



Resource Management Reform

Submission to Review Panel on Issues and Options Paper

Friday 7 February 2020

Introduction

The New Zealand Infrastructure Commission, Te Waihanga ('Infracom') welcomes a review of the Resource Management Act (RMA). It is widely understood across the infrastructure sector that the current system is not enabling infrastructure to contribute its maximum value to the well-being of New Zealanders.

Infracom's purpose is to coordinate, develop and promote an approach to infrastructure that improves the well-being of New Zealanders. In particular, Infracom must have regard for the long-term trends that impact on, or are impacted by, infrastructure.

New Zealand has had a significant infrastructure gap for some years, and we are struggling to fill this. For example, the World Economic Forum Global Competitiveness Report 2019 ranks New Zealand as 46th out of 141 countries for the state of our transport, water and electricity infrastructure. There is clearly room for improvement.

According to the International Monetary Fund (IMF), our infrastructure deficit is a cause of our low productivity growth and it makes it harder to raise our living standards. Other countries in the Asia-Pacific region have used focussed infrastructure investment as a way to gain competitiveness.

We are falling behind: our policy, regulatory, planning, funding and delivery processes look dated in their ability to provide New Zealand with the infrastructure we need.

We are submitting in response to the Review Panel's Issues and Options paper because the resource management and environmental planning system has a critical and long-term impact on the planning, funding and delivery of infrastructure. It is important that the Resource Management Review considers ways to improve the processes described above and to reduce costly hurdles and delays.

We have outlined our high-level comments in the content below, and provided more specific responses to your questions in the appendix.

Thank you for the opportunity to submit in response to the Issues and Options paper. We welcome future opportunities to contribute to this Review.

A high performing infrastructure system

To deliver better infrastructure societal outcomes, it is important that we strive for an environmental planning system that:

- enables and incentivises greater integration
- delivers more pipeline certainty
- gives land use planners the flexibility to release land in sync with demand and

- ensures central and local government have access to best practice funding, financing and procurement.

Key submission themes

The key themes we focus on in our submission are outlined below.

- Outcomes-focused environmental planning system
- Integrated decision-making
- The case for institutional reform
- Coordination of various government initiatives.

Content

Outcomes-focused environmental planning system

The system, whether through a new Act or improved RMA, needs clearer objectives so that those making consenting and permitting decisions have a clearer sense of direction as to how different activities should be prioritised.

The RMA is fundamentally a reactive framework designed to manage the adverse impacts of development. This approach underplays infrastructure's contribution to overall well-being and ignores the ability of infrastructure to regenerate places, deliver essential services, provide mobility and drive better economic, social, environmental and cultural outcomes from resource and land use.

While our focus is on function rather than form, our view is that the benefits of infrastructure must be better articulated through legislation.

Setting clearer objectives may require the social, environmental, economic and cultural benefits of infrastructure to be more clearly expressed in legislation. For example, we note that infrastructure, sustainable development and housing affordability are not included under the RMA's matters of national importance (s6). This list is heavily weighted to environmental protection. This list does not take a holistic well-being approach and should include a wider range of activities that contribute to social, financial/institutional and human (as well as environmental) capital.

As well as being outcomes-focused, the environmental management system also needs to be able to respond to changes in demand for infrastructure and housing. This means, for example, being able to make land available for housing and infrastructure that matches market demand as best as possible.

Integrated decision-making

To deliver on an agreed set of outcomes for a place, funding and planning decisions need to be made in unison by multiple parties across central and local government over 10 years plus. Without this level of commitment, spatial planning and other integrated decisions will always lack enough credibility to endure over the long-term.

We understand there are challenges achieving this level of integrated decision-making under the current system. Transport funding decisions are made under the LTMA and

environmental consenting decisions under the RMA – often years apart and against different principles.

We note the strong emphasis on spatial planning in the issues and options paper. We support efforts to use of spatial planning to agree a long-term vision for a place and bring the relevant parties to the table. This is critical for achieving greater integration and pipeline certainty and moving towards a forward-looking, outcomes-focused system.

However, the value of spatial plans can become undermined if they are not implemented. This requires empowered institutions, that have the requisite capacity, capability, funding and commitment to deliver on spatial plans.

Alongside major land use decisions, spatial plans also need to be the place where major central and local government infrastructure funding decisions are signaled out to 10 years plus. This would help make spatial planning more binding on those involved.

Also while spatial planning is valuable, we will never be able to fully plan for future needs or forecast future trends. It is important that land use and infrastructure decisions are shaped by appropriate economic tools, like price signals, to ensure we are incentivising the market to respond to market changes and lead investment.

It is also important that a robust business case assessment process is maintained in order to assess the full costs and benefits of individual projects before they are committed to.

We understand the Panel is considering the merits of a spatial planning act, which would be separate from environmental and planning legislation. While considering this, we would encourage the Panel to consider the following questions:

- Which Act would have precedence?
- How could the system ensure that the funding was provided when needed to give effect to the spatial plan?
- What if councils are unable to reach agreement?
- How will spatial planning override sovereign decision-making rights of individual councils.
- Will spatial planning be binding and if so, how will this be achieved?

The case for institutional reform

We acknowledge that the Government has excluded institutional reform from the scope of this Review. While we understand the reasons for this, many of the perverse outcomes that arise in the system are due at least in part to the institutional settings. Removing these matters from the scope results in a lost opportunity to look at the full range of matters that could, if reviewed, drive a considerable step-change in the performance of infrastructure.

We have seen many efforts within local government to integrate decisions be ultimately hamstrung by councillors justifiably prioritising local interests over regional or national ones. Due to resource constraints, territorial local authorities often have little capacity to engage in activities that are not either immediate priorities or regulatory requirements. But this is not to say that other tasks – like integrating asset management across council boundaries – would not present substantial benefits to their communities, regions, or the country.

This mismatch of incentives is felt most acutely in the urban housing sector. District councils carry a large share of the cost of infrastructure for new and infill housing

developments, without receiving a share of the benefits (unlike central government, which collects GST from every new arrival in the country).

Overall, we do not have the appropriate levels of governance for different infrastructure and services at present.

When considering institutional arrangements, it is best to consider what central government, local government and the market are best placed to fund and deliver

Our view is that territorial authorities are best placed to work with communities on place-making matters like town centre development and the provision of local amenities infrastructure and services, for instance. However, territorial local authorities do not always have mandate, incentives, capability or resources to act strategically across the wider system – which is what many infrastructure and services would benefit from.

For example, bulk water services require scope and scale to maximise efficiency. From international experience, they are often best delivered either at the national or regional levels.

Other infrastructure and services need to be coordinated at the national level, such as hospitals and prisons facilities, to ensure that facilities around the country complement – and do not duplicate – each other.

Some infrastructure and services will be best delivered by the market, such as the supply of telecommunications, energy supply, airports, shipping and freight. As noted above, in some instances, rather than government trying to predict and provide, it should in some instances be sending pricing and other economics signals and providing lead infrastructure to enable the market to make investment choices in infrastructure and services.

As noted above, we do not have the appropriate levels of governance for different infrastructure and services at present: water infrastructure and services are delivered locally, health services regionally and certain State highways that run through and shape locally communities delivered centrally.

The issues of governance, funding and delivery capability are at the heart of an effective environmental and development planning system.

Since the Panel is not able to look at such arrangements through this Review, we recommend that institutional settings are revisited through a review of the Local Government Act, Land Transport Management Act and other related legislation as a next step.

Coordination of various government initiatives

Finally, we are conscious there are several related government policy programmes underway to lift the pace and performance of infrastructure delivery. As well as the RM reforms, this includes the Urban Development Bill, Infrastructure Funding and Financing Bill, spatial planning activities in and around growth areas, amongst other activities.

We recommend the need for governance or oversight of the wide range of reform programmes. This is so any potential overlaps or conflicting decisions made between different reform programmes can be managed.

Appendix

Response to specific questions

Appendix – Response to specific questions from Resource Management Review Panel

Questions	Infracom's response to specific questions not covered above
<p>Legislative architecture</p> <p>1. Should there be separate legislation dealing with environmental management and land use planning, or is the current integrated approach preferable?</p>	<p>See comments above regarding an outcomes-based system, integrated decision-making and the case for institutional reform.</p>
<p>Purpose and principles of the Resource Management Act 1991</p> <p>2. What changes should be made to Part 2 of the RMA? For example:</p> <p>3. Does s5 require any modification?</p> <p>4. Should ss. 6 and 7 be amended?</p> <p>5. Should the relationship or 'hierarchy' of the matters in section 6 and 7 be changed?</p> <p>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?</p> <p>7. Are changes required to better reflect te ao Māori</p> <p>8. What other changes are needed to the purpose and principles in Part 2 of the RMA?</p>	<p>See comments above regarding an outcomes-based system</p>
<p>Recognising Te Tiriti o Waitangi / the Treaty of Waitangi and te ao Māori</p> <p>9. Are changes required to s8, including the hierarchy with regard to ss. 6 and 7?</p> <p>10. Are other changes needed to address Māori interests and engagement when decisions are made under the RMA?</p>	<p>We acknowledge that tangata whenua could be better recognized in planning legislation, although note that recognition of Māori customary rights is already provided in the RMA under section 6 and the Treaty of Waitangi recognized under section 8 of the RMA. It is important that these rights are recognised without becoming 'veto rights'.</p> <p>We encourage the Panel to consider how the long-term thinking in te ao Māori can be better facilitated through the RM</p>

	<p>system – acknowledging the importance of long-term planning to achieving better infrastructure outcomes.</p>
<p>Strategic integration across the resource management system</p> <p>11. How could land use planning processes under the RMA be better aligned with processes under the LGA and LTMA?</p> <p>12. What role should spatial planning have in achieving better integrated planning at a national and regional level?</p> <p>13. What role could spatial planning have in achieving improved environmental outcomes?</p> <p>14. What strategic function should spatial plans have, and should they be legally binding?</p> <p>15. How should spatial plans be integrated with land use plans under the RMA?</p>	<p>See comments above regarding integrated decision-making.</p>
<p>Addressing climate change and natural hazards</p> <p>16. Should the RMA be used as a tool to address climate change mitigation, and if so, how?</p> <p>17. What changes to the RMA are required to address climate change adaptation and natural hazards?</p> <p>18. How should the RMA be amended to align with the Climate Change Response Act 2002?</p>	<p>The infrastructure system needs a framework to value climate resilience and the carbon footprint of development activities, so that this can be included in cost-benefit and options analysis.</p> <p>To deliver on carbon reduction goals, business cases and project appraisals will need to use appropriate emissions prices over the expected lifetimes of investment options.</p> <p>Integrated planning – e.g. spatial planning – is a useful framework to understand the cumulative resilience or carbon footprint by place over time.</p> <p>We also recommend the need for consistent treatment of climate change across the RMA, Local Government Act (LGA), Land Transport Management Act (LTMA), Building Act and other legislation – at present there are different approaches to natural hazards under different statutes.</p> <p>Finally, we are collaborating within the Australia-New Zealand infrastructure body network to capture best practice climate resilience planning for infrastructure,</p>

	<p>which we can then adapt this to the New Zealand context.</p>
<p>National direction</p> <p>19. What role should more mandatory national direction have in setting environmental standards, protection of the environment generally, and in managing urban development?</p>	<p>We are aware of several common criticisms with national direction, including that:</p> <ul style="list-style-type: none"> • national direction has not been developed to the extent envisaged when the RMA was first enacted • councils are often constrained when it comes to implementing national direction • some councils charged with implementing national policy statements find them difficult to interpret, or its implementation causes unintended consequences because they are often more aspirational than practical. <p>Overall, we encourage the Panel to explore central government making more support available to local government with the interpretation and implementation of national direction.</p>
<p>Policy and planning framework</p> <p>20. How could the content of plans be improved?</p> <p>21. How can certainty be improved, while ensuring responsiveness?</p> <p>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?</p> <p>23. What level of oversight should there be over plans and how should it be provided?</p>	<p>See comments above regarding an outcomes-based system, integrated decision-making and the case for institutional reform.</p>
<p>Consents/approvals</p> <p>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?</p> <p>25. How might consent processes be better tailored to the scale of environmental risk and impact?</p> <p>26. Are changes required for other matters such as the process for designations?</p>	<p>Appeals and hearings</p> <p>For network providers and investors, better understanding what the community wants upfront provides more certainty and reduces the likelihood of unexpected costs and delays later in the process.</p> <p>Unlimited appeals on merit and wide scope for judicial review can undermine investor certainty and impose excessive costs, delays and risks. Ultimately, this makes it very difficult for central and local government to respond to changes in demand for housing and infrastructure.</p>

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?

Experience shows that unlimited appeals also are not necessarily the best way for affected parties to contribute to decisions impacting their communities. Integrated decision-making – e.g. spatial planning – could provide communities with a better opportunity upfront to contribute to the future outcomes for their communities. More community input upfront could also mean the avenues to appeal later in the process are curtailed.

With this in mind, we support the proposal in the Urban Development Bill to streamline appeals. The Independent Hearings Panel process used for the Auckland and Christchurch plans (which provided single stage plan hearings with limited appeals) may be a useful template to build this approach from.

Designations

The RMA currently provides designations for five years, extendable to ten years in certain circumstances (section 184). However, this timeframe does not always allow for the fact that some infrastructure requires decades of planning in advance. The time limit on designations was set to prevent land being blighted for development if not used by the requiring agency within the time period. However, section 185 (Environment Court may order taking of land), which enables the Court to order a requiring authority to pay a lease or to acquire designated land, provides adequate disincentive to agencies to hold land unnecessarily. We recommend that the Panel consider options that allows for long infrastructure lead times, such as extending designations to a minimum of ten years.

Custom and practice and Court precedents currently require project sponsors to prepare detailed project designs (named “outline” plans) for the Court to determine environmental effects. This can stifle innovation as it forces agencies and their suppliers to stick closely to the reference design that has been consented, even though alternative designs may have better environmental

	<p>outcomes. It would be better to enable outcomes focused environmental conditions on project development by way of policies, limits and standards so that competing designs might bring innovative solutions to dealing with environmental issues.</p>
<p>Economic instruments</p> <p>29. What role should economic instruments and other incentives have in achieving the identified outcomes of the resource management system?</p> <p>30. Is the RMA the appropriate legislative vehicle for economic instruments?</p>	<p>We support the true cost and benefits of development activities being reflected in pricing, such as via the polluter pays principle. This ensures costs are allocated fairly, the right behaviours are incentivised and enables growth to pay for growth.</p> <p>For this reason, we support user pricing, particularly for transport, drinking water and wastewater (noting that there are practical issues with charging for wastewater and trade waste).</p> <p>We acknowledge the equity concerns with user pricing, so we appreciate it may not be possible or reasonable to remove all cross-subsidisation. Furthermore, some services, such as public transport, depend on some degree of subsidization to be sustainable. However, any subsidization should be recognised and quantified.</p> <p>We acknowledge that the RMA enables economic instruments at present, but these have not been fully utilized to date. This is because economic instruments are seen by some communities as posing new costs for existing services, or there is a perceived moral imperative that certain infrastructure and services – like access to roads or drinking water – should not be subject to user pricing.</p>
<p>Allocation</p> <p>31. Should the RMA provide principles to guide local decision making about allocation of resources?</p> <p>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?</p> <p>33. Should allocation of resources use such as water and coastal marine space be dealt with under the RMA or elsewhere as is the</p>	<p>The RMA's first-in first-served approach to permitting may not be in the best interest of the community, region or future generations. This approach can lead to a lower economic, social, cultural and environmental use of land and water resources. It also sits at odds with spatial planning, which is about agreeing land use for the community or region at large over the long-term, rather than prioritizing individual interests.</p> <p>Property rights and individual interests will always be important but need to be reasonably balanced alongside the needs</p>

<p>case with minerals and fisheries, leaving the RMA for regulatory issues?</p>	<p>of the community, region and future generations. We note that the Urban Development Bill attempts to make this balance, which we welcome.</p>
<p>System monitoring and oversight</p> <p>34. What changes are needed to improve monitoring of the resource management system, including data collection, management and use?</p> <p>35. Who should have institutional oversight of these functions?</p>	<p>We acknowledge that councils are stretched for capability, and as a result often struggle to monitor compliance and enforce regulations. Any new requirements on councils needs to be met with consider how the resourcing burden can be alleviated.</p> <p>This could take the form of new revenue raising tools for local government, to provide the resources to undertake monitoring and compliance activities – as well as other activities – more effectively.</p>
<p>Compliance, monitoring and enforcement</p> <p>36. What changes are needed to compliance, monitoring and enforcement functions under the RMA to improve efficiency and effectiveness?</p> <p>37. Who should have institutional responsibility for delivery and oversight of these functions?</p> <p>38. Who should bear the cost of carrying out compliance services?</p>	<p>Such revenue tools include:</p> <ul style="list-style-type: none"> • Rating and taxing powers • User charges including road pricing, tolls, and volumetric charges for water • Value creation and capture such as integrated transport and land development • Asset recycling - selling existing assets to fund new assets.
<p>Institutional roles and responsibilities</p> <p>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?</p> <p>40. How could existing institutions and bodies be rationalised or improved?</p> <p>41. Are any new institutions or bodies required and what functions should they have?</p>	<p>See comments above regarding the case for institutional reform.</p>
<p>Reducing complexity</p> <p>42. What other changes should be made to the RMA to reduce undue complexity, improve accessibility and increase efficiency and effectiveness?</p> <p>43. How can we remove unnecessary detail from the RMA?</p>	<p>See above regarding an outcomes-based system, integrated decision-making and the case for institutional reform.</p>

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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