

Transforming the resource management system: Opportunities for change – Issues and options paper

Resource Management Review Panel, November 2019

Submission by Climate Justice Taranaki, 3 February 2020

Introduction

1. Climate Justice Taranaki Inc. is a community group committed to justice, action and true solutions to our climate crisis. We raise awareness on social justice issues around climate change which impact disproportionately heavily on the under-privileged and on future generations. We advocate for policies and decisions that alleviate the impacts and empower communities. We support communities in building climate resilience.
2. We welcome the opportunity to comment on the issues and options paper 'Transforming the resource management system: Opportunities for change'.
3. Numerous scientific studies, research and authoritative documents globally^{1, 2} and nationally^{3, 4} all point to unprecedented crises in our environment and its life-supporting capacity: species extinctions⁵, land and water degradation⁶, ecosystems breakdown⁷, exceedances of planetary boundaries⁸ and climate tipping points⁹, etc. Meanwhile global inequality¹⁰ widens unchecked, resulting in a few ultra-wealthy individuals consuming and exploiting, at the expense of continual impoverishment of the masses, especially indigenous communities including Māori^{11, 12, 13}.
4. Māori tikanga certainly does not define the taonga of our atua as 'resources' to be used or managed for capital gain or so-called economic well-being. Kaitiakitanga is not to take and use. Māori tikanga is to nurture taiao, take some of what is created and give back to further nurture taiao for the days to come. We have already taken so much from this planet and really just need to stop taking more and learn to live with what we have so that future generations might merely live.
5. It's against the above backdrop that we formulate our submission. Our submission builds on several earlier submissions¹⁴ we prepared on related government policy and legislative documents, and focusses on selective issues listed in the current paper.

Issue 2: Purpose and principles of the RMA 1991

6. Indeed, the purpose, and even the name of the Act, are totally out of context, considering the dire state of our environment and the multiple crises we are facing. As the paper pointed out, the concept of "*sustainable management*" lacks focus on "*improving, restoring or enhancing environmental quality*".
7. A new RMA must acknowledge the situation we are in and makes bold commitment to protect, restore and enhance environmental health and ecosystem integrity, rather than resource exploitation. We suggest renaming the Act '**Environmental Protection and Restoration Act (EPRA)**'.
8. To reflect the new commitment or purpose, Part 2 of the Act must be revised, so that s 5(1) reads: '**The purpose of this Act is to protect, restore and enhance the natural environment and ecosystems**'.
9. We do not believe there is a place for "*economic*" in Part 2 of the Act because true values of the natural environment and ecosystems and their costs due to human activities have never been properly evaluated, recognised or considered in planning and decision making.

10. The revised Act must coordinate seamlessly with the many other relevant pieces of legislation.
11. The exclusion of 'minerals' in S5(2)(a) for sustainable management is highly problematic and contrary to the need to stop further minerals, especially fossil fuels, exploration and mining. Our group's submission on the CMA review makes this case clearly¹⁵.
12. S5(2)(b) & (c) remain relevant and important. We support adding climate to S5(2)(b) to read **'safeguarding the life-supporting capacity of air, water, soil, ecosystems and climate'**.
13. We support the suggestions to add a positive obligation such as adding a S5(2)(d) which reads **'protecting, restoring and enhancing the environmental health and ecosystem integrity'**.
14. Clearly insert the requirement to have particular regard to the **'precautionary principle'** in S7. Expand S7(i) to **'the effects of and on climate change'**.
15. We also support the recognition of Te Mana o te Wai or its underlying principles in Part 2. Please refer to our submission on the Action for healthy waterways¹⁶.

Issue 5: Addressing climate change and natural hazards

16. Climate change is a matter of national importance and must be at the core of every resource-based decision. Add **'the protection of our life-supporting climate and climate change mitigation and adaptation'** to Section 6 of the Act.
17. The Zero Carbon Bill¹⁷ seeks to set emissions budgets and reduction plans to help limit global average temperature increase to 1.5° Celsius above pre-industrial levels. To make this happen, councils and consent authorities must consider the effects on climate change of greenhouse gas discharge into the air when making rules and assessing consent applications. Sections 70A and 104E of the RMA currently forbid this. They should be either repealed entirely, or revised while keeping the ability of councils and consent authorities to consider *"the extent that the use and development of renewable energy enables a reduction in the discharge into air of greenhouse gases..."*
18. Sections 68 and 76 also need to be expanded to require regional and district rules to take into account emissions targets, plans and budgets, as well as enabling climate resilience and adaptation.

Issue 8: Consents/approvals

19. We agree with the analysis in the paper that *"the focus of recent reform on improving process efficiency has come at the expense of quality decision-making"* and *"access to justice"*. But our experience from Taranaki tells us that the lack of quality decision-making and access to justice are often the result of industry pressure and inadequate distancing between companies and councils.
20. It would certainly help if *"affected party"* is more clearly defined rather than up to councils.
21. A major issue exists in respect of the 'effects-based' approach to assessing potential impacts, specifically in terms of definitions of 'minor', 'less than minor', and 'cumulative' etc. The determination of the level of effects typically falls to argument among those in the employ of the proponents and opponents, typically with no clearly objective criteria. When such arguments progress to the Environment Court, judges and commissioners are left in the invidious situation of having to choose which of the opposing 'expert' comments (or 'will say' statements) to trust, while having little or no specialist knowledge themselves. Clear, robust definitions of the various terms used would help, if the 'effects based' approach is to remain.
22. In Taranaki, for example, councils routinely use an assessment of 'less than minor' effect as a 'get out of jail free card' to overrule their own bylaws.

23. It would also help improve transparency and enable scrutiny if all applications and consents issued are electronically available the public, rather subject to the Official Information Act.
24. Systemic support for Māori, tangata whenua and the community at large, such as legal and technical assistance, is needed to enable meaningful and effective participation.

Issue 9: Economic instruments

25. We have serious concern over the section on economic instruments in the paper, as indicated earlier (point 9). See also our submissions on the Climate Change Response (Emissions Trading Reform) Amendment Bill¹⁸ and on the Zero Carbon Bill¹⁹.
26. Rather than being “*underused*” as described in the paper, economic instruments have generally been excuses to continue with exploit and pollute. They are largely poorly or unfairly designed to benefit industries and corporations and penalise small operators and community organisations.
27. We caution the introduction or expansion of tradable emissions permits, transferable development rights, environmental offsetting and congestion charges.
28. The only agreeable economic instruments we could think of are (a) appropriate levels of fines to deter reoccurrences of consent breaches, (b) a polluters and users pay scheme, including adequate bonds, which feeds into centralised or regional funds for environmental protection and restoration, and (c) a wealth tax.

Issue 10: Allocation

29. Indeed, the “*first in first served*” basis of the RMA, with “*an expectation by users that access rights will extend over long periods and be renewed*” has led to widespread environmental harm and adversely impacted local communities, especially in the case of oil and gas drilling, fracking, flaring and land-farming of petroleum wastes in Taranaki^{20, 21, 22}.
30. Often, consents for these activities are against the will of local Māori. The matter has been so serious that with the government’s extension of OMV’s offshore oil license in the Great South Basin and EPA granting permits for new exploratory drilling there and in the Taranaki Basin, Māori leader Mike Smith has taken OMV’s CEO to the International Criminal Court²³.
31. Indeed, matters raised in submissions made by Iwi should receive proper weight. For example, the summary of the Iwi submissions for 2018 stated²⁴:

“All the submissions express some level of objection to all or part of the block offer process and/or request exclusion of areas released. The majority of the submissions express objections to oil and gas activity noting a lack of consideration and management in respect to impacts upon customary and cultural interests. A number of submissions provide substantial information to support request for exclusions and/or conditions relating to areas of cultural significance that range from burial sites through to sites of historical interests.”
32. In respect of the 2019 block offer, Taranaki Iwi continued to express deep concern across a range of cultural, heritage and biodiversity issues²⁵. There is growing consensus that this practice needs to stop.
33. Yet, the durations of consents for the petroleum industry, notably in onshore Taranaki, are generally decadal long and they can be readily renewed, without public notification, even to operators who have records of multiple consent breaches. ‘Consent creep’ and changes in conditions to suit non-complying operators are common practice.

34. As explained earlier (see points 3, 4, 13), the concepts of “*the right to take resources, the right to discharge to resources, and the right to occupy public space*” are not fit for purpose anymore. Moreover, the cumulative impacts of such activities, often under different management authorities and processed in a disjoint manner, are generally ignored or under-stated.

Issue 11: System monitoring and oversight

35. In addition to the various issues concerning monitoring and oversight as pointed out in the paper, the oil and gas industry in Taranaki is known to self-regulate while councils often rely on industry supplied data, where available, for monitoring. The process lacks independence and transparency. The phenomena of ‘regulatory capture’ and ‘revolving door’ are well documented^{26, 27}.

Issue 12: Compliance, monitoring and enforcement

36. Indeed, “*investments made in law-making, plan-making and consent processes are undermined if the rules and conditions imposed through decision-making are not upheld*”. Prosecutions are seldom made, penalties are far from adequate as deterrence or to cover costs on monitoring and rehabilitation, if the latter is even possible. All too often, operators who have breached consent conditions repeatedly are allowed to continue their operation and even have their expiring consents renewed.
37. Substantial investments and opportunities for research institutions, universities, technical institutes and community groups including Māori organisations, would provide more robust and independent compliance and monitoring functions. The Parliamentary Commissioner for the Environment, the Ministry for the Environment and Māori authorities may provide some of the oversight of such functions including enforcement, if adequate resources are provided. On cost recovery, see our earlier point 28.

¹ https://www.wwf.org.uk/sites/default/files/2018-10/wwfintl_livingplanet_full.pdf

² <https://www.theguardian.com/environment/2018/oct/30/humanity-wiped-out-animals-since-1970-major-report-finds>

³ <https://www.mfe.govt.nz/environment-aotearoa-2019>

⁴ <https://www.theguardian.com/world/2019/apr/18/decades-of-denial-major-report-finds-new-zealands-environment-is-in-serious-trouble>

⁵ <https://www.sciencedaily.com/releases/2017/07/170710161009.htm>

⁶ <https://www.rnz.co.nz/news/national/395386/health-expert-renews-call-for-study-on-nitrates-in-drinking-water>

⁷ <https://unchronicle.un.org/article/ecosystems-global-water-cycle>

⁸ <https://www.stockholmresilience.org/research/planetary-boundaries/planetary-boundaries/about-the-research/the-nine-planetary-boundaries.html>

⁹ <https://www.nature.com/articles/d41586-019-03595-0>

¹⁰ <https://inequality.org/facts/global-inequality/>

¹¹ <http://www.converge.org.nz/pma/cescr63rd.htm>

¹² <https://livenews.co.nz/2018/04/11/human-rights-housing-and-child-poverty-where-do-we-stand/>

¹³ <https://thespinoff.co.nz/atea/12-04-2018/why-the-un-wants-new-zealand-to-strengthen-maori-rights/>

¹⁴ <https://climatejusticetaranaki.wordpress.com/resources/fact-sheets-presentations/>

¹⁵ <https://climatejusticetaranaki.files.wordpress.com/2020/01/climate-justice-taranaki-submission-on-the-discussion-document-review-of-the-crown-minerals-act-1991-27jan20.pdf>

¹⁶ <https://climatejusticetaranaki.files.wordpress.com/2019/10/cjt-submission-on-mfe-action-on-freshwater-oct2019-v3-final.pdf>

¹⁷ <https://climatejusticetaranaki.files.wordpress.com/2019/07/cjt-submission-to-parliament-on-zero-carbon-bill-final-16july19-with-annex.pdf>

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- ¹⁸ <https://climatejusticetaranaki.files.wordpress.com/2020/01/cjt-submission-on-climate-change-response-ets-reform-17jan20-final.pdf>
- ¹⁹ <https://climatejusticetaranaki.files.wordpress.com/2019/07/cjt-submission-to-parliament-on-zero-carbon-bill-final-16july19-with-annex.pdf>
- ²⁰ <https://climatejusticetaranaki.files.wordpress.com/2018/04/ccheung-cjt-slides-for-dowse-25mar18-v2.pdf>
- ²¹ <https://climatejusticetaranaki.files.wordpress.com/2019/02/cjt-submission-on-remediation-nz-uruti-applications-11feb2019-final.pdf>
- ²² <https://jury.co.nz/category/petrochem/>
- ²³ <https://www.stuff.co.nz/national/116938671/iwi-leader-mike-smith-takes-omv-oil-boss-to-international-criminal-court>
- ²⁴ <https://www.nzpam.govt.nz/assets/Uploads/block-offer/2018/block-offer-2018-annex-submission-analysis-and-recommendations.pdf>
- ²⁵ <https://www.rnz.co.nz/news/te-manu-korihi/388521/maori-disappointed-ancestral-land-up-for-tender-for-oil-and-gas-drilling-in-taranaki>
- ²⁶ <https://www.wheelers.co.nz/books/9781498537599-petroleum-development-and-environmental-conflict-in-aotearoa-new-zealand-texas-of-the-south-pacific/?bic=tq>
- ²⁷ <https://climatejusticetaranaki.files.wordpress.com/2018/10/devantier-cma-hearing-submission.pdf>