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To: Ministry for the Environment
Wellington - Email: rmreform@mfe.govt.nz

SUBMISSION ON “IMPROVING OUR RESOURCE MANAGEMENT SYSTEM” DISCUSSION DOCUMENT

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The Pacific Institute of Resource Management (PIRM) welcomes the opportunity to comment on this Discussion Document. PIRM is a long-established organisation dedicated to promoting the sustainable use of the earth's resources. It publishes the journal "Pacific Ecologist" We have made frequent submissions to government on environmental and social issues including submissions on the Resource Management Act (Simplifying and Streamlining) Amendment Bill 2009 and on the proposed Environmental Reporting Bill of 2011. These and other submissions are available on our website.

Question for Chapter 1

Has this chapter correctly described the key issues and opportunities with New Zealand's resource management system?

The introductory chapter correctly identifies some important resource management issues: perennial problems of cost and complexity and of inconsistent application of the RMA by local authorities. These are however problems of implementation rather than problems with the Act itself. It is not appropriate to address these matters by changing the primary legislation. Any changes made to this end are likely to be ineffective at best and most likely counter-productive. There is significant scope for improving cost-effectiveness and consistency by measures directed at implementation, but these are not part of the core Sections of the Act. They would best be dealt with by promulgation of National Standards.

Although the cost of making a resource consent application is not insignificant, this is a peripheral issue. The average cost of publicly notified resource consents is between \$5000 and \$23,000¹ and less than a fraction of a percent of most applications. The costs of bad resource management decisions will be much greater in the long term than any present administrative costs.

There is some irreducible complexity in sustainable resource management where a multitude of potential impacts and targets must be considered and where the points at issue are often highly technical and sometimes contentious. It is vital that enough time is taken for such matters to be satisfactorily investigated and issues resolved. Although complexity should be minimised where possible, as with cost, it is a side issue to the primary aim of sustainable resource management.

It is claimed that the resource management system does not reflect "present values..". These values are not identified and there is no evidence given to support this assertion. The present format of Sections 6 and 7 of the Act favours sustainable management of natural resources over social, cultural and economic matters. This structure reflects the primary intention of the Act; to prevent avoidable damage to the environment while allowing social, cultural and economic activities to proceed. The values underlying this structure remain as clear today as they were when the Act was drafted. Anecdotally, there is wider recognition today of the primary importance of sustainable management of the environment; witness opinions garnered from the public in post-earthquake Christchurch

This public opinion is in agreement with the evidence that damage to the environment as a result of human activities is ongoing and significant. Although formal measurement of the state of the New Zealand environment has been suspended, there is abundant evidence of this damage in, for example, declining biodiversity and quality of fresh water. The periodic reports of the Parliamentary Commissioner for the Environment are a useful guide as to what needs to be done². That this trend exists in the presence of an active RMA indicates that the present situation is unbalanced against the environment and that any changes to the system of resource management need to redress this by strengthening rather than diminishing requirements to recognise and provide for environmental matters.

Page 12 of the discussion document expresses concern that "the focus under the RMA" has shifted too far towards avoiding effects on the environment and that too little emphasis is being placed on using planning to deliver positive outcomes... ". If it is the case that the RMA is unbalanced in favour of the environment, why do we have very poor water quality in New Zealand? A major aspect of a healthy environment and country is clean water and rivers. With 52 percent of New Zealand rivers currently unfit for swimming, according to the Ministry for the Environment's recreational water quality monitoring report October 2012, NZ cannot be said to have healthy water resources. Another 28 percent were graded "fair," with a risk of illness for those swimming there. Only 20 percent of monitored river recreation sites were graded good or very good. And through this summer of 2013 there is also a drought affecting large parts of the country. Even Wellington city is under drought restrictions. Many rivers are in crisis, being too polluted or low to swim in. The Environment Ministry has also warned of the potential for harmful diseases to be contracted through swimming in polluted rivers such as giardiasis, cryptosporidiosis, campylobacteriosis, salmonellosis and Hepatitis. PIRM notes, such diseases were unheard of in New Zealand a few decades ago. This cannot be progress in the right direction.

Additionally the Government announced on 23/1/2013 an initial \$80 million subsidy for irrigation for intensive farming, through a new Government company. Yet more irrigation and more intensive agriculture with increased stocking, and more artificial fertiliser use will result in greater water pollution. With continued deterioration of the health of our water resources the health of the food we produce may be compromised and the health of the people and the environment will not improve but be under increasing threats. How far down the line of a deteriorating environment is the government prepared to go? Those benefitting from the irrigation, the irrigators and farmers will pocket the profits. But the tax payer and wider community will have to pay for cleaning the waterways and people will also suffer the resulting ill health problems from deteriorating water quality.

The identification of the RMA as an impediment to some business activities is simply in keeping with the protective purpose of the legislation and does not indicate a problem in its fundamentals. Constraints on activities are required for their operation within the limits of both the natural environment and society's wishes.

It is noted that the Productivity Commission is extensively quoted along with other bodies with primary interest in commerce. Opinion from agencies with primary interest in the environment are conspicuously absent suggesting that the Discussion Document itself incorporates significant bias against sustainable management of natural resources. There is no evidence given to indicate how much disapproval of RMA processes arises from perceptions that they have resulted in bad outcomes for the environment.

It is acknowledged in the introductory chapter that resource management often involves competing views which can be difficult to reconcile and that it matters “who makes the decisions...and whose views are taken into account.” This argues against any attempt to restrict representation of opinions in resource consent matters because such restriction must result in bias.

It is also acknowledged that “It is unlikely that there will be a single correct solution to any particular resource management question..” which argues against any proposal to predetermine outcomes or otherwise increase certainty for applicants.

Decisions not to notify resource consent applications are sometimes contentious. Introducing a statutory requirement for certain applications to be non-notifiable would restrict the ability of the resource management system to identify significant effects, especially those which may arise cumulatively.

The RMA is intrinsically reactive by design and any attempt to incorporate proactive planning in its structure would be difficult and disruptive. The Act does not impair planning activity but simply aims to ensure that the constraints of sustainable management are recognised. The supposed effect of RMA processes on housing affordability by limiting the release of land for housing development is contested. Land availability is only one of many factors in the price of housing and is outweighed by some such as speculative activity in housing markets. It is a peripheral and transitory matter that provides no serious justification for changing the Act.

In summary, the chapter fails to make a substantive case for changes to the Act.

Questions for Proposal 1: Greater national consistency and guidance.

Do you agree with the proposals in 3.1.1 – 3.1.4? Could they be improved? Are there any issues that you think have not been considered?

3.1.1 Change the principles contained in sections 6 and 7 of the RMA.

The present hierarchical structure of Sections 6 and 7 is intentional and remains relevant. It is essential for the Purpose of the Act that the critical aspects of the environment identified as of national importance in Section 6 are given special weighting in the process of sustainable resource management. Section 6 describes the aspects of the environment and of human interaction with natural resources that are the most fundamental and of the highest value. They establish a set of ‘bottom lines’ for resource management which justify the requirement to “recognise and provide for”. The items that make up Section 7 are ancillary but of sufficient importance to be identified in separation from their inclusion in more general matters. We recommend that the structure of these sections be preserved.

It is also proposed to change statements of direct action to passive recognition of value relating to public access to coastal and riparian areas and to historic heritage. This proposal would very greatly weaken the present provisions which actively enable public access and preserve heritage. We oppose this change. The intention to remove some very important matters from Section 7 is alarming. The set proposed for deletion are the most important of all the present parts of Section 7. That these should be considered for deletion indicates a complete failure to understand matters that are widely regarded as fundamental to the sustenance of human life on this planet – the finite character of resources that place limits on human activity and the need to maintain and enhance the environment on which our existence is totally dependent. The proposal to remove reference to the intrinsic values of ecosystems is completely out of step with enlightened thinking that recognises that humanity and all other natural entities on this Earth have a common origin and common interests and that the non-human world is not simply a stock of resources for human use.

The ethic of stewardship is the ethical response to this recognition and is the most important general guide in our interaction with nature. Without such an ethic, humanity is doomed to destroy the basis of its own existence. To simply remove this matter from the Act is unthinkable. Likewise, the amenity value of natural and physical resources is a primary aspect of human life. The quality of life is improved by maintenance and enhancement of amenity values and is worsened by the deterioration of these values. What could possibly be the motive to suggest that this item be deleted? PIRM strongly recommends that all of these elements be retained in the Act.

The intention to restrict the application of major principles to “specified” areas is noted. While it would be beneficial to identify natural features and habitats that are of particular value, the designation process would be prolonged and difficult. This could lead to a lack of adequate consideration of features and habitats that are of great value but have yet to be formally specified. The criteria for specification are not outlined and would themselves be likely to be contentious.

2.2 and 3.6.1: Improving fresh water management PLUS links to essential infrastructure

The present widespread drought in NZ, affecting both urban and rural areas, reflects the urgent need to conserve water resources. PIRM supports measures to ensure councils survey and replace old, leaky water pipe delivery systems to ensure billions of litres of water are not leaked away, as is now happening on the Kapiti Coast (See Chris Turvey, former chairman of Greater Wellington Regional Council, environment committee). Also, the building of alternative water storage dams needs to be fast tracked. This plays into the essential infrastructure section and 3.6.1

Note: The costs of not renewing old, failing water pipes and building more water storage dams will affect the ability of communities to survive repeated droughts through effects of climate change that are already upon us.

3.1.2 Improving the way central government responds to issues of national importance and promotes greater national direction and consistency.

The RMA has been handicapped since its inception by an inadequate set of National Policy Statements (NPS). PIRM supports mechanisms that would facilitate the recognition of requirement for a particular NPS. More importantly, we recommend that NPSs that are currently under development be brought to fruition as soon as possible and that further Statements be developed until there is a sufficiently comprehensive suite of Statements to achieve the Purpose of the RMA.

3.1.3 Clarifying and extending central government powers to direct plan changes.

We do not support the proposal to allow central government intervention beyond that already allowed for in the current RMA. The proposal for extended powers would cut across established processes under Section 1 that allow for gathering and examination of evidence and for wide representation of opinion; processes essential for rational and robust decision-making in resource management.

3.1.4 Making NPSs and NESs more efficient and effective

PIRM supports the suggestion to combine these two instruments as this would have obvious administrative benefits. Both of the other proposals – to address some localised issues with the national instruments and to further streamline the processes of developing the instruments – are regarded with circumspection pending further information on what is intended.

Other matters of national importance that should be covered in Part 2 of the RMA.

Agricultural soils as a source of sustenance and economic benefit as well as being the substrate for terrestrial ecosystems warrant specific inclusion.

What matters should additional NPSs and NESs cover?

Soils and natural character including outstanding natural features and landscapes.

Questions for Proposal 2: Fewer resource management plans

Do you agree with proposals in 3.2.1 – 3.2.4? Could they be improved? Are there any issues that you think have not been considered?

We support the proposal for a single resource management plan using a national template with standard terms and conditions. If this is developed by a comprehensive and consultative process, it should result in significant benefits from improved consistency across consenting authorities. It should retain some flexibility to allow local authorities to adapt the template to local conditions.

The obligation to plan positively for future needs has some merits but it is questionable whether this has a place in the RMA when it is catered for by the Local Government Act. The purpose of the RMA is not primarily to focus on development requirements but to ensure that development proceeds with due regard to sustainable resource management. However, there may be value in incorporating a requirement to demonstrate a need within the overall planning context for a particular resource consent application. Applications are often made on the initiative of private citizens or corporations for the purpose of private gain and with no consideration of the broader context. Wider issues are considered during the consent process but there would be benefits to the efficiency of the process and to environmental, social and economic outcomes if the original application was required to demonstrate its place in the wider planning framework.

We have reservations around the proposed new plan-making process which seems to blur the responsibilities of various authorities, to confer unjustified power to an unelected independent hearings panel and to reduce access to legal means for resolving contentious issues. All of these effects are potentially detrimental to the purpose of the Act.

The enforcement of timeframes for Environment Court procedures is not supported as it could greatly prejudice any party that has logistic or financial difficulty in assembling information to make its case. Proceedings of the Waitangi Tribunal illustrate the sort of insurmountable problems which may face some parties in the context of a court hearing.

The proposal to allow for alternative mechanisms for dispute resolution is supported.

Who should be responsible for making final decisions on resource management plans?

It is important in a democracy that duly elected members of local authorities should continue to make final decisions except in the most unusual of circumstances. PIRM opposes the general drift toward increased decision making by commissioners and other unelected persons or groups and increased powers for ministerial intervention in decisions. The Environment Court should retain an adjudicating role to ensure compliance with the Act and to moderate the power of local authorities.

Questions for proposal 3: More efficient and effective consenting

Do you agree with the proposals in 3.3.1 – 3.3.11? Could they be improved? Are there any issues that you think have not been considered?

PIRM has reservations regarding tight time constraints because of the potential that they may lead to poor decisions because either significant effects are overlooked in haste or unnecessary conditions are placed on consents as a precaution where there is no time for full consideration of their necessity.

A proposed new process to allow 'approved exemption' for technical or minor rule breaches is fraught with potential problems. These follow from the difficult and not infrequently contentious decision as to what constitutes a 'minor' effect and from the risk that there will be a gradual shift in the boundaries of acceptability as an increasing number and variety of small breaches are granted exemption. This problem is already evident under present legislation and regulations and would be likely to increase if the proposed new process was introduced.

Non-notification is similarly a matter for contention. There is a perception in some quarters that too many consent applications are not notified under the current system. As the process of notification is designed to elicit information and opinion from the widest possible sources for the benefit of deliberation, any reduction in notifications is likely to impair the quality of decision making and consequently of sustainable management overall. There is already more than adequate provision for non-notification and PIRM opposes its further extension.

The suggested limiting of the scope of consent conditions seems likely to interfere with the established system of discretionary and non-conforming consents which have been carefully designed to cope with difficult decisions in a considered rather than arbitrary manner. Again, the present process seems likely to result in better outcomes for the environment without precluding activities of borderline compliance.

The proposal to limit the scope of participation in consent submissions and appeals is again a threat to best practice in the name of expediency. This is inappropriate when dealing with the critically important matters that fall within the ambit of the RMA. Participation in submission-making and appeals represents a significant contribution of personal energy to a public process and should be accorded respect.

The current practice of *de novo* appeals to the Environment Court may be exceptional in appeal practice but this reflects the important constitutional role that the Environment Court plays in New Zealand. PIRM opposes changing to a simple rehearing process. We support however the development of a Tribunal process for resolution of simpler disputes that could avoid the requirement for and expense of Court proceedings in some cases.

We support the proposal for increased transparency around consent processing fees provided that this does not inadvertently result in any subsidisation of private consent applications from the public purse.

We also support the introduction of memorandum accounting by local authorities as a useful audit tool.

Consistent with our opinions expressed above on the intended shift from decision making by locally elected authorities to central government appointees, we oppose the proposal of 3.3.9.

PIRM supports provisions to prevent land banking and to reduce the costs of the EPA nationally significant proposals process.

Questions for proposal 4: Better natural hazard management

Do you agree with the proposal in 3.4.1? How could it be improved? Are there any issues that you think have not been considered?

The RMA already contains provisions to address natural hazards, including those of unlikely occurrence but large potential impact. However, in accord with other matters of particular importance, this warrants inclusion as a separate matter under Section 7 (present structure retained).

Questions for Proposal 5: Effective and meaningful iwi/Maori participation

Do you agree with the proposal in 3.5.1? Could it be improved? Are there any issues that you think have not been considered?

PIRM recognises the merit of improved participation of iwi/Maori in sustainable resource management. This follows from the value of the Maori world view in which all things are related by common ancestry (whakapapa) and that this incurs responsibility on those living to sustain the environment (kaitiakitanga) by practical demonstration of respect and reciprocity. This world view is increasingly relevant to our times of developing environmental crises. The tools for iwi/Maori participation should be highly flexible and where possible developed by these groups themselves.

Questions for Proposal 6: Improving accountability measures

PIRM broadly supports these proposals. However their emphasis on process may tend to obscure the primary importance of good resource management outcomes rather than good processes.

Thank you for the opportunity to make this submission. The Pacific Institute of Resource Management wishes to appear at any public hearings into RMA reform that may be held.

Yours sincerely

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