenders.
   - Doubling the statute of limitations from six to twelve months.

30. In addition, we encourage the government to consider:
   - Removing the need for a police officer present for an enforcement office to execute a search warrant.
   - Removing the ability for a defendant in a council prosecution to plead not guilty and then elect trial by jury.
   - Continuing explore opportunities to use National Environmental Standards to provide a consistent regulatory regime where appropriate.

31. The scale at which regional councils operate mean that we often have greater capacity and capability to perform environmental compliance monitoring and enforcement services. This may make it attractive to transfer further CME responsibilities to regional councils – for example for vegetation clearance. While this may be the case, we refer again to our submission to the Productivity Commission and the concerns raised about unfunded mandates. Accordingly, additional responsibilities should not be transferred without appropriate resourcing.

Resource allocation

32. The most pressing resource allocation issue outside of land use is for freshwater resources where the ‘first-in, first-served’ approach is seen by many members of the community as unfair, inefficient or inequitable.

33. Where there is insufficient water for all demands, the first-in, first-served system does not guarantee that water is allocated to the greatest environmental, social, cultural or economic values. When catchments are highly allocated there is the potential for ‘goldrush’ situations which exacerbate the problems with the first-in, first-served approach to allocation. The current first-in, first-served system can also make it difficult to manage the cumulative effects of numerous small water takes or discharges to water bodies.

34. The region is also experiencing inter-regional demand for water to serve a growing Auckland population. As a result of the manner in which the RMA presently limits decisions on cross-regional resource allocation, particularly in regard to water, and in the absence of local
democratic accountability over Watercare Services Ltd, there is perceived to be a lesser obligation to contribute to improving long-term catchment health.

35. We consider that there are two possible solutions:

Common expiry dates
36. Firstly, to better enable the use common expiry dates to enable comprehensive review of applications in a catchment. Common expiry dates are particularly useful when catchments are approaching full allocation or are over allocated.

37. The use of common expiry dates is severely hampered by the Resource Management (Discount on Administrative Charges) Regulations 2010 (Discount Regulations). These regulations were promulgated in order to encourage consent authorities to ensure that resource consent applications are processed within the time frames provided for in the Resource Management Act 1991 (RMA) and to apply discounts on administrative charges where those time frames are not met. We have assessed the impact of the regulations on processing applications at a common expiry date and have formed the view that it is not possible to process the applications in a manner which would realise the benefits of the common expiry date approach while avoiding costs (e.g. approximately $140K for 55 consents in one Waikato catchment) as a result of the Discount Regulations.

Alternative first-order allocation approach (e.g. water exchanges)
38. An alternative is to develop an alternative first-order allocation mechanism that will allow for more flexible and streamlined reallocation, potentially using advances in new technologies such as sub-regional or waterbody specific trading exchanges to direct available water to the most valuable use at any one time.