



THE ASSOCIATION FOR RESOURCE MANAGEMENT PRACTITIONERS

Te Kahui Ture Taiao

DRAFT TERMS OF REFERENCE FOR THE RESOURCE MANAGEMENT REVIEW PANEL

TO: The Minister for the Environment

**Submission on behalf of the
Resource Management Law Association of New Zealand Inc**

INTRODUCTION

1. This Submission is made by the Resource Management Law Association of New Zealand Inc (RMLA).
2. The RMLA is concerned to promote within New Zealand:
 - a. An understanding of Resource Management Law and its interpretation in a multi-disciplinary framework
 - b. Excellence in resource management policy and practice
 - c. Resource management processes which are legally sound, effective and efficient and which produce high quality environmental outcomes.
3. The RMLA has a mixed membership. Members include lawyers, planners, judges, environmental consultants, environmental engineers, local authority officers and councillors, central government policy analysts, industry representatives and others. Currently the Association has some 1,100 members. Within such an organisation there are inevitably a divergent range of interests in views of members.

4. While the membership has been consulted in preparing this submission, it is not possible for the RMLA to form a single universally accepted view on the draft Terms of Reference (ToR). It should also be noted that a number of members may be providing their own individual feedback and those may represent quite different approaches to the views expressed here.
5. For these reasons, this submission does not seek to advance any particular policy position in relation to the draft ToR. Rather, the submission is kept at a reasonably high level and is made with a view to ensuring that the draft ToR will enable the review to achieve its stated aim of improving environmental outcomes and enabling better and timely urban development within environmental limits.

SUBMISSION

6. The RMLA considers that the draft ToR (including the key issues outlined in Appendix 1) are generally appropriate and will enable a comprehensive review of the resource management system, as intended. Notwithstanding that view, the RMLA suggests that consideration should be given to the following.

Panel to specifically address institutional culture and capability

7. Previous work (including for example by the Productivity Commission, Environmental Defence Society and Local Government New Zealand, all of which are referenced in Appendix 3 of the draft ToR) has identified that one of the key reasons that the RMA (and the resource management system as a whole) has not achieved its intended environmental outcomes is not because of the RMA itself. Rather, that failing is at least partly due to the culture and capacity of the local authorities and other institutions charged with implementing the Act. Such issues cannot adequately be addressed by making legislative amendments alone.
8. The draft ToR has identified this as an issue that should be addressed by the Panel's Secretariat (paragraph 43 of the draft ToR). However, the RMLA considers that the Panel should be explicitly directed (and have scope) to consider the extent to which the issues it is tasked with addressing result from problems with implementation, rather than the legislative provisions themselves.

Recommendation

9. The RMLA recommends that the following be added as a key issue to be addressed in Appendix 1, as an additional bullet point under the "Institutions" heading:

“Improving institutional capacity and culture, including making recommendations as to how this can be achieved through a range of mechanisms such as amendments to Part 3 of the RMA and the

introduction of improved training/education, management and mentoring for local authorities and other institutions.”

Panel to consider accepted international environmental law principles

10. The RMLA agrees that the Panel should have scope to consider whether the purpose and principles in Part 2 of the RMA should sit in the RMA or elsewhere (paragraph 8 of the draft ToR). However, this consideration on its own is too narrow in scope. The question should be what environmental law principles should guide New Zealand’s environmental and resource management law. This includes, for example, the need to consider the appropriate relationship between protection and development for all areas, including the coastal marine area.
11. In this regard, the RMLA notes that the matters of importance in sections 6 and 7 of the RMA do not generally reflect accepted international environmental law principles (e.g. Rio Declaration 1992 or Global Pact for the Environment 2017) but more accurately reflect statements of national policy.

Recommendation

12. The RMLA recommends that paragraph 8 of the draft ToR be amended to also require that the matters included in Part 2 should be assessed against the extent to which they reflect and incorporate accepted international environmental law principles.

Panel to provide guidance regarding the provision of national direction

13. The RMLA is pleased to note that the key issues in Appendix 1 include “improving the coherence and effectiveness of national direction”. In that regard, the RMLA considers there are two further key questions the Panel should address. First, what should a full suite of National Policy Statements and National Environmental Standards look like? Second, how can we implement such national documents in a timely way (e.g. they should they be more directive and capable of implementation without translations into regional and district plans)?

Recommendation

14. The RMLA recommends that the second bullet point under the “Functions and Processes” heading in Appendix 1 be amended to read as follows:

“Improving the coherence and effectiveness of national direction, including what a full suite of national direction looks like and how this direction can be implemented in a timely way.”

Panel to address what transitional arrangements are required

15. A key issue with previous RMA amendments (and the introduction of the RMA itself) has been ensuring that the new statutory regime provides clear, pragmatic transitional arrangements. The RMLA considers it would be useful if the Panel could also address what transitional arrangements should be included in the revised legislation.

Recommendation

16. The RMLA recommends that the draft ToR also invite the Panel to consider what cost effective, pragmatic arrangements should be put in place to facilitate transition to the new statutory regime.

Panel to recommend further work to be undertaken

17. The RMLA appreciates that the Panel is operating under extremely ambitious timeframes and that it must be realistic regarding the scope of work it can undertake within that time constraint. It understands that is why (at least in part) issues with legislation other than the RMA, Local Government Act 2002 and Land Transport Management Act 2003 have been made out of scope for the Panel, beyond their interface with the RMA (see paragraph 19 of the draft ToR).
18. However, the Panel may well determine that it would also be useful to address possible amendments to other legislation such as the Environment Act 1986 (EA), the Environmental Protection Authority Act 2011, and the Environmental Monitoring Act 2015. This may particularly be the case, for example, when the Panel considers the proper legislative home for Part 2 or other various institutional functions (such as whether the role of the Environment Court is better addressed in the RMA or the EA).

Recommendation

19. The RMLA recommends that the Panel should be specifically empowered to recommend further work that it considers should be undertaken to strengthen New Zealand's overall resource management system (including, for example, to better enable spatial planning), but that has fallen outside of either the scope or timeframe of its current review.

ToR to enable Panel to clarify how various workstreams are to be progressed

20. The draft ToR notes that various work programmes will continue alongside the Panel's review, one of which is the national direction for freshwater. What is unclear is what happens if there is a need for changes/mechanisms in the RMA (or

other statutes) to support or implement the outcomes of those other work programmes.

21. At present, the draft ToR provides flexibility for the Panel to work with the Secretariat to consider how these workstreams intersect with and impact on its review. While such flexibility is appropriate (and necessary), the RMLA considers that once the Panel has reached a view on such matters, it would be useful for the Panel to communicate that as soon as possible (and in advance of releasing its final report), if practicable. This would enable work to continue on those other workstreams without delay and avoid potential duplication of work.

Recommendation

22. The RMLA recommends that the draft ToR should enable the Panel to communicate its view as to how various other workstreams should intersect with and impact on its review, as time permits.

ToR to also address recommendation from Stage 2 Wai 2358 report

23. The RMLA notes that the Waitangi Tribunal has recently released its Stage 2 report in the Wai 2358 National Freshwater and Geothermal Resources inquiry. That report includes recommendations for RMA reform.

Recommendation

24. The RMLA recommends that Appendix 3 of the draft ToR be amended to include reference to the Waitangi Tribunal's Stage 2 report in the Wai 2358 National Freshwater and Geothermal Resources inquiry.

ToR to address any orders or agreements made under the MACA Act

25. The draft ToR currently refer to “existing Treaty of Waitangi settlements, except insofar as how a new resource management system will provide for them” as an “out of scope” item (at paragraph 19). The RMLA considers that orders or agreements made under the Marine and Coastal Area (Takutai Moana) Act 2011 should be treated in the same way, given they provide for statutory rights currently sitting outside of the RMA (although there is an interface with the RMA).

Recommendation

26. The RMLA recommends that paragraph 19 of the draft ToR be amended to read as follows:

“existing Treaty of Waitangi settlements and orders made under the Marine and Coastal Area (Takutai Moana) Act 2011, except insofar as how a new resource management system will provide for them...”

Ensure ToR are not seen to predetermine focus/emphasis of the review

27. The RMLA considers that while the draft ToR call for a high level review of the resource management system (see paragraphs 5 and 9 of the draft ToR, for example), there is potential for the focus or emphasis of the review to be influenced by some of the more specific directions included in the draft ToR. For example, paragraph 7 of the draft ToR refers to the possibility of “separating statutory provision for land use planning from environmental protection of air, water, soil and biodiversity”, while paragraph 8 refers to determining whether Part 2 should sit in a separate piece of legislation.
28. The RMLA notes that there is the potential for such references to be viewed as having already determined what the emphasis of the review should be. It is suggested that the more appropriate approach would be to allow the Panel to investigate all the matters in Appendix 1 and determine which of those issues it considers are most important to achieve the aim of the review.

Recommendation

29. The RMLA recommends that careful consideration be given to some of the more specific directions currently included in the draft ToR (including paragraphs 7 and 8 of the draft ToR), to ensure that they are not potentially viewed as derogating from the broad discretion to undertake a high level review of the resource management system that the Panel is intended to have.
30. If there is any further opportunity to do so, the RMLA would be happy to discuss this submission with you directly.



Signature of Karol Helmink on behalf of the Resource Management Law Association

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