

## Submission to the Resource Management Review Panel

# Transforming the Resource Management System: Issues and Options Paper

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3 February 2020

1. The Canterbury Mayoral Forum thanks the Resource Management Review Panel for the opportunity to submit on the above issues and options paper.

### Background and context

2. The Canterbury Mayoral Forum comprises the Mayors of the ten territorial local authorities in Canterbury and the Chair of the Canterbury Regional Council (Environment Canterbury), supported by our Chief Executives. The purpose of the Forum is to promote collaboration across the region and increase the effectiveness of local government in meeting the needs of Canterbury's communities.
3. All Canterbury councils actively participate in the Forum: the Kaikōura, Hurunui, Waimakariri, Selwyn, Ashburton, Timaru, Mackenzie, Waimate and Waitaki District Councils, the Christchurch City Council and the Canterbury Regional Council (Environment Canterbury).
4. The following submission has been developed with input from the Canterbury Policy Forum, and we have shared our draft submission with Te Rūnanga o Ngāi Tahu. Our submission focuses on matters of general agreement between the members of the Canterbury Mayoral Forum. We note that the Christchurch City Council, Environment Canterbury and Te Rūnanga o Ngāi Tahu also intend to make individual submissions.

### *Mayors standing together for Canterbury.*

Secretariat, E: [secretariat@canterburymayors.org.nz](mailto:secretariat@canterburymayors.org.nz) W: [www.canterburymayors.org.nz](http://www.canterburymayors.org.nz)  
C/- Environment Canterbury, PO Box 345, Christchurch 8140 T: 03 345 9323

## General comment

### Drivers for change

5. The Canterbury Mayoral Forum is generally in agreement that the Resource Management Act 1991 (RMA) has underperformed in the management of key environmental issues. There is scope for improving the land use planning system.
6. The Forum does not, however, agree that the planning system is responsible for the unaffordability of housing. This is primarily driven by the market, not the resource management system.
7. Most councils in New Zealand are not struggling to provide sufficient development capacity to keep up with population growth. Councils that are struggling are limited to two or three examples. Many councils have populations that are seeing little growth, or in some cases are declining. For example, Canterbury's population is expected to grow from 562,900 in 2013 to 767,300 in 2043 – an average annual growth rate of 1%, in line with New Zealand's overall population growth rate.<sup>1</sup> A generic solution to a localised problem will create inefficiencies, requiring councils to develop policy to address a non-existent problem in local residential areas.
8. The Mayoral Forum recommends that the review of the RMA should be informed by a wide base of expert analysis. The issues and options paper appears to rely heavily on the Productivity Commission's *Better Urban Planning Draft Report* (August 2016). See, for example, comments on the assumptions of the Productivity Commission's report provided by Market Economics.<sup>2</sup>

### Speed to effect change

9. Plan making generally takes several years, if not longer, to complete. The length of these processes means that the resource management system is slow to respond to environmental issues. To address the significant pressures on New Zealand's natural environment, a quicker plan and policy statement process is required.
10. The cost of engagement in the resource management process is also high and can limit or restrict opportunities for effective public participation. For instance, to run an effective Environment Court appeal requires a lawyer and several expert witnesses.

### Process

11. We appreciate the early opportunity for participation in the review of the resource management system. We note that the review panel is actively engaging with stakeholders throughout and beyond the submission period and we request transparency about that engagement and its influence on the final recommendations.
12. If the Resource Management System is going to be transformed, we encourage close consultation with councils throughout the development of any legislation. We ask for appropriate lead-in time to ensure any changes can be delivered effectively and efficiently.

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<sup>1</sup> Statistics New Zealand, Subnational population projections, 2013(base)–2043 (Feb 2017 update)

<sup>2</sup> <http://www.marketconomics.co.nz/m-emo/2016-10-memo>

## Issue 1: Legislative Architecture

*Question 1 – Should there be separate legislation dealing with environmental management and land use planning for development, or is the current integrated approach preferable?*

13. Canterbury Councils have a range of views about whether or not there should be separate legislation dealing with environmental management and land use planning for development. We agree, however, that planning and environmental issues are interrelated and that any proposed changes must ensure strong integration between the management of environmental issues and land use planning for development.
14. It is important that any new resource management system has a clear process to address conflicting objectives between environmental and planning matters.

## Issue 2: Purpose and principles of the RMA

*Question 2 – What changes should be made to Part 2 of the RMA?*

15. Part 2 of the RMA could be improved to provide a more effective and efficient resource management system. Our suggested improvements are set out below.

*Question 3 – Does s5 require any modification?*

16. Section 5 does require modification. The sustainable management approach of section 5 is predicated on minimalist market intervention and a balancing approach. While it is important to have a system that can reconcile competing objectives, it is clear that the existing approach has worked well for enabling development but not protecting the environment. This is evidenced by the National Monitoring System results that show that in the 2017-18 period, 99.7% of resource consents were granted, despite concerns about the environment.
17. To ensure better environmental outcomes, it is crucial that section 5 makes it clear that development is only enabled subject to meeting minimum environmental bottom lines. In order to drive improvement, particularly in degraded environments, section 5 should also require the need to ensure positive environmental outcomes.

*Question 4 – Should ss.6 and 7 be amended?*

18. Sections 6 and 7 should be amended. Section 6 should make it clear that its principles are environmental bottom lines or objectives that must be achieved<sup>3</sup>.
19. The need to adapt and mitigate the effects of climate change should be added to section 6 as it is a matter of national importance.
20. Consideration should be given as to whether Te Mana o te Wai should be incorporated into section 6.
21. The need to make positive improvements to the environment to protect threatened species could also be added to section 6. This could clarify that indigenous fauna are protected in their own right, not just their habitat.

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<sup>3</sup> Please note that Christchurch City Council does not fully agree with these points. The Panel should refer to Christchurch City Council's individual submission

*Question 5 – Should the relationship or ‘hierarchy’ of the matters in ss. 6 and 7 be changed?*

*Question 6 – Should there be separate statements of principles for environmental values and development issues (and in particular housing and urban development) and, if so, how are these to be reconciled?*

22. Section 6 should provide principles or objectives for environment protection, while section 7 should provide principles or objectives that relate to land use planning and development. Plans and development should have to meet both the objectives of sections 6 and 7<sup>4</sup>.
23. The relationship between sections 6 and 7 should be clear. If there is conflict, section 6 matters should prevail.

*Question 7 – Are changes required to better reflect te ao Māori?*

24. Yes, consideration should be given to incorporating te ao Māori into Part 2.

*Question 8 – What other changes are needed to the purpose and principles in Part 2*

25. We do not propose any other changes.

### **Issue 3 - Recognising Te Tiriti o Waitangi**

*Question 9 - Are changes required to s8, including the hierarchy with regard to ss. 6 and 7?*

26. Recognising Te Tiriti o Waitangi should be transferred to section 6. Alternatively, the key wording of section 8 ‘take into account’ should be amended to ‘recognise and provide for’ the principles of the Te Tiriti o Waitangi. We consider that ‘take into account’ sets too low a bar. The principles of the Te Tiriti o Waitangi should be stated explicitly for clarity and easy reference.

*Question 10 - Are other changes needed to address Māori interests and engagement when decisions are made under the RMA?*

27. Mana whenua’s lack of resourcing is a barrier to effective engagement in the RMA. Consideration should be given as to how the resource management system can enable greater resourcing of mana whenua so they can effectively engage in the RMA.

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

*Question 11 – How could land use planning processes under the RMA be better aligned with processes under the Local Government Act 2002 (LGA) and Land Transport Management Act 2003 (LTMA)?*

28. Better alignment between the RMA, LGA and LTMA is supported as there is only limited formal interaction between those statutes. This results in a weak relationship and, at times, poor outcomes.

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<sup>4</sup> Please note that Christchurch City Council does not fully agree with these points. The Panel should refer to Christchurch City Council’s individual submission

29. The RMA, LGA and LTMA should be amended to clarify the relationship. Strategic land use planning under the RMA should inform the provision of new growth-related infrastructure under the LGA and LTMA.

*Question 12 – What role should spatial planning have in achieving better integrated planning at a national and regional level?*

30. Strategic integration across the resource management system must happen. A possible approach is to use spatial strategies and plans that all relevant organisations are required to implement. RMA principles and national direction, along with principles from the LTMA and LGA could inform national and regional spatial strategies.
31. A national spatial strategy could help co-ordinate nationally significant strategic infrastructure projects and help integrate regional spatial strategies, particularly the relationship between major urban centres and national infrastructure. Regional spatial strategies would do the same but at a regional level. Regional spatial strategies would subsequently inform District Spatial Plans, the Regional Policy Statement, Regional Land Transport Plans and funding from central government.
32. District Spatial Plans should subsequently inform District Plan provisions (particularly rezoning) and Infrastructure Strategies. Any new growth-related infrastructure required to implement the spatial plan should be funded through the Long-Term Plan and Annual Plan processes.
33. Government capital projects (e.g. NZTA, Ministry of Education, Urban Development Authorities) should align with spatial plans to ensure alignment between government funding of infrastructure and services and regional and local plans. Government support should also be provided in the preparation of spatial plans.
34. The development of spatial strategies and plans would ideally be developed to align with key sustainable development principles, be evidence based and developed with a degree of independence. An independent process would be advisable, possibly through the Environment Court. Ireland's National Spatial Strategy provides a good example of taking the right strategic approach to national planning, but also provides lessons in implementation that we can learn from. The strategy saw sufficient housing being developed nationally, but unfortunately, due to influences in implementation, resulted in developments in the wrong locations.

*Question 13 – What role could spatial planning have in achieving improved environmental outcomes?*

35. Spatial plans should set out how environmental bottom lines will be achieved and could potentially be used to reconcile competing objectives. They should identify areas for protection and enhancement, and how enhancement will be funded.

*Question 14 – What strategic function should spatial plans have, and should they be legally binding?*

36. District spatial plans should principally manage urban form, land use growth and new infrastructure associated with growth. They should set strategic priorities and how environmental bottom lines will be achieved.
37. Spatial plans should be legally binding although some flexibility will be required. Spatial plans are strategic in focus, but often do not contain sufficient detail to manage land use activities in detail.

*Question 15 – How should spatial plans be integrated with land use plans under the RMA?*

38. District Plans should be required to be 'not inconsistent with' spatial plans.

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

*Question 16 – Should the RMA be used as a tool to address climate change mitigation, and if so, how?*

39. The RMA should be used as a tool to address climate change. For instance, spatial plans should consider the need to minimise emissions (e.g. through urban form that has a significant effect on energy use) which will subsequently inform zoning provided in District Plans. However, other than the management of urban form, it will likely be more effective and efficient to minimise all other emissions through a mechanism that applies nationally, for example through the Emissions Trading Scheme.

*Question 17 – What changes to the RMA are required to address climate change adaptation and natural hazards?*

*Question 18 – How should the RMA be amended to align with the Climate Change Response Act 2002?*

40. The RMA already addresses natural hazards and we do not think any further amendments are necessary.
41. However, the effects of climate change are only a section 7 RMA matter. We consider the need to adapt and minimise climate change, and subsequently to align with the Climate Change Response Act, a matter of national importance which should be elevated to section 6. Spatial plans should be required to address climate change adaptation and minimisation as a key component of considering urban form and infrastructure provision.
42. National direction should be provided on climate change adaptation and mitigation, along with the management of natural hazards. This would include national direction on what happens when there is a need to retreat from a natural hazard that poses imminent threat to a settlement. Local government cannot protect existing settlements at imminent threat from natural hazard unless there is more directive legislation. This should clarify whether or not landowners would be compensated for any requirement to vacate their land.

### **Issue 6: National Direction**

*Question 19 – What role should more mandatory national direction have in setting environmental standards, protection of the environment more generally, and in managing urban development?*

43. Until recently, the lack of national direction has been a considerable issue with the RMA. This has led to poor environmental outcomes and long and expensive processes dealing with resource management matters that could have been resolved by national direction.
44. The role of national direction should be to identify national environmental priorities for protection; set out how RMA principles will be achieved; and specify protection methods and standards at a national level. However, the latter should be carefully considered as some existing national direction has been found to be well meaning but impractical to implement.

45. National directions should align with Part 2 RMA and be limited to national issues such as preserving life and loss of natural environment. Other central government policy, as well as funding, should be consistent with the national direction.
46. Any national direction should also recognise that issues that face some of New Zealand's major cities, while nationally significant, are not necessary issues that affect all areas. These issues should be subject to specific regulation, not national direction that affects all areas.
47. National direction about managing urban development should address how:
  - urban form and growth are managed
  - better urban design outcomes will be achieved
  - activities crucial to urban environments such as quarrying are to be managed.
48. It is important that national direction is well integrated and that there are not conflicts between different national direction documents.

## **Issue 7: Policy and Planning Framework**

*Question 20 – How could the content of plans be improved?*

49. As stated above, insufficient national direction has hampered plan making, requiring fundamentals to be separately debated in each of New Zealand's 78 councils. The content of plans could be improved by:
  - providing sufficient and clear national direction – to make plan making easier by setting a clear policy direction
  - requiring an outcomes-based approach – to make it clear what the policies and provisions are intended to achieve
  - more rigorous decision making – by having processes and requirements that ensure evidence is tested, and that decision makers are sufficiently qualified and experienced
  - having a national style guide for plan drafting – to ensure plans are more readable, clearer in meaning and consistent.

*Question 21 – How can certainty be improved, while ensuring responsiveness?*

50. Certainty could be improved by a requirement to demonstrate a clear link in plans between the principles of the RMA and plan provisions.
51. The plan making process takes too long and does not respond quickly to environmental issues. Plan responsiveness could be improved by removing appeals to the Environment Court, except on points of law, but we note that Canterbury councils have not achieved consensus on this proposal.
52. If appeals to the Environment Court are retained, one idea to make them more efficient is a requirement to seek leave for appeal that could potentially act as a screen for cases that do not have significant merit. Cases could also be dealt with on the papers (without a hearing) to improve the efficiency.
53. If appeals were removed, changes would be required to make council hearings and decision making more robust, such as introducing cross examination by parties. This is currently practiced by District Licencing Committees.

*Question 22 – How could planning processes at the regional and district level be improved to deliver more efficient and effective outcomes while preserving adequate opportunity for public participation?*

54. Public participation could be improved by requiring more engagement at the start of plan making processes, and by providing easier opportunities for non-professionals to be involved in council hearings. Public participation is more effective for both councils and individuals during the pre-notification, public notification and hearing parts of the process, rather than during appeals which are often cost prohibitive. More democratic representation could be provided by requiring some level of council representation on hearings panels.
55. More efficient outcomes could be achieved by removing appeals, except on points of law, or making the appeals process more efficient (see response to question 21 above). This would not have a significant impact on public participation, as most members of the public cannot afford to participate in appeals.

*Question 23 – What level of oversight should there be over plans and how should it be provided?*

56. The Ministry for the Environment or the Parliamentary Commissioner for the Environment should provide oversight that national direction is implemented. They should also help ensure that adequate plan processes are followed by providing guidance on good planning practice.

## **Issue 8: Consents & Approvals**

*Question 24 – How could consent processes at the national, regional and district levels be improved to deliver more efficient and effective outcomes while preserving appropriate opportunities for public participation?*

*Question 25 – How might consent processes be better tailored to the scale of environmental risk and impact?*

*Question 26 – Are changes required for other matters such as the process for designations?*

*Question 27 – Are the changes required for other matters such as the review and variation of consents and conditions?*

*Question 28 – Are changes required for other matters such as certificates of compliance?*

57. The only major recommended change to the consent process is a wider scope to review consents. This is recommended as a mechanism to address matters not considered through the initial consent process.
58. Currently, section 128 of the RMA enables reviews only at the time specified in the consent for specified reasons. We do not consider this to be sufficient or practical. For instance, it is difficult to specify a reason to review the consent if an issue was not obvious at the time of processing the consent. Greater flexibility in reviewing consents also provides the opportunity to redress poor outcomes from some consented activities. There would need to be further consideration of how this would work when a review effectively nullifies the grant of consent or has a significant financial effect on the consent holder.

59. Regional consents should be reviewed automatically or within a set time period after a rule in a regional plan becomes operative. This would save time in reviewing consents and make plans more responsive and effective in addressing environmental issues and achieving environmental bottom lines.
60. A number of amendments to the RMA have made some consenting provisions overly complicated. Clarity would be appreciated. The resource consent system should be able to be understood by all who interact with it.

## **Issue 9: Economic instruments**

*Question 29 – What role should economic instruments and other incentives have in achieving the identified outcomes of the resource management system?*

61. More economic instruments would be useful. An economic instrument that would provide a driver for environmental protection and enhancement would be particularly useful. Economic instruments should aim to:
- minimise pollution
  - promote efficient resource use
  - provide for environmental enhancement
  - compensate private landowners who are required to protect significant natural resources for the public good
  - provide infrastructure upgrades.

*Question 30 – Is the RMA the appropriate legislative vehicle for economic instruments?*

62. Yes, or economic instruments should at least be referred to in the RMA.

## **Issue 10: Allocation**

*Question 31 – Should the RMA provide principles to guide local decision-making about allocation of resources?*

63. The RMA should provide principles to guide local decision-making about the allocation of resources. Te Mana o te Wai could be included in those principles.
64. The 'first in, first served' approach of the RMA is not equitable and does not optimise environmental or economic outcomes. A better approach would be a system (subject to Te Mana o te Wai) that would allow equitable access to resources, would drive the highest economic use and would also promote efficient resource use and minimise pollution.

*Question 32 – Should there be a distinction in the approach taken to the allocation of the right to take resources, the right to discharge to resources and the right to occupy public space?*

65. No, as they are all essentially resources.

*Question 33 – Should allocation of resources use such as water and coastal marine space be dealt with under the RMA or elsewhere as is the case with minerals and fisheries, leaving the RMA to address regulatory issues?*

66. No. Separation would likely lead to a loss of integration. However, there needs to be a change in the way resources are allocated under the RMA (see our answer to question 31).

## **Issue 11: System monitoring and oversight**

*Question 34 – What changes are needed to improve monitoring of the resource management system, including data collection, management and use?*

67. We consider the following changes are needed to improve the monitoring of the resource management system:
- internationally recognised environmental indicators
  - requirements to adequately fund 'state of the environment' monitoring of key indicators
  - a standard data base for all environmental indicators that is publicly available
  - independent oversight of environmental monitoring
  - requirements for local authorities to change plans and consents if environmental standards are not being achieved.
68. These changes would ensure that environmental reporting is independent, transparent, appropriately funded and aligns with best practice. It would also ensure that environmental bottom lines are met and that plans are responsive to monitoring results.

*Question 35 – Who should have institutional oversight of these functions?*

69. The Parliamentary Commissioner for the Environment should oversee monitoring of the environment to ensure transparency and independence.

*Question 36 – Who should bear the cost of carrying out compliance services?*

70. This depends on what level system oversight and monitoring is conducted at. For instance, if it is conducted nationally, then it should be funded nationally. If conducted locally, it should be funded locally.

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

*Question 36 – What changes are needed to compliance, monitoring and enforcement functions under the RMA to improve efficiency and effectiveness?*

71. The following are necessary to improve the efficiency and effectiveness of the compliance, monitoring and enforcement functions under the RMA:
- larger fines for non-compliance to ensure that fines are an adequate deterrent, and that it does not make commercial sense to contravene the RMA
  - take the right to use the resource away for repeat or major offences
  - include the ability to consider past performance when considering applications for natural resource use
  - independent annual reviews of council's compliance, monitoring and enforcement functions and make mandatory directions regarding processes and resourcing<sup>5</sup>
  - introduce fees for permitted activity monitoring to enable more activities to be permitted and allow councils to recover the costs of monitoring.

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<sup>5</sup> Please note that Ashburton District Council does not agree with the suggestions made in this bullet point.

*Question 37 – Who should have institutional responsibility for delivery and oversight of these functions?*

72. Ideally the overseeing institution should have some independence to ensure credibility. Reporting processes would need to be transparent and councils would need to follow mandatory directions.
73. The Parliamentary Commissioner for the Environment or the Environmental Protection Authority could fulfil this role. Legislative changes and a change in mandate for the organisation would likely be required to ensure this.

*Question 38 – Who should bear the cost of carrying out compliance services?*

74. Generally, the consent holder (or the person creating the non-compliance with plan rules) as they created the need for the service.
75. However, some flexibility is required. An example of this would be if a consent was monitored as a result of a complaint but was found to be compliant. Another example would be for an application to restore an historic building, for which the compliance costs should be able to be waived at a council's discretion.

### **Issue 13: Institutional roles & responsibilities**

*Question 39 – Although significant change to institutions is outside the terms of reference for this review, are changes needed to the functions and roles or responsibilities of institutions and bodies exercising authority under the system and, if so, what changes?*

*Question 40 – How could existing institutions and bodies be rationalised or improved?*

*Question 41 – Are any new institutions or bodies required and if so, what functions should they have?*

76. We do not support any significant changes to institutional roles and responsibilities other than the additional role referred to above for the Parliamentary Commissioner for the Environment and potentially removal of appeals.
77. There is, however, the need to clarify roles between regional and district councils on some matters. Examples include jurisdiction around braided riverbeds and dust, which are complex issues and difficult to understand.

### **Issue 14: Reducing Complexity Across the System**

*Question 42 – What other changes should be made to the RMA to reduce undue complexity, improve accessibility and increase efficiency and effectiveness?*

*Question 43 – How can we remove unnecessary detail from the RMA?*

78. The complexity of the RMA is due to it being a rules-based system. It seeks to enable development by being very specific about what types of activities require consent, and by having different classes of activities depending on their effects on the environment and the zone in which they are located.

79. The benefit of this system is that it enables significant amounts of development without consent or limits the consideration of matters when assessing consents. This approach has significant time and cost benefits when it comes to consenting. However, the issue is that plans take more effort and time to make, and they tend to be complex as a result.
80. In contrast, some countries rely on a policy-based system that requires consent for most development, which is automatically publicly notified and where there is full discretion to grant or refuse consent or impose conditions. The only guidance provided is the policies of the plan.
81. These plans are simple and quick to make and easy to understand. However, the downside of this approach is that everything requires consent and there is less decision-making consistency and more subjectivity. The consenting costs with this approach are significant, whether they are paid for by consent holders or publicly funded. A far greater number of consents is refused under a policy system (40% in some cases) than under the RMA (0.3% in 2017–18).
82. Both systems have pros and cons. We do not state a preference, noting that changing the system will likely incur significant costs and cause confusion, at least temporarily. In this regard we note that constant amendments to the RMA have made it more complex and difficult to understand.

*Question 44 – Are any changes required to address issues in the interface of the RMA and other legislation beyond the LGA, LTMA?*

83. There are number of other Acts that relate to resource management such as the Fisheries Act 1996 and the Crown Minerals Act 1991. The review should ensure the relationship with the RMA and other applicable Acts is clear.

## **Conclusion**

84. As the largest region by land area in New Zealand, Canterbury councils have a significant role in the implementation of the resource management system. We want to continue engaging with the review of the Resource Management Act as it progresses and would like to be included in future stakeholder engagement meetings.
85. On behalf of the Canterbury Mayoral Forum, thank you again for the opportunity to submit on the Transforming the Resource Management System: Issues and options paper.



Sam Broughton  
Chair, Canterbury Mayoral Forum