

Submission by



to the

Resource Management Review Panel

on

**Transforming the Resource Management System: Opportunities for
Change**

Issues and Options Paper

February 2020

**TRANSFORMING THE RESOURCE MANAGEMENT SYSTEM:
OPPORTUNITIES FOR CHANGE ISSUES AND OPTIONS PAPER
SUBMISSION BY BUSINESSNZ¹**

BusinessNZ welcomes the opportunity to comment on *Transforming the Resource Management System: Opportunities for Change – Issues and Options Paper*.

BusinessNZ notes that some members will be making their own submissions on issues specific to their areas of expertise, and that recommendations in this submissions are consistent with recommendations in:

- [BusinessNZ submission to Local Government & Environment Select Committee on Resource Legislation Amendment Bill March 2016](#)
- [BusinessNZ submission to the Resource Management Review Panel February 2020 \(resource allocation\)](#)
- Previous submissions by BusinessNZ on the RMA, available on www.businessnz.org.nz

This submission to the Resource Management Review Panel concentrates on development, planning and consenting aspects of the RMA.

¹ Background information on BusinessNZ is attached as Appendix 1.

Background: There is concern that environmental protection has, over the years, come to take precedence over the need to develop resources in ways that provide the greatest number with the most benefit. Court decisions, often varying on appeal, have tended to bring confusion rather than clarity.

Surveys of BusinessNZ members since 2000 have reported on numerous aspects of the RMA as impacting on their ability to undertake development activities and as a significant drawback to business growth:

Problems for business from presumptions, activities and decisions under the RMA:

- Presumption in favour of status quo rather than development
- Property rights reduced by Council and Court decisions under the RMA
- Lack of compensation for reduction in property rights
- Limited appeal rights on RMA decisions
- Processes under the RMA that favour the well-resourced
- Lengthy, impenetrable Plans raising uncertainty, requiring businesses to purchase professional advice
- Ongoing changes to Plans as 'live' documents, raising uncertainty
- Differences between Plans developed in different regions, creating compliance costs for businesses operating nationally
- Omissions from Plans on key matters that are left to the resource consenting process to resolve, adding to consenting conditions and raising uncertainty
- Unnecessarily onerous consenting conditions
- Consents required for too many normal everyday activities
- Heavy fees and development contributions
- Micro-management by Councils of matters peripheral to development planning or resource management
- Vulnerability to misuse of RMA appeal processes by competitors for anticompetitive purposes
- Vulnerability to blocking of development by pressure groups

This experience by New Zealand businesses during the life of the RMA informs BusinessNZ's recommendations on Issues in this Issues and Options Paper.

Issue 1: Legislative architecture

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

- Overlap between issues involved in environmental management and land use planning mean there would be definitional problems in separating the legislation into two discrete Acts.
- *BusinessNZ recommends* the continuance of an integrated approach within a single piece of legislation, with more appropriate weighting of its two key elements – ‘environment’ and ‘development’ - in a non-hierarchical architecture.

Issue 2: Purpose and principles of the RMA

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

Does s5 require any modification?

- The purpose statement s5 sets sustainable management as the main purpose of the Act, with the qualification that sustainable management should be achieved in a manner that enables social, economic and cultural well-being and health and safety.
- S5 therefore sets up a hierarchy where sustainable management (‘environment’) is the main purpose, and the enabling of social, economic and cultural well-being and health and safety (‘development’) is subsidiary to that.
- This hierarchy has led to legitimate development activities facing barriers in achieving consents as a result of being deemed lower in the hierarchy than environmental issues.
- This hierarchy has been a key factor leading to the generation of the large amount of case law that has grown up during the life of the RMA that has reduced clarity and certainty and brought difficulties achieving both environmental and developmental outcomes.
- *BusinessNZ recommends:*
 - That the RMA purpose statement should have no hierarchy of environment and development outcomes.
 - That, recognising the right of property owners to use and develop their properties, the purpose and principles of the Act should include the maintenance of property rights.

- That the purpose and principles of the Act should include the efficient use of natural and physical resources, to allow resources to be allocated to their most highly valued use.
- That the purpose and principles of the Act should acknowledge change as a factor in national life, including the changing nature of landscapes and the environment, and the change inherent in development activities.
- That consideration be given to replacing the term “sustainable management” with “sustainable management and development,” to assist in placing environmental and developmental benefits on a more equal footing. BusinessNZ notes that resources can be ‘managed’ in perpetuity without any development ever taking place, but ‘development’ is required for the economy to grow.

Should ss. 6 and 7 be amended?

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

- S6 sets out a list of ‘matters of national importance’ that should be recognised and provided for under the Act, while s7 sets out a list of ‘other matters’ that should receive particular regard. Sections 6 and 7 therefore create an additional hierarchy to the one in s5.
- Absent from s6 ‘matters of national importance’ are any elements relating to development. The hierarchy in ss. 6 and 7 therefore continues the process of ranking ‘environment’ more highly than ‘development.’
- *BusinessNZ recommends* that s6’s list of ‘matters of national importance’ should include legitimate development activity, in order to remove this hierarchy.

Issue 6: National direction

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

- Greater direction through national policy statements would increase clarity and certainty and reduce compliance activity, including number of hearings required.
- *BusinessNZ recommends:*

- Greater use of national direction by way of national policy statements, with NPS formulated by Ministers subject to public consultation and Parliamentary oversight and debate.
- Consideration of a harmonised set of national policy statements delivered through a single NPS.

Issue 7: Policy and planning framework

How could the content of plans be improved?

What level of oversight should there be over plans and how should it be provided?

- More national direction on the content of Plans would help reduce the unwieldy size and complexity of many Plans that bring barriers to public and business participation.
- This would address the current problem of Plans with conflicting elements in different regions, a particular barrier for businesses that operate across the country.
- National direction should include requirements for Councils to undertake rigorous cost-benefit analysis of changes to Plans.
- *BusinessNZ recommends:*
 - That Part 4 s32 of the RMA be strengthened regarding the requirements for cost-benefit analysis for changes to Plans.
 - National direction on number of plans, including integrating Regional and District Plans into a single Plan, and with Councils having no more than two Plans in place at one time: an operative Plan and a single proposed Plan.
 - The establishment of an oversight body to advise on and conduct oversight of Plan content, and test all proposed Plans for intelligibility, legality and the quality of their s32 cost-benefit analysis with regard to net public benefit, and with membership of the body representing environment and development interests equally.

Issue 8: Consents/approvals

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?

- While relatively few consent applications are declined each year, many applications are withdrawn by applicants when confronted with the cost and complexity of the process, and the realization of potential
- *BusinessNZ recommends* that an oversight body (as in Issue 7 above) for Plans should also advise on and conduct oversight of consenting processes undertaken by Councils, with a view to streamlining consent conditions and reducing the number of unnecessary conditions.
- Having the same oversight responsible for guidance on both Plans and consenting processes would help achieve national consistency in planning and consenting regulation.
- One of the drivers of the growth in number of consent requirements is the financial benefits accruing to Councils. Local authorities gain revenue from applications for resource consents and requirements for applications to gain approval from planners, engineers, environmental consultants etc. The resulting consent conditions, restrictive for business, constitute a financial incentive for Councils.
- *BusinessNZ recommends* investigating a separation of Councils' roles as regulator and implementer in order to reduce this financial incentive on Councils that works against development.

Issue 9: Economic instruments

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

Is the RMA the appropriate legislative vehicle for economic instruments?

- The RMA was initially envisaged as a vehicle for economic instruments, aimed at enabling individuals and enterprises to transact with each other to agree on proposed activities and effects, limiting the requirement for regulation, and promoting a market in environmental effects.

- The RMA has failed in this regard and has largely acted to regulate rather than facilitate negotiation, not because it is an inappropriate vehicle for economic instruments, but rather because of the way it has been implemented over time.
- Amending the RMA to specifically enable economic instruments would address many of the difficulties caused for development by the RMA.
- Economic instruments would also be appropriate in other topic-specific legislation related to the RMA, such as ETS legislation, Waste Minimisation Act, Land Transport Act etc.
- *BusinessNZ recommends* investigating the inclusion into the RMA of specific provision for economic instruments such as:
 - a market-based system for allocating natural resources
 - transferable development rights
 - tradability in rights to use natural resources
 - tradable rights in environmental effects
 - contestable consenting

Issue 11: System monitoring and oversight

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

Who should have institutional oversight of these functions?

- Previous submissions by EMA and BusinessNZ have noted the lack of official data and historical records of RMA decisions and outcomes.
- *BusinessNZ recommends* that the oversight body recommended in Issues 7 and 8 above should be charged with the responsibility of maintaining formal records of RMA issues, decisions and outcomes.

Issue 12: Compliance, monitoring and enforcement

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

Who should have institutional responsibility for delivery and oversight of these functions?

- See recommendation for RMA oversight body, in Issues 7, 8 and 11 above

Issue 13: Institutional roles and responsibilities

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?

Are any new institutions or bodies required and if so what functions should they have?

- See recommendation for RMA oversight body, in Issues 7, 8 and 11 above

Appendix One - Background information on BusinessNZ



BusinessNZ is New Zealand's largest business advocacy body, representing:

- Regional business groups EMA, Business Central, Canterbury Employers' Chamber of Commerce, and Employers Otago Southland
- Major Companies Group of New Zealand's largest businesses
- Gold Group of medium sized businesses
- Affiliated Industries Group of national industry associations
- ExportNZ representing New Zealand exporting enterprises
- ManufacturingNZ representing New Zealand manufacturing enterprises
- Sustainable Business Council of enterprises leading sustainable business practice
- BusinessNZ Energy Council of enterprises leading sustainable energy production and use
- Buy NZ Made representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation (ILO), the International Organisation of Employers (IOE) and the Business and Industry Advisory Council (Business at OECD) to the Organisation for Economic Cooperation and Development (OECD).