

## **Submission by the New Zealand Association for Impact Assessment (NZAIA)**

We welcome the opportunity to provide comments on the discussion paper *Transforming the resource management system: opportunities for change*.

NZAIA is a community of impact assessment specialists and supporters. Our membership comprises 80–100 practitioners of many kinds: environmental and social consultants; academics, researchers and students, and other assorted professionals and interested parties. Our members include many of the leading IA experts in NZ, with longstanding reputations and a wealth of New Zealand, Pacific and international experience. We all share a deep interest in impact assessment, a decision-support method that is one of the most important global tools for safeguarding the environment, and the people and communities who rely on it.

NZAIA is an affiliate of the International Association for Impact Assessment (IAIA), a professional association with some 1700 members located across 120 countries. NZAIA is also partnered with the Environment Institute of Australia and New Zealand Inc. (EIANZ); and the Secretariat of the Pacific Regional Environment Programme (SPREP).

### **Impact assessment and the RMA**

Impact assessment (IA) thinking underpins the whole Resource Management Act, particularly through section 5 which sets out the need to consider the implications of sustainable management decisions for environmental systems, people and communities, and future generations, before those decisions are made. The assessment of environmental effects (AEE), often called EIA overseas, is a key component of resource consent processes, and New Zealand impact assessment practice frequently employs a variety of specific types of impact assessment—social, ecological, cultural, health, etc.—to meet the AEE requirements. In addition, section 32 of the RMA includes the requirement that authorities carry out more strategic forms of impact assessment for policies and plans, and related instruments.

NZAIA believes this emphasis on impact assessment must be retained as an integral part of any future environmental/resource legislation. Further, we strongly recommend greater, and more explicit, use of impact assessment tools at the strategic levels of decision-making (policy and plan making in particular).

The discussion paper alludes several times to the emphasis on “effects-based” philosophy of the RMA, in the context of the lack of focus on environmental outcomes in the RMA, and the lack of strategic planning processes. It is important to recognise that these problems are not the result of a strong effects-based approach. They reflect how the Act was finally written. In fact, a greater emphasis on outcomes, and stronger strategic planning frameworks would both benefit from well designed impact assessment processes.

### **Comments on issues and options**

Given the aims of NZAIA, all our comments refer directly or indirectly to the current or potential contribution of impact assessment in addressing issues raised in the discussion paper (DP).

### *Issue 1: Legislative architecture*

We favour retaining the current integrated approach, recognising that impacts on the environment, including people and their activities, often flow across sectors and domains, and do not respect bureaucratic boundaries.

### *Issue 2: Purpose and Principles of the RMA*

We support retaining s5 more or less in its current form. However, given the comments in the discussion paper about the need to strengthen environmental outcomes, we suggest some thought might be given to changing the section to read “the sustainable management of the environment” (the environment retaining its current definition under the RMA). This might then naturally suggest renaming the RMA as the Environmental Management and Planning Act, in anticipation of a greater role for strategic planning, as explored in the DP.

### *Issue 3: Recognising te Tiriti o Waitangi and te ao Māori*

We strongly support strengthening Māori engagement with RMA processes, in line with the partnership principles of Te Tiriti o Waitangi.

In particular, we support greater weight given to the principles of the Treaty in Part 2, and any guidance or mechanisms to improve the implementation of the treaty-based intentions of the RMA.

We also support explicit recognition of Indigenous/cultural impact assessment and its function and value at both the s32 strategic environmental assessment stage and at the resource consent stage, where tangata whenua choose to use the tool.

### *Issue 4: Strategic integration across the resource management system*

The Resource Management Act already institutionalises a spatial planning approach and this needs to be acknowledged. The RMA spatial planning process is based on cumulative effects zoning and spot zoning, both of which are advanced forms of spatial planning. There are many other forms of spatial planning (four different types in Europe alone) so the use of the generic term in the discussion paper may result in different interpretations. We support moves to consider new forms of institutionalising strategic planning processes, not because the current approach necessarily needs replacing but to encourage the consideration of alternatives and their assessment without predetermination of the outcome.

Whichever approach councils use—and we view any form of spatial planning as being more efficient and effective than none—we believe it is vital that strategic environmental assessment (SEA) be recognised and incorporated into those approaches. SEA is widely recognised and employed overseas to provide a fuller understanding of the wider implications of proposed policies and plans. For example, SEA is required under the Australian federal *Environmental Protection and Biodiversity Conservation Act* (EPBC) for policy and plan proposals (EPBC is closely related to the purpose and scope of the RMA, apart from its greater emphasis on biodiversity conservation).

As an integral part of strategic planning approaches, SEA provides a much more effective way to examine the wider, indirect effects of policies and plans. More importantly, it provides the best framework for recognising and dealing with potential cumulative effects of development, an issue that is mentioned several times in the discussion paper.

We note that the changes to the LGA in 2019 restored the requirement that councils consider the social, environmental, cultural and economic impacts of their policies and plans—that is, SEA. This strongly suggests there needs to be greater integration of the strategic planning and assessment processes in the RMA and LGA, as well as the LTMA and indeed other planning legislation (e.g. Health, Education, Conservation, etc.)

### *Issue 5: Addressing climate change and natural hazards*

We support stronger alignment of the RMA and the Climate Change Response Act, especially where emission reduction plans, and national adaptation plans will have regional and local implications for land uses, forestry and agriculture, and urban development (e.g. the land use and environmental impacts of a national shift to e-vehicles). Strategic planning may well be the main arena for aligning these policies and plans with RMA policies and plans.

However, NZAIA strongly recommends that all climate change mitigation and adaptation policies and plans be assessed for their wider social, cultural, and environmental implications. The Climate Change Response Act emphasises risk assessment as a key tool, and we note the reference in the discussion paper to adaptive planning pathways. These tools help identify possible responses in terms of where to focus attention and how to develop the actual form of response. But they do not allow for careful consideration of what are often called “unforeseen consequences” when they occur later in the implementation phase. Impact assessment tools are a way to minimise unforeseen consequences by stronger anticipatory action and should be built into climate change mitigation and adaptation decision processes. Revisions to the RMA should ensure such scrutiny happens, such as through explicit use of SEA in strategic planning processes, as well as project level impact assessment in the resource consent process.

### *Issue 6: National direction*

Any form of national direction requires its own strategic environmental assessment and the Regulatory Impact Statement process is insufficiently developed to deliver the type of assessment required should such national directions be established.

### *Issue 7: Policy and Planning framework*

We agree that a stronger emphasis be given to outcomes based planning, but not at the expense of effects-based thinking in the evaluation of policies, plans and projects.

We support the concept of regional spatial plans that integrate RMA, LGA and LTMA thinking, as well as iwi management plans; this would provide a more effective basis for managing potential cumulative effects. However, we note that these spatial planning processes already exist within the existing RMA structure and legislation and are not clear as to what might be done to improve on these. New Zealand’s experience with previous spatial planning approaches under the Town and Country Planning Act suggested that spatial planning of that nature was not efficient and effective and led to the change to the RMA following a four year process that included a series of in-depth, independent evaluation reports on options. No such similar impact assessment process has been followed in the current critique and proposals.

In relation to plan evaluation, we note s32 evaluation reports for major plans are often very large, overly detailed, repetitive, mechanistic documents that are very poorly designed for public use. Yet in theory they should be the primary method for allowing public scrutiny of proposed policies, plans and similar instruments. In particular s32 requires the assessment of social, cultural and environmental costs and benefits, so provides an important opportunity for impact assessment within the planning process (effectively a form of SEA). However, current practice is inconsistent and generally fails to deliver good impact assessment outcomes, especially in a form that the interested public can access. Moreover, a poor s32 process and report generally has not been sufficient to justify an appeal in itself or the rejection of proposed plan changes by the Environment Court. We strongly recommend that the s32 process be revised to increase public scrutiny of policy and plan making under the RMA and that poor processes should be grounds for an appeal and could result in rejection of plan change proposals (just as they may for consent applications).

### *Issue 8: Consents and approvals*

We agree that a future system must ensure appropriate scrutiny of environmental impacts of proposals, through the resource consent process. But practice at the project level would be much improved if environmental assessment was practised more effectively at policy and plan levels (e.g. by embedding SEA in strategic planning processes).

In addition, future legislation should provide clearer direction (in a Schedule) about the form of impact assessment to be used by consent applicants, by outlining a model process that clearly draws on established impact assessment principles.

Practice would be improved by requiring at least all notified consent applications to be stored permanently in digital form in a public database at the national level. Impact assessment information, including supporting technical documents, would then be available for ongoing learning, but also to assist public scrutiny of projects and their environmental performance, as well as the basis of council decisions.

Councils should have the power to request scoping reports for larger projects, as a basis for setting terms of reference for an assessment of environmental effects.

### *Issue 9: Economic instruments*

We recognise the growing use of economic valuation methods in decision-making, and support their use where appropriate. However, their use can produce a mindset that any impact can be compensated financially, which needs to be resisted. Similarly, decision-makers need to be careful not to give greater weight to analyses based on monetary valuation, compared with intangible values, simply because they are given a neat numeric answer.

Offsets are increasingly popular ways to deal with environmental impacts and international experience suggests developers move too quickly to offsetting their impacts, rather than working through the mitigation hierarchy (avoid, minimise, restore, reduce) before reaching offsets as the final option. NZAIA would like to see future legislation providing a strong lead on use of the mitigation hierarchy, to avoid over-use of offsets.

### *Issue 10: Allocation*

We see resource/land allocation as being strongly linked to the policy and plan making processes, especially at the regional level. Limits to development need to be established at that level so that cumulative effects can be managed. Incremental allocation, project by project, is the cause of many of the current environmental problems, from water pollution to loss of agricultural land. Strategic processes which include environmental assessment provide a better framework for allocation processes.

The tendering provisions in the RMA (and, to a large extent, the Crown Minerals Act)—whereby the allocation of a resource is the right to be first in line but does not pre-empt or override the detailed assessment of effects of the actual application for resource consents—is an acceptable approach. However, the mechanism and criteria used to determine who wins the tender could usefully consider the impacts (socio-cultural and economic) of the allocation effects of the tender process used (for instance, does the tender process enable consideration of the value of community ownership?).

### *Issue 11: System monitoring and oversight*

As noted above (8) we favour a national archive of larger resource consent applications, to support transfer of learning, but also to improve monitoring of impact assessment performance across the country.

*Issue 12: Compliance, monitoring, and enforcement*

From the perspective of impact assessment and management, NZAIA agrees that CME needs strengthening, especially monitoring and enforcement. We would favour retaining the devolved approach but with a national reporting requirement, and archiving larger consent applications. The data contained in such applications should be available to the public to encourage a stronger community role in monitoring and enforcement.

There also need to be more effective means of monitoring plans and their implementation to ensure they are delivering, although we recognise that biophysical lag effects will prevent the effects of some changes (e.g. water management plans) from being measurable within a single planning cycle.

*Issue 13: Institutional roles and responsibilities*

We would support a greater role for MfE in supporting and guiding impact assessment practice, and a more specific role for the PCE to carry out regular evaluations of environmental management systems. The 1995 report by the then PCE is the only one to examine the assessment of effects process in any detail. This is not good enough.

*Issue 14: Reducing complexity*

Overall, NZAIA believes that strengthening strategic policy and plan processes will contribute to reducing complexity in resource/environmental management processes. However, the proliferation of sectoral advisory bodies may add complexity, so this needs to be weighed carefully when considering new bodies.

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*Submission prepared by members of the NZAIA Core Group*

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