

# Draft Terms of Reference

## Resource Management Review Panel

For public release on 24 July 2019

These draft Terms of Reference are subject to changes from consultation on the scope of the Resource Management Review. The Terms of Reference will be finalised before the Review Panel is appointed.

### Establishment of the Resource Management Review Panel

1. These terms of reference establish the Resource Management Review Panel (the Panel).
2. The Panel is established for the purpose of undertaking a comprehensive review of the resource management system (the review). This review represents the second stage of the Government's two-stage approach to resource management reform.
3. The role of the Panel will be reviewed following Cabinet's consideration of the Panel's final report.
4. Further context is set out in the associated Cabinet Paper *Comprehensive review of the resource management system: scope and process*.

### Aim of the review

5. The aim of the review is to improve environmental outcomes and enable better and timely urban development within environmental limits.

### Approach to the review

6. The Resource Management Act 1991 (RMA) was a major step forward for resource management in New Zealand, and was a product of rising environmental awareness. While much of the RMA remains sound, it is underperforming in the management of key environmental issues such as freshwater, and in delivering affordable housing and well-designed urban communities.
7. The review is expected to resolve debate on key issues (listed at Appendix 1), including possibly separating statutory provision for land use planning from environmental protection of air, water, soil and biodiversity. Resolving questions of this magnitude will require the review to consider a wide range of options, including options that depart from the status quo.
8. One such option, in the context of further clarifying Part 2 (purpose and principles) of the RMA, is determining whether Part 2 (or its replacement) sits in the RMA or in a separate piece of legislation.
9. The review must design a system for land use regulation and environmental protection that is fit for addressing current and future challenges. Recommendations should consider, and where appropriate reflect, developments in New Zealand and international best practice.

## Scope of the review

### Primary focus is the RMA

10. This review will focus primarily on the RMA itself.<sup>1</sup> The review will include the interface of the RMA with the Local Government Act 2002 (LGA), the Land Transport Management Act 2003 (LTMA) and the Climate Change Response (Zero Carbon) Amendment Act (once passed), as visualised in Figure 1 below.

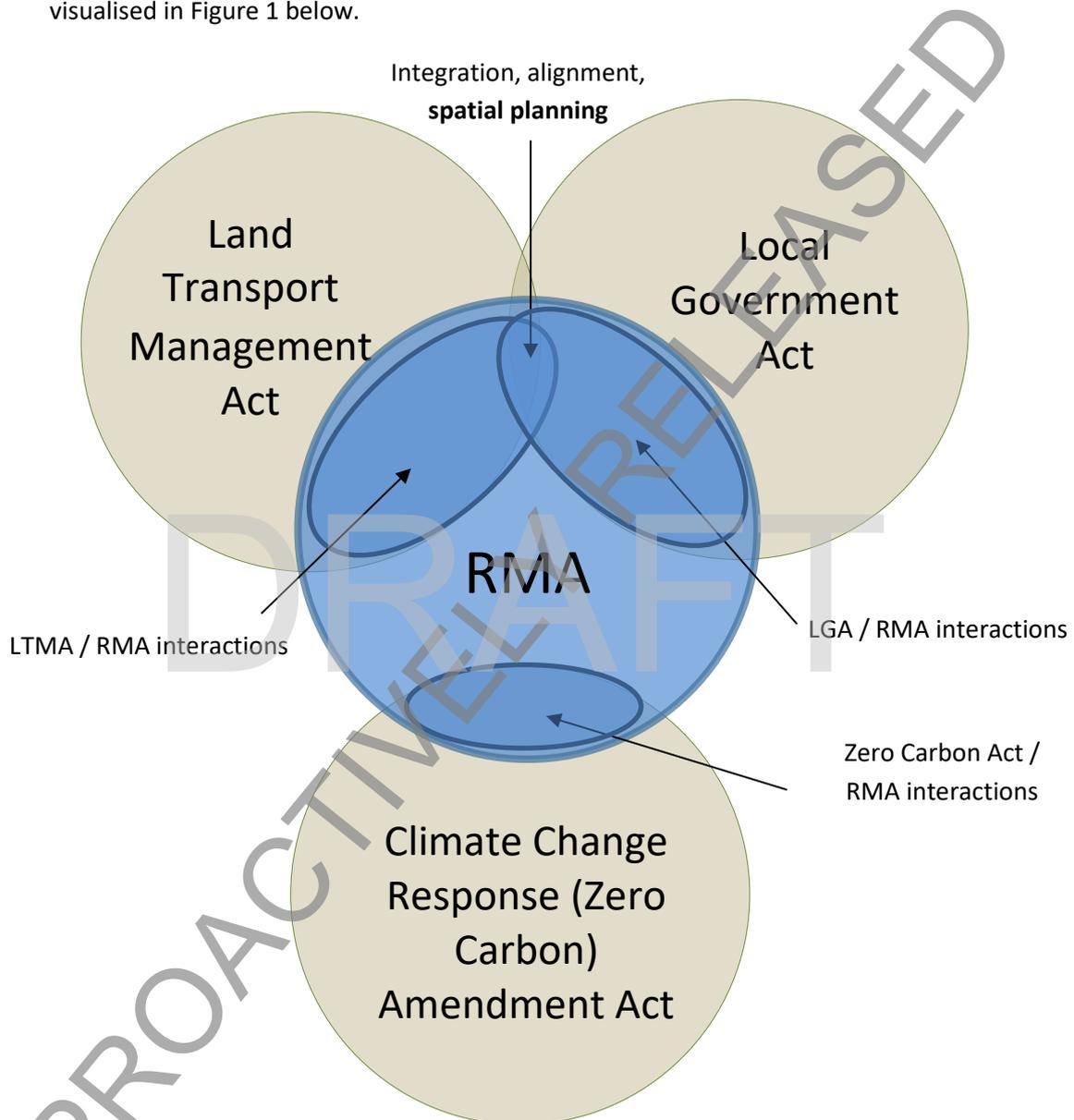


Figure 1: Scope of the review scope. Blue areas are in scope - green areas are beyond scope.

11. The review should prioritise setting the high level framework for an improved resource management system, rather than resolving all specific issues with the current legislation. More detailed policy, process and transitional issues will be progressed by officials following the review.

<sup>1</sup> Cabinet has previously agreed to consider the particular issues of urban tree protection and climate change resilience (both mitigation and adaptation) as part of this review.

12. The review will focus on addressing the key issues listed at Appendix 1.

### **Spatial planning between the RMA, the LGA and the LTMA**

13. The review will begin enabling a new role for spatial planning. Doing so requires consideration of plans and processes across the RMA, LGA and LTMA.
14. Proposals for strengthening spatial planning across all three Acts are currently being developed under the Urban Growth Agenda in conjunction with the Ministers of Local Government, Transport, Housing, and Urban Development.
15. The review must consider any proposals arising from this work and how they should be integrated into the Panel's recommended changes.

### **Other reviews and legislation within the resource management system**

16. The review should consider the potential impact of and alignment with other relevant legislation (including the Building Act 2004 and Fisheries Act 1996), government programmes and regulatory reviews currently underway within the resource management system. These include but are not limited to the initiatives listed at Appendix 2.
17. The Secretariat can facilitate connections between the Panel and related policies and programmes as required.

### **Role of institutions**

18. Institutional reform is not a driver of the review, and it is expected that both regional councils and territorial authorities will endure. However, in making recommendations, the review should consider which entities are best placed to perform resource management functions. In considering any allocation of functions the review should:
  - consider the roles of existing entities and any new entities under development
  - consider whether all entities delegated with resource management functions have the capacity, funding, incentives and capability to deliver those functions effectively
  - only consider the possibility of creating a new entity after evaluating the potential for existing and proposed entities to deliver functions
  - take into account the Productivity Commission's framework to guide the allocation of regulatory roles, especially the principles for allocating roles.<sup>2</sup>

### **Out of scope**

19. The following matters are outside the scope of the review, unless approved by the Minister for the Environment (the Minister):
  - the marine environment that is beyond the 12 nautical mile territorial sea outer limit
  - existing Treaty of Waitangi settlements, except insofar as how a new resource management system will provide for them
  - issues with other Acts, such as the LGA and LTMA, beyond spatial planning or the

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<sup>2</sup> New Zealand Production Commission. 2013. *Towards Better Local Regulation*. Section 6.4. Pages 117-135.  
URL: <https://www.productivity.govt.nz/sites/default/files/towards-better-local-regulation.pdf>

interfaces of these Acts with the RMA (as visualised in Figure 1).

- issues with other pieces of legislation within the resource management system, beyond their interface with the RMA, including for the marine environment
- wider issues within the resource management system not included in these terms of reference.

## **Changes to scope**

20. The scope of the review may only be modified by written agreement from the Minister. [Note: Phase 1 consultation with key stakeholders may require amendments to the scope before the Terms of Reference are finalised.]

## **Review Deliverables**

### **Final report**

21. The primary review deliverable is a final report for the Minister recommending how to improve the resource management system and strengthen spatial planning. The report will provide detailed policy proposals for significant parts of a new Act or Acts, and indicative legislative drafting of key provisions.
22. Policy recommendations must address the review's aim, and issues identified in Appendix 1.
23. Recommendations in the final report should be reached by consensus between Panel members.
24. The final report is due with the Minister at the end of May 2020. A complete rewrite of the RMA is not a review deliverable, but indicative solutions should be provided that can be used for completion of that task. Cabinet will be responsible for making all decisions about how to progress review findings.

### **Issues and options paper**

25. The review will produce an 'issues and options' paper to solicit feedback for the Panel to consider in writing their final report.
26. This issues and options paper is due with the Minister at the end of October 2019.
27. Additional reporting may be required at the Minister's request.

### **Making use of previous reviews of the resource management system**

28. A large number of recent reviews have looked at aspects of the resource management system.
29. These reports contain useful frameworks for evaluating the performance of the RMA, identifying problems with the system, and proposing options for reform. The Panel should look to build on previous review findings in developing its own recommendations.
30. A list of previous relevant reviews is at Appendix 3. Summaries of documents can be provided by the Secretariat (see paras 40-44 below for detail on the Secretariat).

## Roles and Responsibilities

### Resource Management Review Panel

31. The Panel's role is to undertake a comprehensive review of the resource management system in line with the scope and process outlined by these terms of reference.
32. The Panel will collectively have, or be able to draw on, skills in planning, local government, environmental management, ecology, te ao Māori, resource management law, development, primary industries, economics and climate change response.
33. The Panel reports to the Minister, through the Chair. The Minister can direct the Panel on any aspect relating to the review as required.
34. All Panel members will be responsible for:
  - maintaining a broad knowledge of the issues and interests that relate to the review
  - attendance at Panel meetings and other events directly related to the review
  - preparing for Panel meetings and actively participating in discussion
  - complying with the terms and conditions set out in their appointment letter
  - progressing any relevant actions delegated by the Panel Chair
  - responding to direction from the Minister in a timely manner
  - working constructively with other Panel members and striving for consensus
  - producing outputs within agreed time, cost and quality parameters
  - assisting with the drafting of parts of the Panel reports
  - seeking financial approval from the Chair and Secretariat prior to incurring expenditure.
35. All appointments are made on an individual basis and Panel members cannot delegate their role to another person.

### Resource Management Review Panel Chair

36. The Panel Chair is an experienced senior decision maker.
37. The Chair plays a critical role in convening the Panel, reporting to the Minister on behalf of the Panel, and maintaining relationships with the Secretariat and officials.
38. In addition to the general responsibilities that apply to all Panel members, the Chair is also responsible for:
  - confirming the forward work programme with the Secretariat and the Minister
  - setting the operating protocols for the Panel, in conjunction with the Secretariat
  - chairing Panel meetings and working towards consensus amongst Panel members
  - setting meeting agendas in consultation with the Secretariat
  - overseeing the work of the Panel and advising the Minister on behalf of the Panel
  - requesting information, project support and advice from the Secretariat
  - ensuring the production of interim and final deliverables to agreed time, cost and quality parameters.

39. The Chair may establish subgroups of Panel members, officials and/or external advisors to progress specific deliverables or consider specific topics.

## **Secretariat**

40. The Secretariat will be provided by the Ministry for the Environment. The Secretariat's role is to help the Panel operate efficiently and support the production of the key deliverables.
41. The Secretariat will be accountable to the Minister, and responsible for completing all reasonable requests made by the Chair on behalf of the Panel. The Secretariat will also be responsible for all financial expenditure associated with the review.
42. The Secretariat will be supported by a Policy Taskforce, which will provide the Panel with technical analysis, research capability and policy advice needed to progress the review. This includes support for both writing and indicative legislative drafting for the interim and final reports.
43. The Secretariat will separately lead work and provide advice on complementary measures to support the transition to a new system and to address planning system culture, capacity and capability.
44. Officials from other agencies and subject matter experts from outside of Government will be invited to join the Secretariat and Policy Taskforce as required.

## **Conditions of appointment**

45. The Chair and Panel members will be appointed subject to the terms and conditions specified in their letter of appointment and these terms of reference. These letters will be signed by the Minister, following Cabinet approval.
46. Each Panel member will be required to complete a conflict of interest declaration prior to their appointment.
47. The Chair and members may resign at any time by notifying the Minister in writing.
48. The Minister may terminate an appointment at any time for any reason.

## Appendix 1: Key issues the review should address

| Aspect of RMA            | Key issues   |
|--------------------------|--|
| Objectives and alignment | <ul style="list-style-type: none"> <li>• Removing unnecessary complexity from the RMA.</li> <li>• Strengthening environmental bottom lines, and further clarifying Part 2. [See also para 8 above.]</li> <li>• Recognising objectives for development (including housing and urban development and infrastructure networks and projects).</li> <li>• Ensuring the system has sufficient resilience to manage risks posed by climate change and other natural hazards.</li> <li>• Considering an explicit ability to restore or enhance the natural environment.</li> <li>• Aligning land use planning and regulation with infrastructure planning and funding through spatial planning.</li> <li>• Considering whether or not to separate statutory provision for land use planning and environmental protection.</li> <li>• Ensuring that the RMA aligns with the purpose and processes outlined in the Climate Change Response (Zero Carbon) Amendment Act (once passed).</li> <li>• Ensuring that Māori have a role in the resource management system.</li> </ul> |
| Functions and processes  | <ul style="list-style-type: none"> <li>• Examining all RMA functions and processes.</li> <li>• Improving the coherence and effectiveness of national direction</li> <li>• Enabling faster and more responsive land use planning and adequate response to environmental harm</li> <li>• Improving the quality of plans</li> <li>• Reducing the complexity of consenting processes</li> <li>• Ensuring processes enable sufficient certainty for major infrastructure</li> <li>• Improving the use of funding tools and economic instruments</li> <li>• Ensuring appropriate mechanisms for Māori participation in the system, including giving effect to Treaty settlement agreements</li> <li>• Clarifying the meaning of iwi authority and hapū</li> <li>• Ensuring compliance, enforcement and monitoring functions are effective.</li> </ul>  |
| Institutions             | <ul style="list-style-type: none"> <li>• Allocating roles in the system to central and local government, the Environment Court, and other institutions such as Independent Hearings Panels.</li> <li>• Considering the interaction of the Climate Change Commission and other institutions in responding to climate change.</li> <li>• Ensuring institutions have the right incentives (including clearly defined roles, responsibilities, and accountability mechanisms).</li> </ul>  |

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|  | <ul style="list-style-type: none"> <li>• Introducing a package of complementary measures to support the transition to a new system and to address planning system culture, capacity and capability. [See also para 43 above.]</li> </ul> |
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## Appendix 2: Related Government programmes and projects

The Government has a number of programmes and projects (such as those below) to address environmental issues and improve the efficiency and effectiveness of existing systems. Many of these will intersect with the comprehensive review of the resource management system. The Panel will need to consider how these workstreams intersect and impact the review. The Secretariat can advise on these matters.

- Kāinga Ora – Homes and Communities Bill, including the Government Policy Statement on Housing and Urban Development, which will provide the overall direction and government priorities for the housing and urban development system
- Resource Management Amendment Bill 2019 (once introduced)
- Resource management and Crown relationship obligations in existing Treaty of Waitangi Settlement Acts
- Climate Change Response (Zero Carbon) Amendment Act (once passed), and directions to transition to a low emissions and climate-resilient New Zealand
- National Climate Change Risk Assessment, and implications for a future National Adaptation Plan
- Alignment of regulatory frameworks for natural hazards and climate change under the Community Resilience Group (cross-government programme)
- Urban Growth Agenda
- Review of Three Waters regulation: drinking water, wastewater and stormwater management
- Productivity Commission Inquiry into Local Government Funding and Financing
- RMA national direction under development, including for:
  - freshwater management
  - urban development
  - highly productive land
  - indigenous biodiversity
  - aquaculture.

## Appendix 3: Previous reviews of the resource management system of relevance to this review

There are a number of existing reviews of the resource management system that will be relevant for this review. The Secretariat will provide summaries and sections from these reviews.

Relevant reviews include:

- a. Environmental Defence Society 2019: *Reform of the Resource Management System*<sup>3</sup>
- b. Tax Working Group 2019: *Future of Tax*<sup>4</sup>
- c. OECD 2017: *Environmental Performance Review*<sup>5</sup>
- d. Environmental Defence Society 2017: *Last Line of Defence*<sup>6</sup>
- e. Productivity Commission 2018: *Low-emissions economy*<sup>7</sup>
- f. Productivity Commission 2017: *Better urban planning*<sup>8</sup>
- g. Productivity Commission 2016: *Using land for housing*<sup>9</sup>
- h. Environmental Defence Society 2016: *Evaluating the environmental outcomes of the RMA*<sup>10</sup>
- i. Local Government New Zealand 2016: *Planning our future - 8 point programme for a future-focused resource management system*<sup>11</sup>
- j. Local Government New Zealand 2015: *A 'blue skies' discussion about New Zealand's resource management system*<sup>12</sup>
- k. Infrastructure New Zealand 2015: *Integrated Governance, Planning and Delivery: A proposal for local government and planning law reform in New Zealand*<sup>13</sup>
- l. Productivity Commission 2014: *Regulatory institutions and practices*<sup>14</sup>
- m. Productivity Commission 2013: *Towards better local regulation*<sup>15</sup>
- n. Waitangi Tribunal commentary related to the RMA system from Tribunal reports 27, 55, 167, 153, 262, 304, 785, 796, 863, 894, 1130, 1200, 2358.

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<sup>3</sup> <http://www.eds.org.nz/our-work/rm-reform-project/>

<sup>4</sup> <https://taxworkinggroup.govt.nz/resources/future-tax-final-report>

<sup>5</sup> <http://www.oecd.org/newzealand/oecd-environmental-performance-reviews-new-zealand-2017-9789264268203-en.htm>

<sup>6</sup> <http://www.eds.org.nz/our-work/publications/books/last-line-of-defence/>

<sup>7</sup> <https://www.productivity.govt.nz/inquiry-content/3254?stage=4>

<sup>8</sup> <https://www.productivity.govt.nz/inquiry-report/better-urban-planning-final-report>

<sup>9</sup> <https://www.productivity.govt.nz/inquiry-content/2060?stage=4>

<sup>10</sup> <http://www.eds.org.nz/our-work/publications/reports/evaluating-the-RMA/>

<sup>11</sup> <http://www.lgnz.co.nz/our-work/publications/planning-our-future-eight-point-programme/>

<sup>12</sup> <http://www.lgnz.co.nz/our-work/publications/a-blue-skies-discussion/>

<sup>13</sup> [https://www.infrastructure.org.nz/resources/Documents/Reports/NZCID%20Local%20Government%20and%20Planning%20Law%20Reform%20Booklet%20NEW%20single%20pages%20\(2\).pdf](https://www.infrastructure.org.nz/resources/Documents/Reports/NZCID%20Local%20Government%20and%20Planning%20Law%20Reform%20Booklet%20NEW%20single%20pages%20(2).pdf)

<sup>14</sup> <https://www.productivity.govt.nz/inquiry-content/1788?stage=4>

<sup>15</sup> <https://www.productivity.govt.nz/inquiry-content/1510?stage=4>