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Transforming the resource management system: opportunities for change

Local Government New Zealand's draft submission on the Issues and Options paper

January 2020

We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

This final submission was endorsed under delegated authority by Dave Cull, President, Local Government New Zealand (LGNZ) and Doug Leeder, Chair of LGNZ's Regional Sector.

Introduction

In September 2015 Local Government New Zealand (LGNZ) brought together a cross-sector group of experts and practitioners to take a first principles look at New Zealand's resource management system. The scope of this work was broad and was not confined to the role of local government alone. [Our December 2015 paper](#) a 'blue skies' discussion about New Zealand's resource management system drew on the views of these experts and highlighted a series of key concerns regarding the performance of the system. It concluded our resource management system is not delivering. It takes too long to agree plans and it is too costly to gain permissions to use land, and to develop resources and infrastructure. Delay in confirming plans creates uncertainties and there is a cost for all parties. The bespoke models for plan making in Canterbury and Auckland acknowledged this as a problem with the standard, Schedule 1 process.

We came to the view that the resource management system under-values natural ecosystems, the importance of resilience in decision-making, and stifles economic activity through red tape. As a result, LGNZ's view that the resource management system will struggle to address the great challenges that lie ahead such as adapting to climate change and rising sea levels. These changes place billions of dollars' worth of private and public assets at risk. They demand resource management systems and institutions capable of navigating the retreat from coastal and low-lying settlements, investing in inter-generational infrastructure and new ways of designing, building and living with risk.

These are decisions that will be contested on grounds of social equity, cultural cohesion, and their environmental and economic consequences. Commentators and practitioners frequently point to three issues that stop our resource management system from meeting expectations:

- There is a lack of effective horizontal and vertical integration within our resource management system – key resource management statutes have different purposes and follow different and overlapping processes for making related decisions. This creates inefficiency and frustrates efforts to ensure decisions under one framework support objectives set under another and vice versa.
- Objectives and incentives at different tiers of decision-making – central, regional and local – are often not aligned. This frustrates efforts to coordinate and leverage synergies in funding and investment.
- Too much emphasis is placed on making strategies and plans, and on the development and design of consents, relative to monitoring the outcomes of the regulatory actions of councils and incentivising compliance and good practice.

Our December 2015 paper set out a proposed approach to addressing these issues and proposed:

- taking immediate steps to address pressing issues; and
- ‘over-writing’ the core statutes of the system (RMA, Local Government Act 2002 and Land Transport Management Act 2003) to improve their clarity, reduce their complexity and enhance their connectivity

LGNZ agrees that there is a need for reform of the resource management system. The system needs to be flexible enough to allow locally-tailored solutions that integrate decision-making across domains and give resource managers the tools they need to align budgets and behavioural incentives with desired objectives.

Issue: 1 Legislative architecture

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

The current integrated approach is preferred. If it is accepted that the RMA has not sufficiently protected the natural environment or achieved good outcomes for our urban areas or built environment, and we support these being addressed through a single statute rather than through two separate statutes. That being said, this review provides an opportunity to ensure that the RMA delivers a planning framework that is tightly integrated and resilient. Inherent to this is clearly defined powers, functions and roles.

Regarding issues with the urban/built environment we do not share the view that this is a problem with the RMA per se, but argue it is more an issue of the relationship between the RMA and other statutes and issues of funding and financing for infrastructure.

The RMA is not a coercive piece of legislation – it is enabling, creating a framework – it does not require “things to be done.” If this element is seen as being critical, it points to the need to look at other legislative means which have a hook into funding decisions.

Creating separate legislation would create a new set of “interface issues” between the two pieces of legislation. Local government, as the agent already implements approximately 30 regulatory statutes, the RMA is just one.

Issue: 2 Purpose and principles of the Resource Management Act 1991

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

For example:

3. *Does s5 require any modification?*
4. *Should ss. 6 and 7 be amended?*
5. *Should the relationship or ‘hierarchy’ of the matters in section 6 and 7 be changed?*
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?*

7. *Are changes required to better reflect te ao Māori*

8. *What other changes are needed to the purpose and principles in Part 2 of the RMA?*

We don't think amending ss6 and 7 is a priority. We see value in the case law that has been built up and also the suite of national direction, over time.

We do not see a need to change this hierarchy or relationship.

We support the structure of the RMA as it is and have not seen a case for change to support a change to Part 2. We hold the view that Part 2 matters, in addition to separate statements of principles for environmental values and development issues, have the potential to add complexity to the Act and could make implementation challenging.

It could be argued that practice needs to be improved in this space and this will achieve necessary changes.

A focus on the national direction that will assist local government implement the RMA and address the issues is the focus we would advocate. Aligned with this is the need to ensure the national direction is aligned and is not conflicting.

We would like to see a pathway introduced that enables councils to partner with central government in the development of locally-focused "national" direction. Local government, charged with giving effect to national direction, should have a greater say in setting the agenda for national direction and in designing the tools that express that direction.

Central government's role in the resource management system is critical. It is responsible for ensuring the overall efficiency and effectiveness of the system and that it maximises our collective welfare, it is the Treaty partner with iwi, it sets national objectives that councils give effect too, it facilitates national consistency and it shares approaches and processes that work. Recent proposals to give central government more power in local decisions have, however, been met with concern.

Many in the local government, community and environmental sectors view these proposals as a step too far. A step that carries the risk of instability and uncertainty – the ability to appeal directly to the Minister provides an attractive alternative pathway to decisions for some. Such powers also risk separating communities from the decisions that matter most to them, disengaging them from their local government institutions and leading to decisions that are less reflective of local values. Giving central government greater say in key local decisions risks further reducing transparency and accountability, because it does not connect the decision-maker with those paying for it, notably local communities. As it is in New Zealand's highly centralised unicameral political system, there too few checks and balances on central government's power outside of the courts. We need to strike a balance between national and local political direction and while regional spatial planning is one way of bringing together different players in decision-making, for matters of national significance that 'bite' in regionally specific locations, central government may need to partner with local government in decision-making or in changing local policy settings through a national instrument.

This may be a more certain way of ensuring that issues are balanced appropriately than directing decision-making responsibilities to an independent expert panel or a Minister and leaving those decisions to be made under the same national set of criteria. Enabling partnerships between council and central government to prepare locally-tailored national direction will:

- ensure good quality decisions are made on complex issues of national interest even where local capacity to make these decisions is stretched or where a decision may be unpopular.
- improve national/local integration on matters of national interest.
- ensure that the decision makers have the mandate and incentive to consider national, regional and local issues.
- avoids one-size-fits-all decision making by ensuring that local and regional differences are factored into decision making
- allow risk sharing on politically sensitive issues

Issue: 3 Recognising Te Tiriti o Waitangi / the Treaty of Waitangi and te ao Māori

9. *Are changes required to s8, including the hierarchy with regard to ss. 6 and 7?*
10. *Are other changes needed to address Māori interests and engagement when decisions are made under the RMA?*

Section 8 is a powerful statement but perhaps is not given the weight required by those charged with implementing the RMA. To that end, the place of the Treaty along with roles and responsibilities need to be more clear-cut. Local government in the course of its duties encounters a broad range of differing expectations and perceptions between tangata whenua. Linked to this, is the need for greater acknowledgement of the time it takes to ensure meaningful participation of iwi/hapū in decision-making processes.

Practice has changed but it is very varied. Our work illustrates this.

Issue: 4 Strategic integration across the resource management system

11. *How could land use planning processes under the RMA be better aligned with processes under the LGA and LTMA?*
12. *What role should spatial planning have in achieving better integrated planning at a national and regional level?*
13. *What role could spatial planning have in achieving improved environmental outcomes?*
14. *What strategic function should spatial plans have and should they be legally binding?*
15. *How should spatial plans be integrated with land use plans under the RMA?*

Our work in 2015 recommended a regional spatial planning process that has the power to carry vision into action. Although there are some connections between the RMA, Local Government Act 2002 (LGA) and Land Transport Management Act 2003 (LTMA), they have different purposes and it is difficult to ensure decisions under one, support objectives set under another and vice versa. While particularly pressing for our growing urban centres, the need for aligned decision-making goes beyond urban planning and is relevant for addressing many issues facing New Zealand. The agencies, central, regional and local government required to implement it will need to collaborate in the spatial planning process. A spatial plan should avoid subsequent consultation on

matters already subject to the Plan and, critical to success, is that parties to the Plan are bound by it.

Furthermore, iwi organisations are increasingly influential in resource management governance and decision-making and our resource management system must enable effective cooperation between central government, local authorities and iwi organisations if we are to achieve the outcomes our communities want. Decision making at this level needs to reflect what we value and what we want to achieve so we can expect them to involve a significant investment of time and resource. They are political in nature and the process must satisfy democratic principles. Other than ensuring due process, this is not the place for the courts. Introducing a spatial regional planning framework would:

- allow communities to participate in a single ‘joined-up’ discussion about the objectives they have and what that means for resource use, development and protection.
- generate a clear overarching vision that provides direction on the environmental outcomes we expect to achieve, clarifies the rights and responsibilities of resource users and increases investment certainty.
- increase coordination between decisions made under different statutes and the institutions responsible for administering them

Issue: 5 Addressing climate change and natural hazards

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

There probably is a need to use the RMA as a tool to address mitigation, and for the RMA to align with the Climate Change Response Act 2002. LGNZ members passed this remit at the AGM in 2019: That LGNZ members collectively adopt the position that government should revise the Resource Management Act 1991 to adequately consider the impact of greenhouse gases when making decisions under that law to ensure that the Resource Management Act is consistent with the Zero Carbon Bill. This would essentially require a reversal of the current position of regional councils not being able to control greenhouse gas emissions.

We raise the practical question of how emissions associated with resource consent applications would actually measured/monitored etc. Were the changes to the RMA to empower local government to factor mitigation considerations into consenting decisions, central government would need to set a nationally consistent framework first to ensure fairness and consistency of process.

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

We Agree with the need for national direction around restrictions on development and agree with the need to look at how the RMA provides for managed retreat.

Adaptation is likely to require councils to be flexible in their responses (ie certain adaptive measures might be needed sooner than expected, or might need to change depending on the scale of climate change impacts), so there is a need to build some flexibility into the RMA to enable councils to be adaptive to change. In addition, there is no established national policy framework that outlines funding mechanisms for tackling the costs of adaptive measures. This can impede the decision-making process, particularly when communities are being faced with tough decisions,

A recent report prepared by local government on the challenges it faces in building community resilience identifies that one issue is the variation of underlying information that informs analysis/ decision-making. The

report identified that it would be helpful if the factual basis underpinning local judgements about the scale of natural hazards was more uniformly agreed and accepted, particularly where susceptibility to hazards is national or affects more than one local authority jurisdiction (eg sea level rise). The report also identified that where the susceptibility of a hazard is variable (as with flood hazards) there should be an agreed and consistently applied methodology for determining susceptibility. Broadly, the issue is that in the absence of mandated core data (as methodology inputs) and methodologies councils can be reluctant to take a position on risk, favouring further research over meaningful action to reduce risk. The report recommends that a national position on key hazard-specific risk assessment input data (ie scale and likelihood) and/or methodologies for determining scale and likelihood of hazard at the local level be adopted (with the risk assessment and response left to individual local authorities). Priorities for advancing this proposal are nationally agreed and applicable sea level rise projection(s); a flood prediction modelling methodology; and levels of loss-of-life risk that warrant, and determine the extent of intervention (ie what should be regarded as intolerable/tolerable/acceptable loss of life risk). These should be suitable for RMA planning purposes. The recommendation was that to give legal authority to the 'standards' proposed they should ultimately be issued as an NES.

We also recommend consideration being given to how consents might be more flexible if change is needed in light of climate change impacts (particularly where those impacts take hold sooner than expected, or have more significant consequences than expected etc).

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

There is a need to look at how the RMA will align with the risk assessment and National Adaptation Plan and a need for alignment with mitigation provisions (as above).

Issue: 6 National direction

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

National direction is an important component of the resource management framework. LGNZ commissioned work in 2011 which is some time ago but some of the findings are still relevant.

<http://www.lgnz.co.nz/assets/Uploads/72605665f3/Rationalising-National-Intervention-under-the-RMA.pdf>

Of note, the report recommended there is a case to be made for local government to have a much more central say in national instruments, in what the priorities should be and when they are warranted. There is currently a (variable) opportunity. Because, by definition, NESs standardise requirements, remove variation and "extremes" there is invariably a case for benefits to be made that cannot be made with the same authority in respect of NPSs for local government to participate along with other stakeholders but no "special" status accorded notwithstanding its dominant role in NPS/RMA implementation.

While the national government will always retain the right to govern in accordance with its elected mandate, in our system of devolved environmental management there would seem sense in a much more collaborative approach being taken between central and local government on this issue. Local government after all is best placed to understand implementation issues and when a "pan-council" response is required. It also has direct access to the information to justify (or not) intervention options.

A critical policy issue to resolve, however, is the relationship between national and regional (local) standards.

By way of example, in respect of freshwater, national direction was established in 2011, then amended every three years since (2014 and 2017). In addition, since 2010 some regions have had additional direction provided by agreed Crown/Iwi Treaty settlement agreements (e.g. for the Waikato and Waipa rivers the Te Ture Whaimana has the status of an NPS). In good faith, councils and their communities have invested significant time and resources to give effect to such national direction through various plan changes. The national direction for fresh water is set to change again in 2020, proposing national standards that override a number of local standards developed through plan changes (e.g. Waikato/Waipā Plan Change 1: to date \$22m+, 8 years, 1200 submissions and yet to notify decisions version to commence Environment Court stage).

The obvious question is why bother with the time and cost of preparing local plans in future, including giving effect to Treaty settlements, if these can simply be overridden by new national direction every 3 years. Compared to the national process, processes used to set local standards are significantly more robust in terms of testing both community support and technical evidence.

LGNZ supports the view that national standards be used as a default for all of New Zealand unless or until local standards promulgated under the First Schedule of the RM Act are made operative, in which case the local standards take precedence.

Issue: 7 Policy and planning framework

20. *How could the content of plans be improved?*
21. *How can certainty be improved, while ensuring responsiveness?*
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?*
23. *What level of oversight should there be over plans and how should it be provided?*

LGNZ has long advocated for “plan agility.” Plans, and regional plans in particular (responding to environmental issues) need to be able to be developed and made operative in timeframes that respond to the urgency and relevancy of the issues. Too often plans are caught up in very lengthy hearings and appeals processes that mean they can be out of date before that are operative. At least part of the solution is to adopt a plan making process nationwide that removes or restricts de novo Environment Court appeals.

There is obvious recent precedent for this approach in Canterbury and in Auckland. The process proposed for plans dealing with freshwater matters also adopts this model and while we have supported this in principle we foresee problems in applying it to matters that are ring fenced to “freshwater.” LGNZ supports wider use of this plan making model and we consider addressing this this needs to be an essential part of RM reform. We believe that such a decision-making model will at least halve the time required to make regional plans operative.

We have called for reform for many years to dramatically improve the ability to put in place effective resource management policies. It should be possible for a local authority to develop and make operative a complex resource management plan within a single three-year electoral cycle. The single change that can transform the

pace of resource management policy making is to remove recourse to the Environment Court on policy matters.

Issue: 8 Consents/approvals

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?*
25. *How might consent processes be better tailored to the scale of environmental risk and impact?*
26. *Are changes required for other matters such as the process for designations?*
27. *Are changes required for other matters such as the review and variation of consents and conditions?*
28. *Are changes required for other matters such as the role of certificates of compliance?*

Issue: 9 Economic instruments

29. *What role should economic instruments and other incentives have in achieving the identified outcomes of the resource management system?*
30. *Is the RMA the appropriate legislative vehicle for economic instruments?*

Much of the wealth generated from the use of resources that New Zealanders consider to be held in common accrue privately. Meanwhile the social, environmental and cultural costs are carried by the community.

LGNZ's 2015 work considered the role of economic instruments and proposed that the costs of rights to access and use resources held in common should be met by those who benefit from them.

Debates around the distribution of costs and benefits generated by activities that rely on extracting value from natural resources like minerals, fresh water and the coastal marine area expose an issue that is far reaching. We lack the means to ensure that New Zealanders are able to access a fair share of the benefits from the use of common-pool resources (either as direct inputs or to assimilate discharges) and to prevent the largely social and environmental cost being shifted to the public.

We hold the view that a fairer distribution of costs and benefits, possibly enabled by the greater use of resource rentals or other similar economic instruments, would encourage resources to be used by those activities that generate the greatest long-term public and private value. It may also help us move away from a first-come-first-served approach to resource allocation, which is proving problematic where resources, or environmental limits, are fully allocated. Revenues from resource rentals may also be a welcome addition to environmental clean-up funds, resources for monitoring and evaluating system performance and other resource management system functions. Contestable resource rights would also ensure that any resource is put to its most productive use.

However, care would need to be taken to ensure that decisions granting access to resources and the collection

of rents or royalties are adequately separated. This will be important to ensure that granting access to resources is not seen as an easy tool for raising revenue at the cost of environmental bottom lines or wider community objectives. The current resource management system does enable rents to local government for the occupation of space in the Coastal Marine Area. However, this tool has largely been left un-utilised because of perceived complexity and political risk associated with its use (these charges are set under the RMA). The potential impact on existing and future rights means that rents and royalties will be controversial and their development will require specialist input and careful consideration. However, the ability to ensure that the community shares in the benefits from the use of common resources with the potential to improve the allocation and sustainability of resource use without more costly and inefficient regulation means, we believe, that payments for resource use should be considered in any design of a future resource management system.

Issue: 10 Allocation

31. *Should the RMA provide principles to guide local decision making about allocation of resources?*
32. *Should there be a distinction in the approach taken to allocation of the right to take resources, the right to discharge to resources, and the right to occupy public space?*
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 for regulatory issues?*

Issue: 11 System monitoring and oversight

34. *What changes are needed to improve monitoring of the resource management system, including data collection, management and use?*
35. *Who should have institutional oversight of these functions?*

Issue: 12 Compliance, monitoring and enforcement

36. *What changes are needed to compliance, monitoring and enforcement functions under the RMA to improve efficiency and effectiveness?*
37. *Who should have institutional responsibility for delivery and oversight of these functions?*
38. *Who should bear the cost of carrying out compliance services?*

LGNZ's Regional Sector commissioned an independent report in 2018 to improve the availability of data on CME functions:

<https://www.lgnz.co.nz/assets/Uploads/bc9da4d6cd/CME-Regional-Sector-Metrics-Report-FINAL.pdf>

Key recommendations that are relevant to the questions posed are as follows:

- While variation is to be expected given the diffuse nature of the regime and lack of oversight in

the past, there is ample opportunity for councils to now work to standardise approaches to fundamental CME tasks, which would enable national scale data to have much stronger value due to increased comparability

- Resourcing for CME is varied, but overall appears to be relatively low in several councils, possibly too low to carry out the minimum requirements set down within the newly promulgated Best Practice Guidelines. The variation is not generally explained by relative wealth, land area or population - but appears often driven by other matters.
- Many councils were unable to provide some relatively basic Information for these survey questions. While information management is doubtless an area in which the sector has improved greatly in recent years, further development is required to maintain reasonable levels of transparency.
- The internal policy framework for CME in many agencies is incomplete or has aspects that open councils and individuals within those councils up to reputational risk from an inability to demonstrate fair and clear decision-making processes. The sector must carefully consider performance in this space as independence, transparency and consistency are fundamental components of being a credible regulator.
- Some councils perform consistently well across all or most measures in this survey while the reporting of others demonstrates some significant shortcomings that should be addressed. Continuing to administer a robust and regular reporting framework, including review and improvement of the current suite of metrics, will help to drive performance improvement year on year.
- Unitary authorities do not sufficiently demarcate their regional vs district CME activities in their information management systems, meaning that the level of transparency on regional-level operations they can provide is lower than their regional council counterparts. This erodes both the comparability of the collective dataset and has reputational implications for the unitary councils.

LGNZ considers that the current responsibilities for CME should sit where they do currently and that improved practice is key. Better oversight of the system is critical and is absolutely necessary and we note the new role proposed for the EPA in CME will “introduce some tension into the system.” In our view the important matter to be addressed is providing better oversight - we do not have a view on where this should sit.

Issue: 13 Institutional roles and responsibilities

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?*
40. *How could existing institutions and bodies be rationalised or improved?*
41. *Are any new institutions or bodies required and what functions should they have?*

We note the work underway to establish a water regulator. While the focus will be drinking water it the

regulator will also have a role in stormwater and wastewater, which will interface with the functions of regional councils exercising their functions under the RMA.

There is also a call to set up an independent freshwater commission and the EPA is being given new functions with regard to compliance, monitoring and enforcement.

The complexity in the system is increasing which needs to be acknowledged, pointing t the need to be absolutely clear about roles and responsibilities of the various institutions.

Issue: 14 Reducing complexity

42. *What other changes should be made to the RMA to reduce undue complexity, improve accessibility and increase efficiency and effectiveness?*
43. *How can we remove unnecessary detail from the RMA?*
44. *Are any changes required to address issues in the interface of the RMA and other legislation beyond the LGA, LTMA?*

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