

Resource Management Review Panel
Ministry for the Environment
Environment House
23 Kate Sheppard Place
Wellington

3rd February 2020

By email: rmreview@mfe.govt.nz

Hon Tony Randerson QC and Resource Management Review Panel members,

Thank you for the opportunity to provide feedback on the submit on the consultation document Transforming the resource management system: Opportunities for change; Issues and options paper.

About DairyNZ

DairyNZ is the industry good organisation representing all 11,000 of New Zealand's dairy farmers. Our purpose is to secure and enhance the profitability, sustainability, and competitiveness of New Zealand dairy farming.

We deliver value to farmers through leadership, influencing, investing, partnering with other organisations and through our own strategic capability. Our work includes research and development to create practical on-farm tools, leading on-farm adoption of best practice farming, promoting careers in dairying and advocating for farmers with central and regional government.

Overview of DairyNZ's comments on the Issues and Options Paper

DairyNZ **supports** a comprehensive review of the Resource Management System, focusing on the Resource Management Act (RMA), as well as the Land Transport Act and the Local Government Act (LGA).

We **support** the government's focus on the framework provided by the RMA. This work is of high importance to the future economic, social, environmental and cultural sustainability of New Zealand.

We view this process as an **opportunity** to consider if the architecture of New Zealand's resource management system is performing efficiently and effectively. There will be continued debate and evolution over time on the balance between economic development and environmental protection, but this process is a unique opportunity to consider the architecture we use for resource management in New Zealand.

DairyNZ is **open** to change to the legislative architecture and to the system as a whole, that are future-focused and strategic, such as those proposed by Environmental Defense Society (EDS) in their December 2019 document "Reform of the Resource Management System".

We have provided detailed comment on the following three key topics of importance to dairy farmers now and in the future:

1. Allocation of rights to natural resources and economic instruments
2. Improving Plan development and Resource consent processes
3. Climate change mitigation and adaptation.

DairyNZ **supports** changes to provide greater direction and support for local decisions on freshwater allocation, and the use of economic instruments. We do not believe the RMA requires amendment to direct any particular allocation of freshwater. Instead, support and guidance should be provided through other policy instruments. We expect future changes to the National Policy Statement for Freshwater Management (NPS-FM) to incorporate guidance on allocation following on from Government work and Tribunal findings on iwi rights and interests in freshwater allocation.

DairyNZ **supports** changes to the RMA that result in greater certainty and faster resource consent processes for farmers undertaking changes on their land.

DairyNZ **opposes** consideration of greenhouse gas emissions in the resource consenting process in a restrictive way. We believe that, as greenhouse gas emissions are a global rather than local resource, management of greenhouse gas emissions should be done in a nationally consistent way. Requiring consideration of greenhouse gas emissions in the resource consenting process is likely to result in regional variation and an inefficient national climate change response. There may be an opportunity to expand the permissive approach applied to the consenting of renewable electricity to the resource consenting of other low-emissions development.

Allocation of rights to natural resources and economic instruments

Response to Issues 9 and 10 of Issues and options document

We **support** the provision of greater central government guidance on economic instruments and allocation.

Our general stance is that legislation cannot set out the 'ideal' initial allocation. Allocating access to scarce resources is an equity decision, and efficiency is maximised if trading of initial rights can occur. Perceptions of equity or fairness of each allocation option will differ, because of differing costs and opportunities forgone for individuals or sectors. Decisions on how resources are allocated should not be dealt with under the RMA. This review of the resource management system should simply ensure that legal frameworks adequately set up the conditions for decisions on initial allocation, as well as allowing change in who holds rights to a resource, for instance through transfers or trading between individuals.

We note central government's intention to work with iwi and sectors on nutrient allocation through 2020, and that the Review Panel terms of reference (page 4, paragraph 20) lists Maori rights and interests to freshwater allocation as out of scope. However, we make some brief general comment on the issue of allocating assimilative capacity of water bodies to absorb diffuse contaminants.

DairyNZ is involved in several regional plan changes that are mired in fundamental disagreements about initial allocation of rights, and a long-standing contention that iwi are treated as just another stakeholder rather than a Treaty partner. Changes to the resource management system should provide the impetus for councils to act and make greater recognition of shared governance and management of particular water resources.

While iwi rights and interests in water resources remain unresolved, developing and implementing regional plans will continue to be litigated with ongoing costs and uncertainty for existing land users.

It is important that a level of regional flexibility is retained for varied solutions in the varied regions and catchments across New Zealand. However, there is room for central government to either provide best practice guidance on economic instruments and allocation or provide a 'permitted list' of approaches that regional government can use – i.e. providing regional government the “tool box” but allowing regional government to choose which of the tools to use. National support to assist capability is required, both to get the technical basis right i.e. the quantum of resource to be allocated, and the planning framework to establish and track rights to the resource. The need for this national level support will be further amplified if all councils are required to notify new regional plans responding to NPS-FM by December 2023 as currently proposed.

Section 30 of the RMA already sets out regional council functions to allocate resources. National-level tools such as the NPS-FM and support at a national level for how to go about the process, are the key to assist councils in determining the quantum of the resource to be allocated, and ensure plan drafting is clear and enforceable. How the resource should be divided up is a matter for consultation and local decision.

Economic instruments

Trading is one economic instrument that has an important role in long term natural resource sustainability. Some council plans contain property-level allocation of nitrogen, without provisions for trading. DairyNZ's stance is that legislation should not preclude set up and operation of trading markets.

Currently the RMA allows trading with some bounds on environmental effects. For instance, once water takes are authorised by a regional plan rule, holders can lease or sell all or some of their water downstream.

Trading diffuse discharges is more complex. The Lake Taupo catchment is currently the only region operating trading rules, and those are for diffuse discharges of nitrogen. The reason that there is only one region using cap and trade is because of implementation difficulties, rather than an issue with the use of an economic instrument such as trading per se. These diffuse contaminant regulation implementation difficulties would be faced regardless, given issues with agreement over the quantum of the resource, the “measuring stick”, the contentious issue of initial allocation, and ongoing monitoring of the diffuse contaminants.

The RMA is not the only legislation where economic instruments can be deployed. For instance, taxes and charges can be imposed under the LGA, and adjusted through the annual planning cycle if needed. Changes to charges for congestion or use of coastal space would trigger the requirement under the LGA to consult regional communities, but has the benefit of being a faster and more streamlined process than a regional plan change.

Improving Plan development and Resource consent processes

Response to Issues 7 and 8 of Issues and options document

DairyNZ **supports** improving the speed of processes that will result in certainty for landowners. This includes both plan development and resource consents. However, this should not come at the cost of opportunity for public participation and set-up of co-management between councils and iwi. DairyNZ's submission on the Resource Management Amendment Bill (2019) was that that

freshwater aspects of regional plans should be allowed to take longer than the proposed deadline of December 2023 if there are local capability and capacity issues.

DairyNZ **supports** the use of strategic spatial plans that do not have direct regulatory effect, and assist positive, outcomes-focused social and environmental change. For instance, DairyNZ sees merit in overarching regional strategic spatial plans that assists New Zealand and local communities decide how to respond to aspects such as adapting to climate change, urban expansion, biodiversity corridors and the use of land to grow food.

We note that strategic spatial plans can, and have, been done under existing legislation. This point is also noted in the Environmental Defence Society's (EDS) proposals for reform of the resource management system¹, which contains many aspects that will be critical in achieving the aims of a reformed resource management system. The tension to be resolved is whether the shortened deadlines for councils under the current governmental proposals in the RM Bill will preclude a more thorough strategic approach.

A theme of DairyNZ's submission on the Essential Freshwater package was that causes of poor outcomes are often related to implementation of the RMA rather than issues within the RMA itself. Our overall request to the Review Panel is to continue to be alert to this factor as you make recommendations for change. We agree with the section entitled "Reasons the system has not responded effectively to challenges" (paragraphs 31-57). The Panel has the opportunity to delve into deeper reasons why local authorities have not sufficiently recognised the Treaty, or made full use of existing legislative tools. If this is kept front and centre, changes needed to the RMA may not be as extensive as some believe are necessary.

The proposed Resource Management Amendment Bill and Essential Freshwater package gives regional councils more to do and less time to do it. We are concerned that the New Zealand-wide 2023 deadline proposed in the Resource Management Amendment Bill for notifying freshwater plans will not allow for thorough strategic and co-management processes to be in place before regional plans can follow with farm-level rules.

In addition to the need for dairy farmers as stakeholders to participate in plan development, regional councils will require time to fully engage with iwi authorities and set up processes that allow for the co-management of natural resources. In some regions, new legislation following Treaty Settlements, has provided the impetus for councils to act and make greater recognition of shared governance and management of water bodies. It is possible, but challenging to the status quo, for a council to set up overarching committees intended as co-management with iwi.

Regional and district councils already have functions under the LGA that allow them to develop strategic documents including spatial plans, and consult through the Long Term Plan, with associated funding set aside and outcomes tracked. It is more a matter of internal arrangements and political will to use non-statutory plans to develop RMA planning instruments in the form of Regional Policy Statements. For example, implementing a future-looking and strategic programme means council needing to sequence the various statutory and non-statutory instruments. Existing council programmes and plan reviews might require pausing or being brought forward, as well as effort to grow in-house capability. Changes create financial cost and political risk. More importantly, co-management and developing strategic direction with follow-up in statutory plans, requires new

¹ Section 8.4 Framework for strategic and spatial planning, Environmental Defense Society 2019, *Reform of the resource management system: a model for the future*.

working relationships, starting with inquiry into whether there are shared values around Te Mana o te Wai.

We suggest that raising the status of existing instruments in the hierarchy of the RMA may assist councils justify the intent of approach under the proposals (for instance iwi management plans).

In order to support enhanced use of strategic spatial planning and allow time to fully engage with processes to design co-management thereby assisting regional allocation discussions, DairyNZ continues to advocate that a blanket 2023 for all freshwater regional plans to be publicly notified is inappropriate. More flexibility is required, given the complexity of the issues and the variation in regions.

Resource consents

DairyNZ **recommends** changes to the consents sections of the RMA, to specify when public notification of application for a resource consent is required, and when assessment of adverse effects is required. We contend that these provisions should be used in exceptional situations, and required to be expressly defined in regional plans. DairyNZ **supports** highly complex consent applications to continue to be notified and sees benefit in using independent commissioners alongside councillors to ensure thorough analysis and decisions.

For many farmers, their first direct involvement with the resource management system is an operative regional plan rule. In much of New Zealand, first generation 1990s regional plan rules only regulated some aspects of farming operations and did not address all diffuse contaminants leaving the farm, despite the presumption in Section 15(1)(b). This is changing, with many councils notifying freshwater plans requiring farm environment plans to manage risk of diffuse discharges and set mitigations tailored to each farm.

We are in a transition phase, with complexity and some confusion, with some regions subject to overlapping proposed regulation and first generation operative permitted activity plan rules with highly technical, effects-based conditions. For instance, a 10-9 sealing requirement for effluent holding ponds, where, to make effects-based conditions more practical, councils issue 'work around' operational guidance documents that have no legal weight. Where consents are required, councils take a variety of approaches in whether to publicly notify. Changes to the RMA to clarify consent notification will assist certainty for resource users, as will changes to aspects of the proposed NES and NPS-FM.

Resource consent processes will continue to be part of day-to-day farming businesses. Therefore, streamlining the process and providing certainty is important to dairy farmers. There are two key areas where changes to the resource management system would allow environmental outcomes to be achieved and would assist farmers taking action to reduce their environmental footprint:

- 1) Strong guidance to regional councils that all freshwater-relevant aspects must be reviewed at the same time. This would prevent inadvertent rule conflicts. As freshwater limits are proposed in regional plans, existing operative rules are still in force. Many were drafted decades ago and are out of step with current approaches. Constructed wetlands are a good example of a farm-level mitigation to reduce sediment, microbes and nutrients entering water, but which trigger the need for a discretionary activity consent in first generation regional plans.
- 2) Full assessment of environmental effects (AEE) should only be required where the activity being consented has a high risk of adverse environmental effects. This would remove the situation where discretionary activity consents automatically trigger public notification and full AEEs.

The current situation in the RMA of determining notification is subjective. While DairyNZ has seen sensible and logical council decisions to notify, other situations are driven more by perceptions of political risk. Dairy farmers would benefit from knowing which activities will be publicly notified.

In summary, highly complex resource management should be given the time and due process to develop, but we also need to enable activities that are neutral or that relate to improving the environment. For instance, the onerous and expensive resource consent process is currently a disincentive for landowners seeking to create a constructed wetland in Canterbury to reduce nitrogen leaching.

Climate change mitigation and adaptation

Response to issue 5 of Issues and options document

The Issues and options paper discusses the potential to expand the ability for the planning process to consider climate change impacts and greenhouse gas mitigation.

Climate change mitigation

Greenhouse gas emissions are a global rather than local resource. Countries have undertaken great effort to agree common global approaches to managing greenhouse gas emissions. The United Nations Framework Convention on Climate Change was adopted in 1992. The Kyoto Protocol to this Convention was adopted in 1997, and the Paris Agreement in 2015. Each of these agreements seeks to drive a global response to mitigate the impacts of climate change.

In New Zealand a range of national policy mechanisms exist. The Climate Change Response Act was legislated in 2002. An emissions trading scheme was legislated in 2008 and a Zero Carbon Bill in November 2019. The Government is currently consulting on several supporting national policies including a fee-bate scheme for low-emissions vehicles and a moratorium on certain new coal fired boilers.

Each of these policies would apply a uniform approach across all of New Zealand.

Consideration of climate change mitigation was largely removed from the RMA under the Resource Management (Energy and Climate Change) Amendment Bill 2004. On introducing this Bill, Hon Pete Hodgson noted the Bill “recognises the Government’s preference for national coordination of controls on greenhouse gas emissions”.

This Bill also however provided “national direction by ensuring that efficient use of energy, the benefits of renewable energy, and the effects of climate change are flagged for the attention of those working with the Resource Management Act” while requiring that, for example, “local authorities considering proposed wind-farming projects to have particular regard to the benefits of lower greenhouse gas emissions offered by such an energy source” (Hon Pete Hodgson, 2003).

DairyNZ view this current policy framework as striking the right division of responsibility between central and regional government. The concerns expressed by the Government in 2003 remain valid, that is, allowing an ability to control greenhouse gas emissions by denying resource consent would result in a lack of national coordination. Given greenhouse gas emissions are a global rather than local resource, a person seeking to invest in an activity that will result in greenhouse gas emissions should face the same scrutiny if they seek to undertake that activity in Northland, Southland or anywhere in-between.

Consideration of energy efficiency, the benefits of renewable energy and the effects of climate change are however flagged for the attention of those working with the RMA.

There may be an opportunity for greater consideration of greenhouse gas emissions in a permissive way. Currently the RMA allows a permissive approach to be taken to the consenting of new renewable electricity generation. This could be expanded to apply to other forms of development that support a transition to a low-emissions economy, such as low-emissions public transport, carbon capture and storage or new low emissions industrial activities (e.g. green hydrogen production).

Climate change adaptation

We agree with the Issues and Options paper that greater direction on climate change adaptation and natural hazards is needed.

Under the Paris Agreement, countries have agreed to take collective actions that aim to hold the increase in global temperatures to between 1.5°C and 2.0°C. So far, however, this is not reflected in the commitments countries have put forward. Current commitments under the Paris Agreement are expected to result in 3.2°C of warming². While 3.2°C is a central estimate, there is uncertainty above and below this figure on what global temperature response will be seen to increasing greenhouse gas emissions. Even if we had certainty on the level of temperature increase, there is uncertainty on the level of sea level rise and other impacts that would result.

Rather than each individual Council make individual assessments on the level of temperature change and sea level rise it should plan for, there is a role for national direction to provide a uniform approach across New Zealand. For example, directing local government to prepare for X increase in sea level by 2050.

As the climate warms many regions may see a change in land use suitability due to a hotter and, sometimes, drier climate. Central government may also support local and regional government by providing guidance on land use change that could occur as a response to various climate change scenarios. Local government may wish to consider how changes in land use will impact local employment and service demand. Regional government may wish to consider how changes in land use will impact contaminant loss to water ways and changes to water extraction rules that may be needed to allow land use to adapt to a changing climate.

Conclusion

The amendments sought by DairyNZ are, in large part, founded on a desire to assist local decision-makers to ensure the sustainability of rural land. In our view, the reform of resource management legislation will be successful if:

- 1) Landowners can continue to be involved in local processes that result in land use decisions about their future,
- 2) Are confident that legislation is arranged in a way that allows actions affecting climate change, land, water, air and marine to be considered in an integrated way,
- 3) Retain national targets for climate change in separate but aligned legislation, including the detailed processes for emissions trading, but adjust the RMA to fill gaps and remove barriers for regional implementation of climate mitigation and adaptation, and;
- 4) Streamlining regulatory processes where the activity on-farm will result in environmental mitigation or enhance existing environmental and economic values.

The ability to be involved in what is needed and when will be important, including spatial plans to visualise potential land use futures or assist investment changes in how the land is used. As the

² United Nations Environment Programme Emissions Gap Report 2019.

regulatory scrutiny expands from a handful of farm activities, to whole farm discharges to water and greenhouse gas emissions, landowners are concerned that they risk making the wrong investments when deciding what to do next year or next decade.

We welcome the opportunity to discuss this further with the review panel and secretariat. Please contact DairyNZ National Policy Manager Paul Melville (paul.melville@dairynz.co.nz).

Signed on behalf of DairyNZ Limited

A handwritten signature in cursive script, appearing to read 'Jenny Cameron', written in black ink.

Jenny Cameron
General Manager Responsible Dairy, DairyNZ
3 February 2020