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Hon. Tony Randerson QC
Chair
RM Review Panel

Per email: Lisa.Attrill@mfe.govt.nz

Dear Review Panel

Thank you for sharing indicative proposals for reform and Part 2 wording with us.

We congratulate the Resource Management Review Panel (the Panel) on progress it has made in the relatively short period of time available.

As the Panel is aware, Infrastructure New Zealand, along with our partners at the Employers and Manufacturers Association (Northern), Environmental Defence Society and Property Council of New Zealand have long advocated for this review.

We note that the Panel is still finalising recommendations on economic instruments. We are pleased that the Panel appears to be giving deep consideration to this issue. We agree that the funding of activities and the entities responsible for resource management is essential to understanding failures in the current system and anticipate significant recommendations for reform.

In the absence of direction from the Panel regarding proposals for funding reform, we have assumed in our following comments limited material change from the status quo.

Indicative Proposals for Reform

We support the clear and explicit commitment to achieving outcomes and consider the emphasis on outcomes will result in better resource management performance overall. (6)

We support the ambition of the Panel and share its aspiration to not only manage environmental effects, but improve environmental performance. (7a)

We support the proposal to repeal and replace the RMA, which we consider has had a negative impact on many important public outcomes. (8)



The RMA's effects-based approach to planning has under-represented the benefits of growth and development and over-represented negative impacts on existing activities from change, regardless of whether these existing activities provide broad benefits.

A new approach which acknowledges the potential for sound resource management planning to improve public outcomes is required.

However, on the basis of information provided to date, it is not possible to say whether recommendations by the panel will or will not have the desired effect of shifting New Zealand away from the effects-based approach.

In order to shift away from effects-based resource management, statute and authorities overseeing statute will be required to prioritise outcomes. This will occur when authorities and the communities they serve share in the long term benefits of positive, proactive decision making.

It is important that the Panel's final recommendations reflect the importance of sharing costs and benefits across affected communities and institutions, and that the Panel allocates resourcing and responsibility accordingly. Our views on how resourcing and responsibilities can best be allocated across decision making authorities is set out in our Building Regions report.¹

We expect the creation of new legislation to integrate across the wider resource management system will have a net beneficial impact on resource management. (9)

However, on the basis of available information, we cannot support the purpose of new legislation including "to give effect to the concept of 'Te Mana o te Taiao'" (Te Mana). Our present understanding² is that this concept establishes a rigid hierarchy for decision making which elevates natural environmental wellbeing above human health considerations and, in turn, human health considerations above economic, political, security and other wellbeing.

We agree, in principle, that human and other wellbeing cannot be promoted in the absence of an adequate natural environment. It is in this context that we support environmental bottom lines. However, it is not clear in the information provided whether the concept of Te Mana is referring simply to environmental bottom lines or a clearer preference for elevating environmental outcomes above other outcomes. If the latter, we anticipate an unworkable and litigious situation where minor environmental impacts are permitted to undermine major economic and social outcomes. This situation would likely resemble the most acute interpretations of the current RMA-based system whereby the environment is upheld above any and all other priorities, and environmental impacts must be mitigated in the extreme with weak consideration of social, cultural, or economic benefits.

¹ <https://infrastructure.org.nz/Reports>

² Based on the information provided in para. 11 and Appendix 1.



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We consider it important that our country's laws recognise and reflect the Māori worldview, but are not in a position to agree or disagree whether Te Mana fairly and adequately represents this view. We do note, however, that the current effects-based system, which has placed environment above other outcomes, has disproportionately affected Māori through unaffordable housing, and poor of consideration of social, cultural, and economic outcomes. If Te Mana indeed prioritises the environment to the detriment of other outcomes, we are concerned that this inequity would only be exacerbated.

We consider that collaborative development of long term spatial strategies will materially improve public outcomes. (12)

However, we wish to be clear that the reason why spatial strategy and planning is so important is because “place” is an inherent integrator of public policy. It is the practice of approaching outcomes within a defined area which enables authorities to combine and prioritise different activities, investments, goals, issues and objectives.

Aligning and integrating statute itself is important, but what matters most is the actual implementation of policies, and public responses, to legislation. The priority for resource management is the integration of planning, funding and governance around place above the abstract alignment of legislative architecture.

We are challenged to understand how the global and therefore “aspatial” nature of climate change can be efficiently and effectively implemented through spatial planning.

To be clear, we strongly support climate change mitigation, as well as adaptation. Our concern is whether spatial planning is an appropriate vehicle to achieve this.

Given the constrained resources and responsibilities of local government, and observed decision making to date, we consider there to be an unacceptably high risk that climate change regulation is used less as a means to achieve lower net emissions and more as a tool to manage down council costs.

Our concern is that in-practice implementation will involve the establishment of additional barriers to housing, food production, employment and wider activities with *no net benefit to the global environment*.

We consider that climate change objectives can be more simply and appropriately managed through other legislation and policies, in particular, through the pricing of energy and energy-consuming technologies.

We support the creation of a single regulatory plan for each region and consider the simplification of planning rules will result in greater clarity, transparency and efficiency of resource management. (13)

However we do not agree that *existing* regions are the appropriate subnational geographic entities to represent outcomes. Existing regional boundaries reflect the needs and activities of



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the existing RMA and LGA – they reflect watersheds more closely than they do regional livelihoods or economies. A new RMA and LGA must consider whether these regional boundaries and the entities which share responsibility within them are still appropriate.

We consider that, in order for authorities to pursue outcomes, regional boundaries should better reflect economic and social geographies. That is, boundaries should seek to, as much as possible, represent the spectrum of movement to, from and around a shared community. Where people work, live and play should be a defining feature of a region, rather than, or at least in addition to, freshwater catchments and other factors.

If boundaries do not represent the primary interactions of people and goods then understanding and facilitating those interactions is more difficult. Resourcing is misaligned, evidence gathering is compromised, governance is weak and responsibilities are confused.

The difference in capacity and scale between New Zealand's regions is also striking, and creates unnecessary disparity between existing regions.

While we recognise that consideration of local authority boundaries is outside the terms of reference of the Panel, the Panel can draw attention to the importance of aligning local authority boundaries with activities and it can identify issues with the retention of existing boundaries in a new system.

We consider the independent hearings panel process in Auckland resulted in a better trade-off of the costs and benefits of different rules than would have been achieved via a traditional council process.
(14)

Most notably, the Unitary Plan Independent Hearings Panel was able to unlock much greater housing development potential than would likely have been otherwise possible.

However, we encourage the Panel to consider why this was the case and whether final recommendations through this process will address the underlying pressures which almost led to a severe failure to provide for growth in Auckland.

Why, in a context of severe housing undersupply and unaffordability, did the Auckland Council propose a draft solution which constrained both greenfield and brownfield development? Why did the Auckland public prefer a compact city with little density?

More importantly, will the Auckland Council, other authorities and their constituents desire fairer and better policies under the Panel's recommendations?

Until communities and their representatives share equally in the costs and benefits of different resource management decisions, they will not receive the signalling they require to make informed and sensible decisions. Suboptimal economic, social, cultural and environmental outcomes will then be promoted, with or without independent panels.

On the basis of available information, we are not in a position to comment on proposed consenting improvements. (15)

We note, however, that consenting is a microcosm of the wider regulatory context described above and that the priority for the Panel should be ensuring that the costs and benefits of projects are more explicitly tied to those affected.

There is a clear and immediate need for improved compliance, monitoring and enforcement. (16, 17)

Given the significance of this issue, most obviously in respect of freshwater quality, but also in regard to the cost of urban land (which is heavily influenced by planning rules which regulate supply), we firmly consider that major reform of this function, and the entity/entities which perform it, is required.

Regional councils in, more or less, their existing form are unlikely to deliver the outcomes the Government or public expects, with or without national oversight. This is due to limited resourcing, responsibilities dominated by environmental regulation over outcomes and limited capacity and capability.

Most obviously, we cannot see how regional councils in anything like their current form could resource and pursue environmental *improvement*. This would leave regional authorities as effects-based regulators and a potential impediment to achieving outcomes.

It could also be the case that proposals to strengthen monitoring via national oversight result in fewer skills at the regional level and less accountability over performance.

Our position remains that environmental monitoring and enforcement should be performed nationally, where skills can be fostered and resourcing adequate, with regions instead geared for sustainable economic, environmental, and social development.

We consider that a proposal which broadly retains councils in their current form, with their current resourcing capabilities and current responsibilities will severely fail New Zealand. (18,19,20)

We support partnerships, national direction, oversight, spatial planning and other measures, but if councils and other entities do not want to achieve shared outcomes then they will not.

We strongly encourage the Panel to question why institutions have been making the decisions they have and what changes to the resource management system will then be required to change the status quo.

We refer the Panel to our 2019 Building Regions report for further detail on the importance of aligned planning, funding, governance and delivery of resource management decisions.³

³ <https://infrastructure.org.nz/Reports>



It is difficult for us to comment further in the absence of information on economic instruments, as these are central to understanding the drivers of local and central government decision making.

Reform proposals to address review priorities

It is difficult to comment directly on the substance of individual reform proposals, as these tend to express *intent* as currently provided and our primary interest is in *application*.

However, we are very concerned with the proposal to codify the *precautionary principle*. (22c)

Favouring protection where there is uncertainty about information but a risk of harm runs an unacceptably high risk of severe policy failure. It introduces, indeed it encourages, the potential for any and all vexatious objections to infrastructure and development.

Given the complexity of the natural environment, there will never be a situation where all information is known and understood. Opponents to infrastructure and development on the basis of economic, social, personal or other concerns will be in a position to use the pretext of a lack of satisfactory information to impede and prevent housing, employment and even net environmental improvement.

The precautionary principle is inconsistent with other planning systems we have examined internationally. Indeed, best practice in planning systems like New Zealand's is moving in the opposite direction to the precautionary principle because of the power such a policy transfers to opponents of change.

In the UK for example, the National Policy Planning Framework codifies the *presumption in favour of sustainable development*. It instructs that permission be granted unless evidence is sufficient to show that it should not proceed.⁴

This is a much more economically and socially sustainable approach to resource management decision making. It better balances the risk of poor decision making by spreading it across all parties, rather than concentrating it on those who require development for new housing and services. It places greater responsibility on authorities – who have the resources and capability – to research, analyse and build understanding of the natural environment to inform good, long term decision making.

We do not support the precautionary principle as currently outlined and strongly encourage the panel to codify the presumption in favour of sustainable development.

We thank the Panel for this opportunity to provide feedback.

⁴ National Policy Planning Framework, February 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPP_F_Feb_2019_revised.pdf