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The Minister for the Environment
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DUNEDIN CITY COUNCIL SUBMISSION ON TRANSFORMING THE RESOURCE MANAGEMENT SYSTEM: OPPORTUNITIES FOR CHANGE

Introduction

1. The Dunedin City Council (DCC) appreciates the opportunity to make this submission on the issues and options paper; Transforming the resource management system: Opportunities for Change.
2. The challenges Dunedin faces have changed significantly in the period of nearly 30 years since the Resource Management Act (RMA) was introduced. Dunedin, like many other urban centres, is facing increased housing pressures as a result of growth. Since being reclassified as a medium-growth city in 2017, the DCC has identified a shortage of residential development capacity as assessed through the National Policy Statement for Urban Development Capacity. The DCC has a keen interest in the RMA reform, as an efficient RMA is vital to addressing the city's housing pressures.

Issue 1: Legislative architecture

3. The DCC sees advantages to separating the legislative frameworks that deal with land use planning and environmental management and recommends the Ministry for the Environment (MfE) explores this. For the advantages to be fully realised, integration between the two systems (land use / environmental) needs to be built into the framework. The DCC recommends that urban planning functions stay with district councils for medium and large cities and fast-growing towns.
4. One advantage of splitting the legislative framework would be that the 'effects-based' approach could be retained for environmental management (where it works most effectively), and land use planning could move back towards a more strategic long-term outcomes-focused (town planning) approach. This should be based on medium to long term spatial planning linked with good infrastructure, facilities, and financial planning to ensure that cities plan appropriately for population growth or other changes.

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

5. The DCC agrees that the RMA's purpose and principles do not provide enough recognition of the need for a strategic focus to develop housing and infrastructure. The DCC would like to see any future changes to the purpose and principles account for this.
6. The DCC believes it is important that any guiding principles for urban planning should not just promote growth for the sake of growth but adhere to the principles of 'smart growth'. Several key planning issues that New Zealand cities face include; the inefficient use of land, poor transport network design, lack of co-location of employment and key commercial activities, and lack of affordable housing are a result of poorly planned growth. These issues are equally important to the quantity (or lack) of housing being developed. It is important that these matters be included in the guiding principles of any urban planning legislation to make it easier for district councils to defend the principles and hopefully deter lengthy legal battles.

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

7. The DCC would like more guidance in this area, in particular on best practice in terms of incorporating Māori interests into different aspects of the process. Guidance on how Māori may be considered, represented, and balanced through decision making functions (members of hearing panels), involvement as submitters (or through earlier engagement), and input through acting as professional 'experts' advising local authorities, would all be welcomed.

Issue 4: Strategic integration across the resource management system

8. The DCC developed a spatial plan under the Local Government Act (LGA) which was adopted in September 2012. The development of the plan under the LGA rather than the RMA, in the DCC's experience, enabled more open, creative, and people-friendly engagement. This resulted in the process not being overtaken by the need for legal representation or expert evidence.
9. The DCC recommends that spatial plans should be required for each medium to large city, or fast-growing town/conurbation. (In the NZ context this means where cities or towns grow to merge into each other to form a continuous or near-continuous functionally integrated urban area). District council boundaries should reflect these city/conurbation boundaries. Where satellite towns are in a different district council area, or where conurbations exist but amalgamation is not favoured, the DCC recommends spatial plans should be undertaken as a joint process.
10. The DCC would like to see the spatial plan process include a degree of specificity around what should be included. The DCC further suggests the spatial plans ability to influence the content of a district plan be upgraded to be similar to a Regional Policy Statement (RPS) (i.e. they must be given effect to). All spatial plans should include strategic directions that have objectives and policies that at a minimum cover:

- a vision for the future urban form of the city
- urban design principles
- transportation objectives and policies around mode share and role of active modes and public transportation
- values to be maintained or enhanced (e.g. cultural and environment objectives and strategic policies)
- key goals for the city's future (e.g. social, economic, housing choice objectives and strategic policies)
- where and how growth should occur in a principled (rather than site-specific) sense
- what council planning (infrastructure/ facilities planning) is required to support that future vision for a city
- detail of housing capacity assessment requirements.

Spatial plans should be linked to the 10-year Plan and Regional Land Transport Plans (RLTP) process and be reviewed every 6 years similar to an RLTP.

11. The DCC recommends the decisions on where specific growth should be provided for (future zoning) should remain in the district plan and be subject to the full submission, further submission and appeal process. However, limitations on appeals could be imposed by enabling a fast track plan change procedure for plan changes that meet strategic criteria outlined in spatial plans.
12. The DCC recommends stricter limitations on who can appeal zoning changes, perhaps limiting appeals to affected landowners and those that may be directly adversely affected by any zoning change.
13. The DCC submits that for reasons of resourcing and efficiency, regional councils should focus on environmental management plans and should not be responsible for urban planning, with the exception of small towns or when greater efficiencies can be achieved as discussed in paragraph 37.
14. The DCC would like more consideration of public transport as a key element in town planning and connectivity.

Issue 5: Addressing climate change and natural hazards

15. The DCC submits issues, objectives and policies related to climate change mitigation should be articulated in the spatial and possibly other strategic plans developed under the LGA. RMA-plans are only one tool in the tool box necessary to deliver climate change adaptation and mitigation solutions. Climate change and natural hazards planning needs significant national and regional level support, both in terms of a national policy direction, and financial and resourcing assistance for communities where the potential impacts of climate change are disproportionately higher than the ability of the population base to deliver solutions.
16. The DCC supports a more permissive regulatory framework for certain activities that are necessary to transition to a low emissions economy, and as discussed in Issue 1 that the guiding principles of the RMA should include principles of 'smart growth'.

17. The DCC would also like greater clarity around the relative roles of the RMA and Building Act in terms of national hazards management, particularly as it relates to minimum floor levels and relocatable buildings.

Issues 5: questions and answers

Option	Response
<i>Mitigation</i>	
a. Maintain the current focus on the NZ ETS as the main policy tool to address climate change mitigation	Agreed.
b. Add reference to climate change mitigation to Part 2 of the RMA	Agreed in principle.
d. Use “spatial planning” for land use and infrastructure as a tool for addressing climate change mitigation	Agreed. The DCC uses spatial planning for land use and infrastructure management which requires the impacts of climate change to be considered, and to some extent methods for climate change mitigation.
<i>Adaptation and natural hazards</i>	
a. Develop national direction to provide clearer planning restrictions for development in high risk areas	Agreed. The DCC submits such national policy direction would be useful for guiding the development of natural hazard provisions in local authority plans. However, overall, flexibility needs to be provided for differences in local circumstances.
b. Use spatial planning processes to identify future adaptation responses (in the context of the national adaptation plan) that connect with regulation, infrastructure provision and adaptation funding	Agreed.
c. Improve implementation of risk assessment	Agreed.
d. Clarify what changes might be needed to existing use rights in the context of managed retreat	<p>Agreed. The DCC submits that changes are needed regarding existing use rights. In particular, there may need to be changes to the RMA to enable existing use rights to be extinguished by local authorities in areas where retreat is necessary.</p> <p>The DCC recommends widening the mandate for changes to existing use rights for not only managed retreat but any climate change adaptation (or mitigation) planning or local activity.</p>
e. Introduce new planning tools such as “dynamic adaptive planning pathways” and other measures	Agreed. The DCC considers that dynamic adaptive planning pathways provide flexibility for the management of natural hazards, and that this pathway is already set

	<p>out in the MfE documents including <i>Preparing for coastal Change: A summary of coastal hazards and climate change guidance for local government (December 2017)</i>.</p> <p>DCC is already using this guidance.</p>
f. Require the Minister for the Environment to develop or amend national direction under the RMA in response to the national adaptation plan developed under the CCRA	<p>Agreed. The DCC submits any findings / feedback from the CCRA should inform legislative change.</p>

Issue 6: National direction

18. The DCC asserts urban planning for medium and large cities should remain local. The look and feel of cities, and values to be maintained or enhanced should reflect the aspirations and values of local communities, balanced with an improved Section 5-8 framework as discussed above. Environmental management, particularly as it relates to the environmental bottom lines for soil conservation, food resilience, waste management, biodiversity, air quality, freshwater and emissions reductions, should be set at a national level where appropriate. National direction and support in this area will improve consistency and be more efficient and cost-effective.

Issue 7: Policy and planning framework

19. In addition to the responses in the questions and answer table below, the DCC submits that the proposed planning template (national planning standard) may not improve the content of land use plans and consideration should be given to removing this as a mandatory requirement.
20. The DCC submits guidance, training and support for plan drafting will be more effective than trying to standardise zone types across diverse communities.
21. The DCC submits certainty could be improved through improvements to the s32 assessment process. For example, there should be more detailed requirement for the assessment of 'efficiency'. The RMA should give guidance on the function of different activity statuses.
22. The DCC submits the full range of activity statuses should be retained. However, there should be greater national direction on when they can be used. For example, non-complying activity status should mean contrary to strategic objectives and generally not appropriate, except in exceptional circumstances.
23. The DCC submits restricted discretionary status should be used in all instances where the concern is related to managing the 'effects' of development, with the general outcome of development proposals being the alteration of the scale and design to manage effects to ensure strategic objectives are achieved as much as practicable. Consideration could be given

to creating more simplified forms and fast track procedures (removal of appeal rights) for restricted discretionary activities.

24. The DCC submits the submission and appeal process should be redesigned to focus on benefiting decision makers, rather than providing a means of defending perceived individual property rights or relitigating strategic policy decisions that have already been considered and decided through strategy or plan development.
25. The DCC recommends the MfE explores organising and supporting a national plan-making review panel (made up of certified practitioners that are supported by the Ministry) that would be individually available to provide guidance, training and feedback to local authorities.

Issues 7: questions and answers:

Option	Response
a. Require regional spatial plans with effect across the RMA, LGA, and LTMA	<p>The DCC supports the use of spatial planning to provide a strategic framework for integrated urban planning (land use and infrastructure planning) for medium and large cities and fast-growing areas.</p> <p>The DCC submits that this should be done by district councils not regional councils as local councils have expertise in urban planning (and regional councils should retain environmental management as their core focus).</p> <p>The option for towns and settlements to delegate urban planning functions to regional councils should be given to mainly rural/ unpopulated regions.</p> <p>Spatial Plans should be strategic documents that direct plans developed under the RMA, LGA, LTMA.</p> <p>Spatial Plans should be required to be 'given effect to.'</p>
b. Require combined plans for a region	The DCC supports combined plans for conurbations that cross-district council boundaries (for example QLDC/CODC).
c. Reconsider the functions of regional and district councils under the RMA and the effect they have on the content of plans	The DCC agrees that the focus of district councils on urban planning and regional councils on environmental planning should be more clearly articulated in the case of regions with medium to large cities. For regions with small towns, there may be efficiencies in local authorities choosing to

	delegate some land use planning functions to regional councils on a voluntary or prescribed basis.
d. Provide for an 'outcomes'-based approach to the content of plans	<p>The DCC submits there should be a separate urban planning framework that is primarily outcomes (spatial planning) focused, but with 'effects-based' provisions around managing some issues within the strategic framework as appropriate (transportation, shading, wind, landscape etc.).</p> <p>The (regional) environmental management framework may still require an 'effects-based approach' but with policies and rules developed based on clear nationally directed environmental bottom-lines where necessary.</p>
e. Provide for a more flexible plan-making process (greater ability to choose steps and timeframes) so that minor plan changes can be progressed using a streamlined process	The DCC supports the idea that private proposals that align with directions in Spatial Plans should be able to be processed using a stream-lined process (similar to a resource consent).
f. Adopt a "single stage" plan making process or retain the Schedule 1 process with or without modification	<p>The DCC agrees that having independent commissioners on hearings panels can add value and submits there should be increased limits on who can appeal to the Environment Court.</p> <p>The DCC does not agree that the further submission process should be dropped as it provides an opportunity for people to comment on proposals that might impact them.</p>
g. If a "single stage" process is developed, require: i. the decision-making body to reach a final decision, or the decision-making body to make recommendations to the initiating council ii. plan changes to be determined by the Environment Court, with appeal rights limited to questions of law only to the High Court, or plan changes to be determined by an Independent Hearings Panel, with appeal rights limited to questions of law, either to the Environment Court, or to the High Court iii. further rights of appeal to the	The DCC recommends MfE explores options, other than the single stage process suggested. For example, a requirement for decisions to be supported by a qualified professional who is a member of a hearings panel (affidavits to be signed to support decisions). Or, instead of the Environment Court appeal process, use of a mediation or Alternative Dispute Resolution process and then only allow appeals to Court on matters of law.
h. If an Independent Hearings Panel model is used, require: i. the members to be appointed by the Minister for the Environment ii. the	The DCC submits that Independent Hearings Panel should be appointed by local

members to be appointed jointly by central and local government, with iwi participation	authorities from an approved list developed by Central Government.
i. Require draft plans to be approved by a Minister or central government authority prior to notification, and/or prior to finalisation	The DCC does not support this provision.
k. Establish a central mechanism to provide assistance to councils with plan-making	The DCC supports this idea.
l. Expand or restrict the ability to apply for a private plan change	The DCC submits MfE should restrict private plan changes to plans which meet policy criteria outlined in strategic spatial plans.

Issue 8 Consents/approvals

26. In general, the DCC supports the resource consent process being simplified where possible, but it should not be done at the risk of generalising activities to the degree that a clear framework is not given to those applying for resource consents. The introduction of boundary activities is a good example of the process being simplified in an effective way, as it is very localised and being addressed by what is essentially a contractual agreement between neighbours. The DCC recommends expanding this type of resource consent process to other appropriate activities.
27. The DCC believes a clearer definition of an affected party would streamline the consent process for applicants. Consent applicants can be required to consult multiple agencies and individuals as a sort of 'catch-all' by the consenting authority even when their concerns may overlap or if they are simply interested in the activity, rather than affected. A clear difference between an interested and an affected party would remedy this. This would also reduce the workload for agencies who frequently receive requests for written approvals.
28. The DCC recommends one method to streamline the consenting pathway would be to ensure all notable activities that occur in the region and or/district are identified, and if these activities are not permitted, provide a clear pathway for consent or otherwise. When a plan is silent on a certain activity, but the activity requires consent under the RMA, the applicant and the consenting authority do not have a clear policy framework to work within, which can lead to perverse outcomes, such as 'planning by consent'.
29. The DCC recommends exploring the benefits of a resource consent process template.
30. DCC supports the simplification of the designations process to provide for more timely outcomes. The current process for making designations can often be slow and ineffective. Clear guidance at a national level regarding what local governments can and can't do on the transport network would also be supported.

Issue 9: Economic instruments

31. Economic instruments can be helpful and the DCC has found success using them. For example, the DCC offers financial assistance through free consents, grants for maintenance of scheduled trees, grants towards work on scheduled heritage buildings, and biodiversity grants. These types of incentives are often necessary to balance regulatory approaches for protection of values that may reduce perceived property rights. The DCC notes that these economic instruments are not provided under the RMA, but via the LGA. However, s32 analyses could be improved by requiring the assessment of economic instruments that can complement or replace regulatory methods.
32. The DCC submits there is a role for central government in providing loans or financial certainty for housing and infrastructure projects, including social housing or rent-controlled housing, apartment buildings in CBDs/larger centres, or projects that have strategic benefits but may be perceived as difficult to achieve.

Issue 11: System monitoring and oversight

33. The DCC recommends exploring the roles and responsibilities of monitoring and collecting data and information on the state of the environment, on environmental pressures at the local and national levels, and on the performance of the resource management system. It is possible that there is a lack of monitoring and subsequent data collection because it is unclear whose responsibility it is to undertake it. To improve monitoring and data collection, clarification of roles and responsibilities of district councils, regional councils and government agencies in this area is essential.
34. The DCC also notes that further monitoring by regional councils has already been proposed in the draft National Policy Statement for Freshwater Management. Any additional monitoring required by RMA reform would need to align with this.

Issue 12: Compliance, monitoring and enforcement

35. The DCC would like further work to be carried out into the reparations associated with breaching the RMA. There is currently a big gap between the highest infringement fine and the next option of taking a matter to the Court. The DCC would like to see more graduated infringement fines. The DCC acknowledges a change is presently being made but believes these could have gone further to provide a useful tool to disincentivise RMA breaches.
36. While the DCC believes territorial authorities and regional councils are best placed to manage compliance, monitoring and enforcement for resource consents, there does need to be oversight from central government to ensure enforcement action taken by councils is consistent within their jurisdiction, as well as consistent with other councils across the country.

Issue 13: Institutional roles and responsibilities

37. The DCC recommends MfE explores the possible efficiencies of removing the urban planning function from smaller towns, and having regional councils undertake both urban planning and environmental management functions with different requirements for spatial planning in non-urban areas (eg areas with small towns and settlements). Large towns and cities should retain their urban planning responsibilities in all cases.

Issue 14: Reducing complexity

38. The DCC agrees that the resource management process has become more complex since the RMA was introduced in 1991. A reduction in the level of complexity of the system overall is supported provided this is not at the expense of local decision-making.
39. The DCC recommends drafting the RMA to meet modern plain English requirements.
40. The DCC submits the RMA may be improved by longer and more thorough engagement by central government on national instruments and changes to the RMA. Consultation is often rushed, with insufficient stage and limited focus on getting feedback from experienced practitioners. This has resulted in implementation problems and a loss of effectiveness and efficiency in national instruments.

Conclusion

41. Thank you again for the opportunity to submit. The DCC looks forward to continuing to input throughout the next stages of the substantive review of the RMA.

Yours faithfully

Aaron Hawkins
MAYOR OF DUNEDIN

A handwritten signature in black ink, appearing to read 'Aaron Hawkins', written over a light blue horizontal line.