# Submission on the Comprehensive Review of the Resource Management Act

## Response to Issues and Options Paper

**To: Resource Management Review Panel**

**From: Low Carbon Kāpiti**

**Closing Date: Monday 3 February, 2020**

### Introduction

Low Carbon Kāpiti would like to make the following comments:

Low Carbon Kāpiti (LCK) is an incorporated society representing approximately 200 Kāpiti Coast residents who are concerned about the climate crisis. Our purpose is to work at a local level to do all within our power to stop climate heating. One of our recent and successful endeavours was to present the Kāpiti Coast District Council with a petition, signed by 1,500 local residents, asking the Council to go carbon[1] neutral by 2025. The Council subsequently voted unanimously to do so. This response reflects the fact the Kāpiti District will be strongly impacted by the climate crisis, for example, it is especially vulnerable to sea level rise as noted in the recent Greater Wellington Regional Council Sea Level Rise Charts.

In light of our goal of working at a local level to reduce carbon emissions, we feel it is particularly appropriate that we make a submission on the Resource Management Act, as under the RMA, decision-making has largely been decentralised to local and regional levels. We will be commenting on those sections that relate more specifically to climate change, although agree that other areas relating to protecting the environment are also of importance.

The climate crisis is clearly becoming an issue of extreme urgency and all countries must take every step possible to dramatically reduce their carbon emissions. It is imperative that the developed countries that have benefited most from the burning of carbon take the lead on this, for reasons of global justice and equity. This goal must be given precedence.

At present, the main tool for climate change mitigation in New Zealand is the NZ Emissions Trading Scheme. This was introduced to New Zealand by the Labour Government in 2008 and subsequently amended by National in 2009 and 2012. To date, this tool has been particularly ineffective, as the Ministry for the Environment admitted in 2016, resulting in New Zealand becoming a climate change laggard. The ETS is now being reviewed and hopefully the end result will be a scheme that gets New Zealand onto a path of lower emissions. However,

[1] The word ‘carbon’ is shorthand for all anthropogenic greenhouse gas emissions, or ‘GHGs’.

counting on it to suddenly become more effective is an exceedingly poor strategy. Time has all but run out – to have a hope of limiting warming to 2degC, let alone 1.5degC, emissions cuts must start immediately and be cut by a truly heroic 8% per year. Therefore, we need to use all possible tools that are available to us. Market mechanisms, such as an effective ETS, are part of the mix. Carbon taxes are another. Additionally, legislation and regulation that can directly control emissions must also be used. The RMA is such a legislative device. Given the urgency of the situation, the time has come to start giving regulation its rightful place in the battle against ever-increasing carbon emissions.

The RMA is the main law that sets out how the environment should be managed. So, what is its position on climate change?

The principles of the Act are set out in sections 6, 7 and 8. Section 6 outlines “matters of national importance”, Section 7 “Other Matters” and Section 8 Treaty of Waitangi issues, each one having differing levels of significance.

Section 7 of the Act states that: “In achieving the purposes of this Act, all person exercising powers under it …shall have particular regard to… (i) the effects of climate change: (j) the benefits to be derived from the use and development of renewable energy.”

However, the direction to have particular regard to the matters listed in Section 7 is not as strong as the direction to recognise and provide for matters of national importance in Section 6. Section 7 still needs to be given due consideration, but may be accepted only in part or rejected (Marlborough Ridge Ltd v. Marlborough District Council [1998] NZRMA 73). LCK feels that this is a weakness of the Act. Because climate change is not given due weight, the RMA has not had an impact on New Zealand’s excessive carbon emissions.

Also, following Upland Landscape Protection Society Inc v. Clutha District Council (NZEnvC CO85/08, 25 July 2008), the requirement to have particular regard to the effects on climate change is aimed at considering the effects of climate change on the application (adaptation), rather than the effects of the application on climate change (mitigation). For example, if a decision is required on a project near the beach, it is the potential impact of sea level rise on the project that is considered, not the amount of carbon that the project might release into the atmosphere.

Furthermore, Sections 70A and 104E of the RMA clearly state that a decision maker cannot have regard to climate change when preparing rules to control discharge into the air of greenhouse gases (S.70A) or when considering resource consent applications for a discharge permit or coastal permit (S.104E). These clauses have been interpreted by planning authorities and the Supreme Court (in their ruling on West Coast ENT Inc vs Buller Coal Ltd, SC75/2012 [2013] NZSC 87) as meaning that the warming effect of any greenhouse gas emissions resulting from or prevented by a proposed development cannot be considered at all in any

resource consent decisions[2]. These two sections must be either deleted or amended to require that a decision maker must have regard to climate change and/or the effects of greenhouse gas discharge. These sections are clearly inappropriate in today's climate.

Overall, the Resource Management Act must recognise that climate change mitigation is imperative, and it must play a role in responding to this challenge.

In light of the above considerations, these are LCK's response to the relevant questions in the issues and options paper:

## Issue 1: Legislative architecture

### *1. Should there be separate legislation dealing with environmental management and land use planning, or is the current integrated approach preferable?*

The RMA endeavours to resolve two conflicting issues – the natural environment and the built environment.

The National Party, in its RMA discussion document, suggests separating the two issues into separate acts. However, this would still leave the basic conflict intact - a means must be found to reconcile the two. We believe land use and environmental management are interconnected and therefore an integrated approach is essential. This should also help to avoid duplication of effort and provide greater consistency.

Whichever solution is decided on, it must ensure the protection of the environment and a downward trajectory in carbon emissions.

## Issue 2: Purpose and principles of the Resource Management Act 1991

### *2. What changes should be made to Part 2 of the RMA?*

The Environmental Defence Society proposes that Part 2 be rewritten so that it imposes, amongst other things, "high level [environmental] bottom lines for truly long-term and essential matters, not just that it allows them to be made if authorities choose to" (EDS Working Paper 3, page 4).

Climate change is clearly a long-term and essential matter for which "high level bottom lines" are essential if any impact is to be made on our carbon emissions. LCK would support this approach if these bottom lines were of a sufficient adequacy to start reducing carbon emissions.

The EDS also wants the pursuit of "good" outcomes, not just prevention or management of "bad" outcomes). LCK also supports this.

[2] Apart from the GHG reductions that would arise from a renewable energy development.

*3. Does s5 require any modification?*
*4. Should ss. 6 and 7 be amended?*
*5. Should the relationship or 'hierarchy' of the matters in ss. 6 and 7 be changed?*

- Sections 5, 6 and 7 need to be amended to impose the conditions as described above.
- Also, S.7 (i) relating to climate change should be promoted from the "other matters" category, where it may or may not be part of a decision. All decisions need to be made with a climate change perspective and any issues that arise from this perspective must be reflected in the final decision. If a proposal does not meet the environmental "bottom lines" then it should be refused.
- Section 7 (j) relating to the use and development of renewable energy should also be promoted.
- Additionally, the interpretation in Upland Landscape Protection Society Inc v. Clutha District Council (NZEnvC CO85/08, 25 July 2008), relating to the requirement to have particular regard to the effects on climate change, needs to be broadened to include not only the impacts of climate change on the new development, but also the impacts of the development on climate change.

*6. Should there be separate statements of principles for environmental values and development issues (and in particular housing and urban development) and, if so, how are these to be reconciled?*

- There might be benefits in this. This conflict between the two different purposes has resulted in the RMA failing to deliver on both environment and infrastructure. LCK is open to either approach as long as it ensures reduction on carbon emissions. The EDS proposal of bottom line environmental requirements may be such an approach.

*7. Are changes required to better reflect te ao Māori*

- Yes. The EDS proposes strong Treaty of Waitangi principles and LCK would support this.

## Issue 3: Recognising Te Tiriti o Waitangi / the Treaty of Waitangi and te ao Māori

***9. Are changes required to s8, including the hierarchy with regard to ss. 6 and 7?***

Yes.

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

We agree with the principles stated in your document, summarised in para 84:

Spatial planning would encompass consideration of economic, environmental, social and cultural wellbeing. It would also need a long-term time horizon, and a focus on integration of environmental protection, land and natural resource use and infrastructure decision-making, including funding and financing.

This would require linkages between local, regional and national bodies.

## Issue 5: Addressing climate change and natural hazards

### *16. Should the RMA be used as a tool to address climate change mitigation, and if so, how?*

Yes. The RMA should include mandatory environmental targets, including those relating to carbon emissions and thus climate change.

### *17. What changes to the RMA are required to address climate change adaptation and natural hazards?*

Sections 70A and 104E state that a decision maker cannot have regard to climate change or the effects of a discharge into air of greenhouse gases. Sections 70A and 104E must either be repealed or alternatively, amended by simply changing “cannot” to “must”.

### *18. How should the RMA be amended to align with the Climate Change Response Act 2002?*

The government should add a clause to the bill requiring planning authorities to have regard to the objectives of the Zero Carbon Act, its targets and carbon budgets, in decisions on whether to grant resource consent applications. This would help ensure a carbon lens on every decision, avoiding massive planning decisions with huge carbon consequences.

## Issue 6: National direction

### *19. What role should more mandatory national direction have in setting environmental standards, protection of the environment generally, and in managing urban development?*

While resource management legislation is largely implemented by local government, central government can provide national direction in several ways, by using tools such as National Policy Statements (NPSs) and National Environmental Standards (NESs), regulations and the exercise of Ministerial intervention.

At present there are few and inadequate national policy statements and standards. Mandatory national direction should have a more significant role to ensure that carbon emissions start on a

rapid downward trend. It would also mean more consistency between decisions being made by different councils.

### Note:

For ongoing functioning of the Act it seems that there will need to be training given to local and regional (and probably central government) authorities to run a responsive system with standards available that can be modified easily when new information comes to light. Whereby applicants can readily access help in their planning, plans are reviewed by an independent local, regional or national group, with advice as needed by trained technical experts. This all to be transparent, auditable and audited along with whatever other audits are in place for these bodies (e.g. financial). This should be on a performance-based system to encourage compliance and minimise costs.

### Examples

International examples of local councils using planning law to regulate carbon emissions are available, most notably in the United Kingdom. The UK planning system allows councils to control emissions using “Supplementary Planning Documents”. The purpose of the energy policies in the Plans are to ensure that development delivers secure, affordable, low carbon growth, increases future energy resilience, and helps to deliver the strategic objectives of the government’s National Planning Policy Framework(NPPF)(2019), Industrial Strategy (2017) and the Clean Growth Strategy (2017)

Examples of such documents are available at:
https://www.ecosia.org/search?q=uk+supplementary+planning+documents+sustainability+renewable&addon=opensearch

For example, the Adur District Council published a supplementary planning document in August 2019: https://www.adur-worthing.gov.uk/media/media,153456,en.pdf

This document outlines the council’s sustainable energy plans. Amongst other things, this SPD encourages all developments to submit Energy Statements to demonstrate how they are delivering clean, smart sustainable, development, in the spirit of wider sustainability objectives of the Plans.

Part of the document states:

“The policies and principles referred to in this document are minimum standards. The Council will welcome proposals that exceed these and especially welcomes zero carbon development. The requirement for renewable and low carbon energy is aligned with the National Planning Policy Framework which requires all local planning authorities to deliver radical reductions in greenhouse gas emissions and support the transition to a low carbon future.”

"Key challenges for the Plan include the need to: improve infrastructure; address climate change; work towards achieving sustainability; and to balance development and regeneration requirements against the limited physical capacity of Adur without detriment to environmental quality."

It also notes the legislation behind these requirements, notably the Planning and Compulsory Purchase Act 2004, the Climate Change Act 2008 and the Planning and Energy Act 2008 and then moves on to a more detailed outline of plans and finally discusses renewable energy options.

A second example is ex-President Obama's Clean Power Plan which established a federal-state process for controlling power plant pollution. It required lower $CO_2$ emissions per unit of energy as part of permitting power stations (which would have forced many older and coal fired plants to clean up or close). The plan set flexible and achievable standards that gave each state the opportunity to design its own most cost-effective path toward cleaner energy sources. In the rare cases where states chose not to act, the Clean Air Act provided a critical guarantee that the national government would regulate polluters directly if necessary. USA states are much larger and different entities than New Zealand local councils, but even so there are parallels. Indeed, in the USA, many states are taking the lead in climate change mitigation, despite the reluctance of the present federal administration to support this issue.

Clearly then, there are international precedents where acts that regulate development and environmental effects, akin to the RMA, are being used as mechanisms to reduce carbon emissions.