

## WISE RESPONSE SUBMISSION ON THE RMA AMENDMENT BILL

(7 November 2019)

### Introduction

1. The Wise Response Society Inc wish to express its support for the amendments proposed to this Act as summarised in Appendix A to this submission.
2. We also wish to comment on three particular aspects which are directly or indirectly related to it.
  - i. The appointment of the EPA representatives
  - ii. The need to repeal sections 70A and 104E of the RMA
  - iii. The new Freshwater planning process to support a holistic approach
3. Accordingly, we make 4 specific recommendations.
4. The background and purpose of the Wise Response Society is set out in Appendix B.

### Appointment of EPA representatives

5. We consider the proposal to introduce a **new plan-making process** that councils must use for proposed regional policy statements or regional plans (or changes) for freshwater potentially will be helpful, provided it streamlines and makes for a more robust and consistent outcome between councils.
6. One reason for supporting this change is that increasingly, we seem to be caught in **an endless cycle of planning** to comprehensively address issues such as water quality, but never actually getting there! The process has become so protracted that:
  - i. either circumstances change and the Policy or Plan becomes obsolete or the goal posts have shifted
  - ii. there is a perpetuation of inadequate or partially operative policy
  - iii. the policy or plan is never actually made fully operative before there is a change in government policy that requires a review or fresh start.
7. This cycle can repeat with the effect that there is that some forms of development are effectively proceeding in a **policy vacuum**. Wise Response considers a way needs to be found to break this cycle so we can achieve real, timely action on the ground in our common interest.
8. By way of example, our Society was party to the review of the **Regional Policy Statement for Otago**. The process is set down in the table below and illustrates how long and involved the process has been.

**Table 1: Time line for the review of the Otago Regional Council Regional Policy Statement**

- Pre-consultation submissions invited for June 2014
- Proposed Regional Policy Statement publicly notified on May 2015. A total of 156 submissions and 42 further submissions were received. The hearing panel heard or received evidence from 88 submitters in November 2015.
- The panel deliberated from December 2015 to September 2016 and released its decision 1 October 2016. Twenty six notices of appeals were received.
- People then had the opportunity to lodge and serve a notice to become a party to the proceedings until January 2017.
- ORC, appellants, and section 274 parties negotiated throughout 2017 on the issues raised in appeals. Two issues were not resolved through negotiations and became the subject of Environment Court hearings.
- Resolved matters became the subject of 19 separate memoranda and associated court orders, lodged with the Environment Court through the first half of 2018. The Court has granted 17 of these consent orders.
- The two appeal points that were not resolved out of court concerned ports, and mining and indigenous biodiversity offsetting. These appeals were heard by the Environment Court in February 2018.
- The mining and indigenous biodiversity offsetting decision has not yet been released.
- An interim decision on the Ports topic was released on 28 September 2018. The decision has been appealed to the High Court, and a hearing was held 5-6 June 2019.
- As of Nov 2019 the RPS is still only partially operative with outstanding matters to be resolved.

9. Now with the requirement for Councils to have new Plans in place for 2025 we are concerned that the above RPS review we (and others) put so much effort into over 5 years will **ever be fully implemented**.

10. As if to confirm that fear, the Otago Regional Council has just proposed Plan Change 6AA, which seeks the **key water quality compliance date** of 1 April 2020 be put back to 1 April 2026 in anticipation of the new legislation.

#### **Recommendation 1**

Ensure that the legislation addressing the EPA involvement will result in a more efficient, swift, robust and consistent outcome between councils

## Selection of EPA personnel and role

11. One particular concern we have about involving the EPA directly in the manner proposed is that it **concentrates power and influence** in the hands of a small group who may be misguided in their views of what is most appropriate.

12. For example, not so long ago we had former EPA chairperson, **Dr Jacqueline Rowarth**, making public statements that were highly misleading. These included needing irrigation to fund protection from its adverse impacts, NZ has some of the best rivers in the world, that freshwater going to sea was wasted and everything should be about producing animal protein.

13. Amongst such a small group there are not the **checks and balances** that exist when there are more people involved in making planning decisions.

### Recommendation 2

That the primary purpose of the EPA in this role be firmly linked to Part 2 of the RMA and (as its name suggests) preserving ecosystem health to minimise the risk of personal agendas and commercial interests influencing their decisions under this legislation

## Repealing of Sections 70A and 104E of the RMA

14. We note there is no proposal in this RMA amendment to remove the very **serious constraints** in both the 2004 Amendment to the Resource Management Act (RMA) 1991 (ss 70A and 104E) and which also happens to form part of the Exclusive Economic Zone and Continental Shelf Act 2012 (EEZ/CS Act) - s59 (5)(b).

15. As will be aware, these clauses specifically **prohibit any consideration** of the effects of proposed activities on the production of greenhouse gases (GHG) or any other possible effects on climate change, while not preventing consideration of the reverse.

16. This policy has created a most **bizarre and dangerous situation** where the most serious and urgent threat to the very existence of all life on the planet can not be addressed in our cornerstone "effects-based" legislation, which controls the management and development of our all our natural and physical resources.

17. Our Society has **experienced the frustration** of this situation with both the RMA: in 2016 with an appeal against the Fonterra proposed expansion in South Canterbury; and also with the EEZ/CS Act, with the recent hearing of the OMV Application to the Environmental Protection Authority for exploratory drilling in the Great South Basin.

18. In my submission I described the situation as having permission to fight a fire but without the use of water; the local media, Otago Daily Times, described this hearing as "**a farce**", in relation to this situation.

19. We do, however, recognise that as almost all activities today depend on fossil fuel at some point and hence are responsible for GHG emissions. So at this point in time, a functioning economy is dependent on being able to lawfully be associated

with a level of GHG emission. Hence, the **wording of any legislation** around this will need to be carefully considered.

### Recommendation 3

As soon as possible, that RMA Sections 104E and 70A be repealed and replaced with provisions that are linked to the objectives of the Zero Carbon Act and the need to achieve emission neutrality at or before 2050.

## New Freshwater planning process to support a Holistic approach

### Scope for a Integrated Landscape management/Regenerative approach to help Catchment Groups achieve good quality water

20. Over the last 3 years, our Wise Response Society has been promoting to the Otago Regional Council an **Integrated Landscape Management (ILM)** approach as a way to more effectively address the raft of sustainability issues now confronting the region - both rural and urban sectors alike. Integrated management of natural and physical resources is a foundation concept in the RMA, the significance of which for planning does not ever appear to have been fully realised.

21. Accordingly, it is most encouraging now that integration and a holistic approach to addressing water quality issues are core themes in the **draft NPS-FM** currently under consultation. Likewise, the requirement to establish FMUs/Rohe for the entire region offers an ideal vehicle for the concept.

22. So to meet this objective and because freshwater is linked to so many other management factors, we think that the brief for these units/groups **needs to be sufficiently broad** to include the likes of climate change, indigenous biodiversity, pest control, land capability, etc., as well and that there is both urban and rural representation in the groups.

23. In this context it seems that the **"landscape function"** approach proposed by leading exponents of "regenerative" land management would provide a useful guide for such groups to use as a way of stepping back sufficiently from their current operations to be able to reassess their suitability at a structural level going forward. They challenge landusers in 5 key areas to come up with sustainable practice, all of which have a direct bearing on freshwater quality:

- a. Solar-energy cycle - maximising photosynthesis to fix as many plant sugars as possible to build soils and increase productivity
- b. Water cycle - capturing and recycling in the land as much rainfall as possible
- c. Soil mineral cycle - mobilising, holding and recycling natural fertility
- d. Self-organisation in ecosystems and biodiversity at all levels
- e. Appropriate management/social systems

24. Using these ecosystem functions as a guide, they are devising solutions from the **ground-up**, where regenerative is beyond just "sustainable". This process has the potential to shift the mindset from focusing on maximum exploitation down to

"bottomlines" over to together building a **more resilient and "nourishing terrain"** that brings community wide benefit.

25. Being able to consider landuse from these basic principles is more likely to bring landholders to a **timely and pragmatic decision point** where they can decide if their current means of creating value will be sustainable in the medium term or if it is time to start structural change immediately.

#### **Enhancing water yield from landscape**

26. Further on the theme of building resilience, a key concept in regenerative land management is the potential to **increase effective rainfall** (i.e., the proportion of rainfall that infiltrates the land surface - landscape function "b" above). One estimate from Australia is that a 1% increase in soil organic matter in the top 30cm of soil increased the water holding capacity by 14.4 l/m<sup>2</sup><sup>1</sup>. That additional storage exists each time it rains so has the potential to hugely increase recharge to the subsurface (including aquifers) and prolong base flows in rivers if scaled up.

27. To add to this, it has been clearly demonstrated that **ground cover/cover type** also strongly influences catchment yield. For example the role of upland tussock in capturing fog/mist<sup>2</sup> or the capacity of Pinus radiata to reduce yield.

28. Therefore, the extent to which these factors (soil infiltration and holding capacity and vegetation cover) can be optimised across our agricultural landscapes has the potential to **significantly change the freshwater balance** directly in terms of water quantity (including aquifer recharge) and indirectly in terms of quality (as a result of enhanced natural filtering and dilution).

29. Our Society considers that these are the sort of concepts that all Regional Councils should be taking out to **challenge catchment groups** into a holistic response to achieving the good water quality flagged in the draft NPS-FM and for all Councils to anticipate the need to include such strategy in their Action Plans.

#### **Recommendation 4**

In order to more effectively implement its holistic approach proposed in the new NPS-FM, we recommend that the new freshwater planning process in the RMA and involving FMU and catchment groups, as far as possible, includes a requirement for Councils to incorporate in their action plans, the fundamental principles of healthy landscape function.

Thankyou for the invitation to submit. We should like to have the opportunity to be heard if that is offered.

**Signed.** Alan F. Mark, FRSNZ, KNZM,  
Chair, Wise Response Society Inc.

<sup>1</sup> Glen Morris, Soil Scientist, Page 140 in Charles Massy, Call of the Reed Wabler, 2017

<sup>2</sup> Mark, AF, Dickinson, KJM. 2008. Maximising water yield with indigenous non-forest vegetation: a New Zealand example. Frontiers in Ecology and the Environment 6: 25-31.

## Appendix A: Summary of key changes proposed

1. Repealing 2017 changes: These include:
  1. Restoring public participation rights particularly in respect of resource consents relating to subdivision and residential activity.
  2. Restoring public notification and appeal rights in relation to decisions on resource consents relating to subdivisions and residential activity.
  3. Restoring the presumption that subdivision was to be restricted unless expressly permitted by a district plan rule.
  4. Restoring financial contributions, Councils can now impose financial contributions as a consent condition after April 2022.
  5. Reducing the powers of the Minister for the Environment to override local plan rules
  6. Repealing regulation-making power for additional fast-track activities
2. RMA enforcement: Improving enforcement under the RMA by:
  - Enabling applicants to have processing of non-notified resource consent applications suspended for up to 20 working days to be more consistent with limited or publically notified applications
  - Enabling consent authorities to suspend processing resource consent applications until fixed administrative charges are paid
  - Enabling review of conditions of multiple resource consents concurrently
  - Increasing the maximum infringement fees for offences under the RMA.
  - Extending statutory limitation period to file charges for prosecutions under the RMA from 6 months to 12 months.
  - Empowering the Environmental Protection Authority to undertake investigation and enforcement actions under the RMA even where no local authority is involved.
  - Protecting special advisors to Environment Court against legal proceedings as with other jurisdictions
  - Clarification of process for making national environmental standards
3. New Freshwater Planning Process by:
  - Introducing a new planning process for freshwater, including the Government appointed Commissioner and hearing panels who will have enhanced hearing powers, including directing conferencing of experts, appointing special advisors, cross-examination, and mediation.
  - Repealing and replacing collaborative planning process introduced in the RLAA 2017

## Appendix B: Background to the Wise Response Society Inc.

1. Wise Response is an Otago-based but New Zealand-wide, non-partisan Society, launched in 2013, with the purpose of persuading the New Zealand Parliament, Government and New Zealand society in general, to confront and respond effectively to any confirmed threats arising from the question:

*"As demand for growth exceeds earth's physical limits causing unprecedented risks, what knowledge and changes do we need to secure New Zealand's future wellbeing?"*

2. Chairperson Sir Alan Mark conducted a nation-wide tour that year with 11 public meetings from Auckland to Invercargill to explain the Society's purpose and strategy, and gain support. The Society strength is in the wide range supporters who participate in online discussions around the "limits" theme, many being experts in their professional fields are able to provide multidisciplinary input into our initiatives. Our Patron is Sir Geoffrey Palmer QC.

3. In April 2014, we presented our 5,000-signature petition to Parliament, that recommended they undertake a Risk Assessment of New Zealand, in five subjects as follows:

- i. **Financial security:** the risk of a sudden, deepening, or prolonged global financial crisis.
- ii. **Energy and climate security:** the risk of continuing our heavy dependence on fossil fuels.
- iii. **Business continuity:** the risk exposure of all New Zealand business, including farming, to a lower carbon economy.
- iv. **Ecological/Environmental security:** the risks associated with failing to genuinely protect both land-based and marine ecosystems and their natural processes.
- v. **Genuine well-being:** the risk of persisting with a subsidised, debt-based economy, preoccupied with maximising consumption and GDP and increasing inequality.

4. The Appeal sought a commitment to a quantitative, cross-party risk assessment of how and exactly where New Zealand is exposed, as a rational, integrated basis for planning a more secure future. The petition was referred to the Finance and Expenditure Select Committee, with a hearing on July 1, 2015. The majority response was negative, claiming Government was adequately addressing the issues of concern, but the three minority parties (Labour, NZ First, Greens) offered strong endorsement.

### Other submissions

5. Our Society also makes regular submission on a range of policy change issues. Examples include the Emissions Trading Scheme, the Resource Legislation Amendment Bill, Regional Policy Statement of the Otago Regional Council (and mediation with Dr Royden Somerville QC and Will Anglin as Counsel which has since



been appealed to the Environment and High Courts), New Zealand Energy Efficiency and Conservation Strategy, the Productivity Commission, the Child Poverty Reduction Bill and the Tax Review Group, and most recently, the Zero Carbon Bill with particular focus on methane and the NPS-FM review.