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Resource Management Review Panel

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## **Water New Zealand Submission on the Resource Management Issues and Options Paper**

### Introduction and Overview

1. Water New Zealand appreciates an opportunity to provide a submission on the *Resource Management Issues and Options Paper (the Paper)*.
2. Our submission is that we are generally in support of the objectives of the review of the resource management regime as set out in the Paper. We also agree that the issues and options set out are, at a high level, the correct ones to focus on.
3. Water New Zealand is a national not-for-profit sector organisation comprising approximately 1900 corporate and individual members in New Zealand and overseas. Water New Zealand is the principal voice for the water sector, focusing on the sustainable management and promotion of the water environment and encompassing the three waters: drinking water, waste and storm waters.
4. Water New Zealand understands that the purpose of the Paper is to start a conversation about issues to be considered and addressed by a review of the resource management system and to offer some initial thoughts on possible options. Water New Zealand would also be happy to meet with the Resource Management Review Panel if its views or expertise would be considered helpful to the Panel.
5. Water New Zealand notes that some members will be making their own submissions on issues specific to their areas of expertise and interest, particularly those from local authorities.

### Overarching Comments

6. The three waters sector is experiencing a time of unprecedented legislative and structural change. Currently there are a number of government proposals in various stages of development that will impact directly on the sector, including:
  - (a) **Taumata Arowai – the Water Services Regulator Bill** (currently out for submissions) – which establishes a new regulatory body to oversee, administer, and enforce the drinking water regulatory system;
  - (b) **Infrastructure Funding and Financing Bill** (currently out for submissions) which intends to provide a funding and financing model to support the provision of infrastructure for housing and urban development that supports functioning urban land markets and reduces the impact of local authority financing and funding constraints.

- (c) **Water Services Bill** (currently still with the government to be released for submission) which complements the regulator legislation to implement the system-wide reforms to the regulation of drinking water and source water and targeted reforms to improve regulation and performance of wastewater and stormwater networks.
7. Water New Zealand's members are directly affected by a resource management reform such as the approach discussed in the Paper as most of the activities undertaken by water service providers require planning and policy support and generally need to obtain resource consents.

## The Specific Issues of Interest to Water New Zealand

8. The specific provisions of the paper that our submission relates to are:
- a. Legislative architecture (Issue 1);
  - b. Purpose and principles of the RMA (Issue 2);
  - c. The integration of land use planning and other natural and physical resources (Issue 4);
  - d. Climate change (Issue 5);
  - e. National direction (Issue 6);
  - f. Policy and planning (Issue 7);
  - g. Consents (Issue 8);
  - h. Allocation (Issue 10): and
  - i. Compliance, monitoring and enforcement (Issue 12);
  - j. Institutional roles and responsibilities (Issue 13).

## Legislative Architecture (Issue 1)

9. The paper has asked whether there should be separate legislation dealing with environmental management and land use planning, or whether the current integrated approach preferable? Water New Zealand prefers an integrated approach but does not consider the current RMA framework achieves this very effectively. Currently planning and regulatory requirements for water infrastructure sit across several statutes, including the RMA, the local government statutes, transportation legislation, the Health Act and the new regimes that will be coming into force in the near future and noted above.
10. As part of the review of the RMA Water New Zealand recommend that a more holistic approach is taken to broader infrastructure planning and regulatory frameworks to ensure consistency, efficiency and ultimately good environmental outcomes while ensuring communities have safe delivery of essential services.

## Purpose and Principles of the RMA(issue 2)

11. Generally Water New Zealand considers that the purpose and principles of the RMA are fit for purpose in any new environmental regulatory regime going forward. However some clarity about the purpose and the principles that support it is still required even though it has been nearly 30 years since the RMA was enacted.
12. Section 5 in particular has been subject to litigation about its meaning and application since 1991. The Supreme Court in *King Salmon* and the subsequent Court of Appeal decision of *Davidson* have greatly assisted the judicial interpretation of section 5 and the way in which many consider it ought to have been implemented since 1991.
13. Unfortunately, section 5 has not been applied by decision-makers on plans and policy and resource consents in the way intended. There have been a number of decisions resulting in trade-offs that have been at the expense of the environment. Decisions that should have been made to cease resource use and development were not made. Post the decision in *King Salmon*, it is not considered that the system needs re-writing, as to do this would essentially re-start the whole interpretation process. Rather, the system needs be implemented in the way it was intended to apply in 1991.
14. A fundamental flaw to the implementation of the RMA in 1991 is it was largely left to local authorities to get on with it with limited guidance or support from central government. That coupled with an ideology at the time that the focus of decision making should be on environmental effects and nothing else (the market will determine everything else) has left enormous gaps in the way in which we have planned for both our urban and our rural environments.
15. This time around local authorities need significant direction and guidance to help them apply the purpose and principles. Resources need to be focussed on not only implementation but monitoring and compliance to ensure implementation is actually occurring (see comment further below on this matter - refer to issue 11 and 12, page 11).
16. This sporadic planning approach and lack of a strategic focus (see issue 4) has been one of the reasons (not the only one) that we see very poor infrastructure planning and provision in New Zealand.

## Strategic Integration (Issue 4):

17. Several questions are posed in relation to this issue. As noted above land use planning processes across the RMA, LGA and LTMA in particular could be better aligned. In Water New Zealand's view the best mechanism to achieve this is to mandate a form of spatial planning throughout New Zealand. This could be modelled on the Auckland Plan and the legislation underpinning that Plan. While spatial planning in Auckland is under the auspices of a unitary authority it can be done in those parts of the country where there are no unitary authorities. There are examples of joined up planning processes throughout the country – such as the Bay of Plenty, Waikato and Wellington regions where various joint approaches to strategic planning for growth occur. However to be effective and universal spatial planning would need to be mandatory.
18. The spatial plan would set the blueprint for a region for a lengthy time period – such as 30 years. It would focus on all the well-beings and outcomes not just environmental. It would need to be delivered across a range of regulatory tools including plans developed under the RMA and any successor. Those plans should be required to give

effect to the spatial plan in the same way they are required to give effect to higher order policies such as NPSs and RPSs.

## Climate Change (Issue 5):

19. Issues associated with climate change both in terms of planning for the effects of climate change and mitigation of such effects are critical environmental issues. The infrastructure that the members of Water New Zealand manage are critical for safe and healthy communities and given the location of these they are at the forefront when natural disasters (including those exacerbated by climate change) occur. Climate change management should be a part of every councils strategic and spatial planning and must be included as integral to those processes not a tick box to be considered and moved on from.
20. Issues around national greenhouse gas reduction can and should only occur at a national level but to the extent appropriate be given effect to locally by local authorities.

## National Direction (Issue 6):

21. The issue question posed is what role should more mandatory national direction have in settling environmental standards, protection of the environment generally, and in managing urban development?
22. As noted under the discussion of issue 2 above, until relatively recently mandatory national guidance in the form of regulation, NPSs and NESs has been less than desirable in the RM space. In 1991 until the mid-2000s local authorities were largely left to their own devices on how they were to implement the RMA in their districts and regions. As a result, we have a plethora of approaches to environmental matters that should have been dealt with at a country level. Some examples in the water industry space are:
  - (a) Varied approaches to the setting of limits and regulatory frameworks for freshwater;
  - (b) Every district plan adopting different definitions for terms that should be consistent across the country;
  - (c) Every wastewater treatment plant having different standards to meet even though on the whole generic standards are appropriate tailored for the local situation;
  - (d) Out of synchronised timing between the development of policies and plans such that in some places we have regional and district plans are yet to give effect to more up to date RPSs and NPSs;
  - (e) Continuous ‘reinvention of the wheel’ and a lack of learning from past experiences or the experiences of others.
23. It is critical that there is national guidance (both mandatory and non-mandatory) to accompany any re-setting of the RM framework. It is also critical that there is appropriate transitional arrangements in place so the problem of policy and planning documents being unsynchronised is kept to a minimum.

## Policy and Planning (Issue 7):

24. It is the view of Water New Zealand that if there is mandated spatial planning, a greatly improved integrated decision making framework and significant national level guidance and direction then the quality of policy and planning document should naturally follow.
25. The policy and planning process provisions in the RMA have been ‘tweaked’ almost every year since the statute was enacted. These ‘tweaks’ have not resulted in better policy and plan making but have led to increased bureaucracy and placed an enormous burden of cost on local government.
26. In terms of monitoring effectiveness this is covered in issue 12.

## Consents and Approvals (Issue 8):

27. As for issue 7 it is the view of Water New Zealand that dealing with the higher order areas will result in significant improvements to processes for consents and approvals.
28. The consent process provisions in the Act have been ‘tweaked’ even more often than the policy and planning ones. The result is lengthy, time-consuming costly and inefficient processes that many local authorities are struggling to undertake. The fact that many consents are not notified only tells half the picture of what really goes on in consent teams within councils. Our members tell us that consent process are unwieldy and do not necessary deliver any environmental improvements.

## Allocation (Issue 10):

29. Water New Zealand is directly affected and has been involved in previous reforms regarding the allocation of water. The Government is developing its freshwater allocation policy through its Essential Freshwater work programme. Through the Action for Healthy Waterways Discussion Document which Water New Zealand submitted on, the emphasis to date has been on freshwater quality reform as an initial step.
30. There is an inherent tension in having an Act that is allocating resources and managing environmental outcomes. There is therefore merit in the idea of removing allocation from the RMA and having that allocation dealt with by other processes – many of which exist such as DOC concessions for areas that that Department administer.

## Compliance Monitoring and Enforcement (Issue 12):

31. Compliance monitoring and enforcement under the RMA is piecemeal and largely ineffective. One only has to look at the decline in freshwater quality over the last 30 years to see that something has gone very awry. Some local authorities are very good at this function whereas others are not due to competing priorities and lack of resources.
32. Water New Zealand considers that there needs to be national oversight of compliance monitoring and enforcement across all the matters covered in the RMA – policy and plans and consents. Such national oversight would include setting up standardised templates and processes for monitoring and would also need to have strong regulatory tools of enforcement to ensure that poor performance is addressed.

## Institutional Roles and Responsibilities (Issue 13):

33. Water New Zealand considers that changes to institutional roles and responsibilities are essential to ensure a new environmental system works as intended. The elements need to include:
- (a) New roles and functions in relation to spatial planning;
  - (b) National oversight of compliance monitoring and enforcement;
  - (c) A greater level of national guidance and direction either via increased activity at the MfE or via a new agency;
  - (d) Consideration of how the management of freshwater ought to be dealt with in light of the changes signalled (and noted above) in the water industry.

## Conclusion

34. Water New Zealand is directly affected by any changes to the resource management system affecting water. Whilst the issues discussed above outline the key areas of interest for Water New Zealand, other issues may also have effects and implications on the water sector and on how water is managed.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Pffhalert', written in a cursive style.

John Pffhalert  
Chief Executive