DRAFT SUBMISSION

Thank you for the opportunity to submit on *Transforming the resource management system: opportunities for change - Issues and options paper*. We appreciate the opportunity this paper creates to have a conversation about the future of the resource management system in New Zealand. Our comments, detailed below, are relatively high level, as the timing and timeframes for consultation have been particularly challenging.

We look forward to continuing to engage in the reform discussions as the project continues.

Issue: 1 Legislative architecture

It is Council's view that changing the legislative framework –particularly separating out growth and environmental legislation – is unlikely to have a substantial positive impact on the functioning of the RMA system. The problems local government is facing with the current resource management system are not the result of the way in which the legislative framework is configured – it is the result of a lack of integration within that framework, and a lack of clarity about how the various trade-offs in balancing growth and environmental concerns ought to be managed.

The current RM system has not achieved functional integration across the various acts that interact with the RMA under the current structure. The current separation of land transport planning legislation from the rest of the planning framework (with its own planning and funding processes) has proved difficult to integrate together in practice. Integration with the LGA has not fared much better, with Councils completing long term plans under the LGA that are out of alignment with planning processes under the RMA and NPS-UDC. This lack of alignment creates inefficiency and uncertainty for councils and their communities. That being the case, there is limited reason to believe that this pursuit of integration will be more successful through the creation of a more fractured system. Councils are very concerned they will be left with the increasingly complex and unsolvable puzzle of trying to achieve balance across conflicting directives. This leads to more complex, costly and litigious planning and consenting processes.

We acknowledge that the RMA has struggled to adequately deal with the competing interests of growth and environmental protection within a single piece of legislation. However, we would argue this is more of a function of a complex system lacking in clear direction than a failing of a framework dominated by a single piece of legislation. This system is dominated by an unclear set of priorities/principles, which are often competing with each other and lack a framework/clear direction to assist decisions-makers in navigating the unavoidable trade-offs between them. It is also a function of a complex system which, in requiring evidence-based decisions, has a bias towards those who can afford the experts to build their technical case and use their understanding of how the system works to their advantage.

In order to support dividing the RMA into specific growth- and environment-focussed legislation, Councils would need more clarity on the interface between the pieces of legislation and on the way in which it will be split up.

Issue: 2 Purpose and Principles of the RMA

Council supports the addition of a positive obligation to maintain and enhance the environment and the strengthening of Part 2 to more explicitly require environmental limits and/or targets to be set (although this may be best done through an NES/NPS). Including a separate statement of principle for urban environments may be useful if single legislation is to be retained.

Consistent implementation of the RMA by councils would also be greatly assisted by a clearer distinction of priority of matters within sections 6 and 7, particularly how conflicts are to be weighed up. We also strongly support new concepts being included in Part 2 to address climate change.

Issue: 3 Maori Participation

Iwi as mana whenua hold significant expertise and knowledge and barriers to their being able to contribute this should be removed. We support the removal of barriers to the uptake of JMA's and transfer of powers. More clarity would be helpful in identifying when iwi are an affected party, as would a stronger direction for applicants to consult with iwi prior to applying for consent. This would help reduce delays which can occur in resource consent processes when iwi have not been appropriately consulted or involved by applicant's early on.

Other barriers to improving meaningful iwi engagement in the present RM system include:

- a lack of resourcing of iwi entities
- significant demands for iwi input and involvement on a broad range of matters from multiple councils and other entities
- the 20-day statutory processing timeframe for non-notified resource consent applications, which puts considerable burden on iwi to provide input including raising any concerns about a consent application with the local council.

Issue: 4 Strategic integration across the resource management system

As mentioned above, finding a way to better integrate the various pieces of legislation within the broad planning framework is an important way of creating an efficient and planning system with certainty for its users. Spatial planning is one of the tools that can assist in that integration by articulating the broad outcomes being sought by the community and transposing those into a spatial form.

Spatial planning would encompass consideration of economic, environmental, social and cultural wellbeing. It would also need a long-term time horizon, and a focus on integration of environmental protection, land and natural resource use and infrastructure decision-making, including funding and financing. It could provide an opportunity for Māori to participate in strategic decision-making about resource management issues.

However, in its present form, spatial planning (to the extent it is undertaken) creates an additional layer within the planning framework to be interpreted through regional and district level documents. This is largely due to it not being mandated in the RMA. A better option could be to align and integrate spatial planning into the standard planning framework – potentially replacing parts of the current Regional Policy Statement/Regional Plan/District Plan. This would also require that spatial plans be legally binding. Coordination at the regional level is likely to be beneficial due to the scale of some infrastructure projects, although this would further complicate plan integration.

A legally binding spatial plan integrated into the planning framework should align and include relevant elements of LTMA and LGA. This should include aligning the frequency and timeframes of underlying planning and investment documents. It should also consider how private developers contribute to the provisions of infrastructure to support the outcomes of the spatial plan. Given the strong links between infrastructure planning and spatial planning, it is recommended that this be refreshed at a cycle which aligns with Long Term Plan cycles (i.e 3, 6 or 9 years).

Issue: 5 Addressing climate change and natural hazards

Council is broadly in favour of the recommended options for adaptation outlined on page 32. However, in our view there is overreliance by Government on the ETS as an effective tool for reducing emissions – more needs to be done.

Council is also concerned that using regionally coordinated spatial planning to identify a future adaption response may result in a clunky and very layered approach. It would in effect be another layer sitting between the National Adaptation plan and adaptation responses at the District/TA level. It would be beneficial to look at options to streamline actions being taken under the direction of the National Adaptation Plan, for example should the NAP (or parts of it) be given the equivalent status of an NPS under the RMA?

Climate change is an urgent and pressing problem, not a 'future problem'. Councils are already dealing with the impacts of climate change as they respond to increased flooding and inundation events and the problems these create for our communities and infrastructure. Past attempts to address projected climate change impacts on the coast have resulted in significant litigation, potentially affecting the appetite of councils to tackle climate change adaptation through regulatory means. This can result in more emphasis being placed on reactively dealing with the aftermath of increasingly frequent and intense weather and storm events. This is not helped by the imbalance in availability of government funding/support to assist in the response to natural events which have been exacerbated by climate change. There is no government funding available for building communities' understanding of the regional/local risks or support for Councils to make and fund decisions that create a more resilient community over time. Proactively preparing for the impacts of climate change on our communities over time will require an environment where there is confidence in making decisions on some very tough issues, such as when and whether managed retreat should be a viable option.

Greater direction is required from Central Government to support local government to respond to effects of climate change and for this to occur in a consistent way across the country. It is still a relatively new and evolving area for local government and more directive policy, as well as funding and capacity-building support, is required from central government. Greater national direction on best practice and standards with regards to climate change and adaptation methodologies and science would help reduce the risk of legal challenge as councils try to implement measures to address climate change through their plans. Greater national direction would also ensure local conversations are targeted to how (or by when) the national direction should be achieved, not whether it should be achieved at all - avoiding unnecessary delays and costs. A contestable science and engagement fund could also be used to assist those Council whose communities are ready for climate change adaptation conversations, but are unable to fund a community process which follows the MfE guidance.

Some specific amendments to RMA processes that would help councils implement climate change mitigation measures include:

- make it easier to adopt prohibited activity status for certain developments along the coast and in other areas with high natural hazard risks.
- create a clear legal mechanism and mandate providing for managed retreat – this does not currently exist (wide and uncertain interpretation of: S.10(4)(a) appears to allow Regional Council to do so through changing regional plan rules, however this is only now being tested).
- clearly establish responsibility between regional and local councils for managing climate change. This lack of clarity causes ambiguity, time delays and has financial impacts.

- align the RMA with the Climate Change Response Act 2002 (including purpose) to enable a planning regime that can effectively help New Zealand achieve the mitigation and adaptation goals of the CCRA, including moving climate change considerations from section 7 to section 6 and adding it into the sections 30 and 31 roles and responsibilities for councils.
- consider an alternative planning process to schedule 1 for climate change and natural hazard issues to allow greater speed of plan-making in this area and reduce scope for expensive and time consuming appeal processes.
- a risk assessment framework for natural hazards should be established as an NES. This should include risks caused and/or exacerbated by climate change. This would allow councils to take a nationally consistent risk-based approach to climate adaptation.

Issue: 6 National direction

There is a clear need for central government to be able to either insert targeted content into plans, or to set expectations that communities will resolve particular issues through their planning documents. However, the implementation of the RMA has seen first an absence of adequate national direction, and then a proliferation of national direction that has at times been too blunt and has resulted in a one-size-fits-all approach that may not be appropriate for all communities. We appreciate that it is a difficult balance to get right.

There has been a tendency to prioritise and produce national direction tools (especially national policy statements) as a way of getting local government to assist in the implementation of the government's policy agenda (focused on what central government needs from local government). While that is appropriate, local government also needs national direction tools to focus on the areas where we are struggling to resolve contentious issues in the community. Climate change and natural hazard management are two good examples. The Schedule 1 plan making process, with full public consultation and appeal rights, means that plan changes that are needed to protect our communities are able to be held up by small factions concerned about their own interests (e.g., fears over the impact of hazard lines may have on their property values) over the needs of the community at large. This can lead to drawn out and expensive plan changes that may not ultimately be successful and a proliferation of other litigation. Having national direction focusing on appropriate methodologies would be helpful, in that it would both prevent appeals on the methodology and science underpinning plan changes and would also allow communities instead to focus on the details of their approach to managing these issues. These should be developed closely with local government working groups.

Making better use of provisions allowing local government to adjust or deviate from the national direction instruments where appropriate (i.e. the ability to make rules more or less stringent than the NES stipulates) and providing greater ability to deviate from national direction where appropriate would be helpful. It would allow communities to tailor provisions to best suit their needs while still achieving the overall outcomes sought by the national direction.

Issue: 7 Policy and planning framework

Schedule 1 Process – Consultation and Appeal Rights

Ensuring meaningful public engagement occurs at the right time is important for streamlining planning processes, as giving the public multiple opportunities to re-litigate their concerns creates drawn out and costly plan making processes. We would support a streamlined 'single-stage' plan-making process. Our second generation plan was first publically notified in 2012, decisions were

notified in 2017 and this year we are expecting to resolve the remaining appeals so the plan can be made operative – some 8 years after first notification.

We therefore recommend allowing councils to front-load engagement in exchange for limited appeal rights (restricted to points of law only). This would avoid re-litigating issues through appeals while still ensuring adequate public consultation. Concern about participation could also be balanced by expanding the parties who receive a draft plan for comment beyond iwi authorities.

Similarly, removing the ability for parties to seek s.85 directions and lodge appeals with respect to plan provisions which give effect to national direction would be helpful, as national direction instruments are consulted on at the national level and shouldn't be re-litigated during their incorporation into planning documents.

Plan oversight

Creating additional plan oversight is likely to add additional steps to the Schedule 1 process and could make plan making slower. However, if this was to be combined with a reduction in appeal rights as discussed above, then additional up-front scrutiny of plans could help offset the reduction in appeal rights.

There is some concern as to what criteria the Minister or Ministry would use to 'approve' or make recommendations for changes to plans prior to notification and/or finalisation and how long that might take. It would be additional steps in the process and may result in additional delays with unclear benefit, and which seem at odds with what the goal of streamlining plan-making processes. It is also concerning from a local democracy perspective. If there is genuine concern about local decision-making on plans, then the suggestion in para 105 of the Issues and Options paper would be a preferred approach.

Given the overall shortage of planners across the country, moving a number of planners into review type roles could have an overall negative consequence for councils who are already struggling to attract and retain experienced policy planners.

Other Process Improvement Suggestions

- Extending the types of amendments that can be made to plans and proposed plans under Schedule 1 clauses 16(2) and 20A would enable councils to make a wider range of minor and technical amendments to their plans without incurring a full schedule 1 plan making process, improving overall plan quality and reducing costs.
- Removing the ability to apply for a certificate of compliance under section 139 if an activity could not be done lawfully without a resource consent under a draft plan.
- Give rules immediate legal effect from notification, or at least extend the list of matters referred to in section 86B(3) to include important issues such as hazards, urban development and climate change.

Issue: 8 Consents/approvals

Simplify categories

We don't consider that it is necessary to simplify activity status categories under the RMA. This issue is that often plans are drafted in a way that is not making effective use of the categories available.

We see a benefit in retaining the direct referral system. Often smaller TAs do not have the resourcing or experience within the team to process large complex applications, let alone nationally

significant proposals. Complex applications would often go to planning consultants, so retaining direct referral provides a further option to TAs, even though it is unlikely to speed up the process (as these are complex applications that take a significant amount of time to consider).

Reduce complexity for minor consents

We agree that the RMA should be flexible in what information needs to be submitted for minor consents, which are often submitted by building designers or owners themselves. It should be made clearer that the level of information in an AEE should correspond with the scale and significance of an activity, and this should be done in a way which avoids subsequent arguments about what is sufficient.

For even seemingly minor applications the policies of the plan should inform the aspects of the environment which are important to consider in an AEE. Allowing too much discretion could undermine this approach and reduce the effectiveness of the overarching objectives and policies of the plan.

More certainty around notification

We support more certainty around when notification should be required and simplified provisions around this. Notification appears to function well in the Victorian (Australian) planning system and provides developers, neighbours and the processing planner more certainty around when people could be affected. The UK also uses a system where there are no written approvals associated with making consent applications. This system leaves it up to the Council to serve notice on affected parties, consider submissions and determine the application. Appeal rights of affected parties are limited to points of law only. This system avoids the current challenges associated with affected party approval being 'bought' by applicants, or resulting in significant delays while applicants attempt to obtain affect party approval.

The current notification system has a number of inefficiencies and uncertainties:

- notification can be very subjective and different planners may come up with different results
- the appeal mechanism (judicial review) is very costly, and if you are a neighbour in reality if you are not considered affected you are cut out of the planning process, and Councils spend a lot of resourcing on justifying to lay people why they were not considered affected.

More transparency

Many councils publish a list of consent applications received and decisions issued on their website. Once a resource consent application is lodged, this becomes public information and members of the public can request copies of applications and decisions if they are interested. However, our experience is that it is rare for the public to request copies of the application and decision. When they are requested it is usually by neighbours of residential developments. It is our view that the additional resourcing required to publish all decisions and applications would outweigh the benefits of the public having immediate access to this information.

Online processing

Online processing will not reduce the cost of processing an application. The majority of the cost in processing is staff time in requesting further information, assessing the application, and issuing a decision. Online submissions of applications and tracking will not negate the need for a robust assessment and further information required. It may speed up the time it takes to lodge the application and be entered into Council's system, but it is unlikely to reduce the processing times

significantly. There will be potentially significant costs associated with the development and maintenance of an appropriate IT facility to provide this service. This will very difficult for small councils to afford the initial outlay and would result in increased costs being passed on to applicants.

Designations

Designations can be complex and for many councils are a rare occurrence. We would recommend:

- simplifying the multi-stage process (notice of requirement, outline plan etc.)
- extending the five-year default timeframe for designations, as it is out of alignment with the long-term strategic function they are intended to perform (or the district plan review cycle)
- clarifying information requirements for notice of requirement applications so that consent authorities are clear on the level of information required for notice of requirement applications and outline plan applications.

Other consenting issues

- The information required for Councils to be satisfied of compliance/existing use rights and then issue Certificates of Compliance and Existing Use Rights certificates is unnecessarily high.
- The wording of section 181(3)(b) is inconsistent with that used in section 95E with respect to identifying affected parties, which can cause confusion during the designation alteration process.
- There is no ability for a territorial local authority or a requiring authority to stop the clock under section 176A. This can cause problems if more information is needed by a council to determine whether or not to request any changes to an outline plan, or in instances where the requiring authority wishes to place an outline plan on hold. Therefore, it would be useful if it was possible to place outline plans on hold and to request further information.

Issue: 11 System monitoring and oversight

Councils need a streamlined and simplified monitoring system through the development and use of consistent systems that enable data to be easily captured through daily services to relate back to council outcomes. This is a substantive and specialised function that overlays over and above the design and use of systems to serve their priority intent/purpose.

The NMS system is unwieldy and time consuming to input into for Councils. The systems that councils use (such as MagiQ) do not have the full functionality that would allow all of the information that MFE requires to be easily inputted and extracted each year. Upgrades to systems and new systems to provide the functionality required to monitor all the information MFE requires can be costly. The data available focuses on the timeliness over assessment of the quality of decisions and outcomes.

Issue: 12 Compliance, monitoring and enforcement (CME)

The independence of the regulator is a key part of any regulated system, however despite the guidance in the LGA, the line between regulator and governance can, in practice, be blurred. We note it is common in the NZ regulatory landscape for independent boards to create clearer separation between governance and regulatory functions within government (e.g. Worksafe). One possible solution could be for the EPA to have overarching responsibility for the delivery and oversight of CME functions under the RMA in NZ.

Cost-recovery under the RMA has a negative impact on CME under the RMA. The charge out rates established for cost-recovery of CME activities are high nation-wide, which can result in disproportionately high compliance costs for otherwise minor compliance matters, creating negative

public sentiment towards CME under the RMA. One option could be to establish a permitted activity CME fund to cover the monitoring required for activities that don't require consent. This would allow better enforcement of permitted activity standards without direct cost recovery creating a financial burden on the user.