



10 SEP 2019

Hon David Parker
Minister for the Environment
Parliament Buildings
WELLINGTON 6160

Feedback from the Education experience *Provided to inform the Comprehensive review of the resource management system*

Dear David

Thank you for your invitation to outline any specific issues, relevant to my portfolio as the Minister for Education, which should be considered as part of the upcoming (Stage 2) resource management system review.

As we have discussed, the expansion of the compulsory education system is predicted to be one of the most frequent Crown users of the designation process over the next 10 years and as such, has a strong interest in ensuring the good features of the resource management system are retained and the issues that have been identified, are addressed.

You may be aware that the Prime Minister and I have recently announced as part of the *National Education Growth Plan* the intention to build 61 new schools by 2030 (in addition to expanding existing schools). This work programme is needed to respond to population pressures and support urban development across New Zealand. These schools will provide vital social infrastructure to help enable liveable and prosperous communities, providing places for people to learn, meet, play sport and hold community events.

I note that one of the key aims of the review is to improve intergenerational wellbeing by strengthening environmental protection and better enabling urban development outcomes within environmental limits. I believe that recognising the special role that schools play in building community capacity and promoting intergenerational wellbeing will likely be fundamental to achieving that aim.

Learning from the Education experience, I suggest the comprehensive review of the resource management system note:

- ***The designation process provides significant benefits:*** The key benefits of the current Resource Management Act 1991 (RMA) designations process (Part 8) are to reduce costs, prevent delays and minimise uncertainty when establishing a new school and to provide me flexibility when an existing school requires upgrading or expansion. I ask that these enabling features of the designations regime be retained and strengthened in the upcoming review.

- ***The role of requiring authorities is not always recognised:*** One of biggest challenges for Education has been the tendency for territorial authorities to conflate designations (Part 8) with resource consents (Part 6). This misunderstanding can result in significant time delays, added costs and uncertainty in securing designations for new schools or approvals for the redevelopments of existing schools. The risk we experience with this, is that if existing schools come under capacity pressures due to delays, the community can quickly become disillusioned with the state education system, and this can undermine confidence in the government. I would like to see the review provide clarity around the roles and responsibilities within the designation process, and improve the distinction between the concepts of designation (with requiring authorities) and the public resource consent process.
- ***The “land use and planning” focus of designations could be more clearly signalled:*** The review provides an opportunity for a more fundamental restructure of the RMA. It would assist me in my role of managing the state schooling network to have the RMA specifically recognise that designations are a land use planning tool. This could be achieved by restructuring the RMA to consolidate the public works provisions in a standalone Part that sits after Part 5 (Standards, policy statements, and plans), but before Part 6 (Resource Consents). Such a restructure could create a straightforward and simplified process that functions as a self-contained checklist for confirming and managing public works.
- ***Often the benefits of Crown developments are overlooked:*** Territorial authorities and private sector developers often treat the provision of schools as a typical private development, rather than a Crown public work (necessary to provide vital social infrastructure, appropriately located, for a community). This is equally relevant to the RMA and the development contribution provisions of the Local Government Act 2002. Central government, local government and private developers all have responsibilities for providing, maintaining and funding infrastructure in New Zealand. Having a clear demarcation of these responsibilities would ensure that Vote education funding continues to be used for education purposes and not local authority infrastructure.

I have attached specific examples of the key challenges that have been faced when establishing new (or upgrading existing) schools and offered ideas of where the upcoming review could affect useful change in streamlining and improving the resource management system. I wish you all the best with the Stage 2 review and invite you to involve Ministry of Education officials in any clarification or discussion of the comments I have made.

Yours sincerely



Chris Hipkins
Minister of Education

ANNEX ONE: Expanded discussion of Education experiences

1. The Ministry of Education has significant experience with both the [Resource Management Act 1991](#) and the [Local Government Act 2002](#) as part of its role in creating, opening and operating state schools. The following sections outline a reflection on what has worked well, where issues have been experienced, and the impacts this has had on the meeting the capacity needs within the compulsory education system.

What is working well?

2. Within the [Resource Management Act 1991](#) (RMA), [Part 8 – Designations](#), contains the key provisions and planning framework by which new schools are provided. The enabling powers within this part allow the Minister of Education, as the requiring authority, to give notice to a territorial authority to designate a new school. This is a powerful tool in maintaining and extending New Zealand's network of schools in areas of high population growth.
3. The key enabling features of the current designations regime are:
 - a notice of requirement (NoR) is issued from a requiring authority to advise that a territorial authority should reflect the designation in its district plan;
 - the territorial authority can recommend that the designation is confirmed, modified, comes with imposed conditions, or is withdrawn; and
 - the requiring authority retains the power of decision on the designation (subject to oversight by the Environment Court) and this recognises the broader, nation-wide perspective, that the territorial authority will not have.
4. For the establishment of schools, the designation approach is necessary as:
 - district plan zoning does not usually provide for schools (or any other large scale public infrastructure), which means that it would be difficult, time consuming and costly to obtain resource consent for such proposal;
 - unlike a resource consent, seeking permission to undertake an activity that is not permitted under district plan, a designation is a land use planning tool that displaces the underlying zoning of a site;
 - education designations give notice to the public that the land is intended for a school, and this has a range of positive impacts for the development of the area;
 - the specifically crafted designations process allows the public benefits of schools to be acknowledged, with different statutory tests to other permissions (primarily resource consents) under the RMA; and
 - a territorial authority's role on an outline plan (OP) is to request changes, but the power to accept or reject these (subject to Environment Court oversight) rests with the Minister.
5. Overall, the key benefits of the designation process are to reduce costs, delays and uncertainty when establishing a new school and provide the Minister of Education with the flexibility to upgrade or expand an existing school (within the limits of the designation conditions and the OP process). This is particularly valuable when responding to rapid growth in urban environments or when upgrading and remediating schools with weathertightness or earthquake resilience issues that require urgent action.
6. It is proposed that the designations regime be retained and strengthened in the upcoming review.

What is not working well?

The structure of the RMA results in the designation process being confused and conflated with resource consents

7. The designation process does not work well when a territorial authority is unfamiliar with the process and its role under [Part 8](#) of the RMA, and conflates its responsibilities with its more frequent role as a consent authority granting or declining resource consent under [Part 6](#) of the RMA. This confusion can also be partly explained as [Part 8](#) contains some process provisions that are shared with resource consent provisions (e.g. submissions and hearings) and with proposals of national significance provisions (e.g. notification).
8. Examples of the problems that this creates for school designations include, territorial authorities:
 - requesting further information on matters of detailed design, when the actual purpose is to set aside land for a school, rather than determine the exact form the eventual school may take;
 - referring to district plan zone requirements that are not applicable to designations and trying to impose standard resource consent conditions on school designations (e.g. development controls such as yards, and height controls);
 - making requests for further information under [section 92](#), or recommending conditions or advice notes which, where relevant, will be picked up in the separate consenting process for the detailed design of the new school;
 - being uncertain about whether powers or constraints on resource consents should be read into the designations provisions (including Tauranga City Council case to determine if the specific power to impose financial contributions (and the rules governing that power) could be read into the broad power to impose conditions on designations in [section 171](#) of the RMA);
 - not understanding the implications of the legislative differences between a *territorial authority* processing a NoR and a *consent authority* granting or declining a resource consent.² This leads to territorial authorities to expect they retain the power of the decision (as in a resource consent application under [Part 6](#)) instead of the accept/decline decision sitting with the requiring authority (as intended for a designation under [Part 8](#) of the RMA);
 - delaying NoRs and OPs by applying incorrect timeframes for processing and notification. The timeframe for a decision on notification of a designation ([section 169\(1\)](#)) is 10 working days. This is half that for a standard resource consent ([section 115 \(3\)](#)) and the same as a fast track resource consent application ([section 115\(4A\)](#)). Territorial authorities routinely extend the time limit after the 20 working day limit for requesting changes to an OP under [section 176A\(4\)](#);
 - having no statutory time limits for making a recommendation on an NoR. The effect of this is that after a NoR hearing, a territorial authority has no obligation to make its recommendation within a set time period. It would benefit the timeliness of the designation process and provide greater certainty if a legislative timeframe was introduced;
 - placing designations on hold or extended the processing timeframes without notifying the NoR, given a resource consent applicant needs to agree to an extension of time under [section 37](#) of the RMA, but there is no comparable provision for requiring authorities to authorise an extension;

² A consent authority's role is defined as "...territorial authority...role to give permission to carry out an activity for which a resource consent is required under the RMA". Under [Part 8](#) of the RMA the Minister gives notice of a requirement for a designation to a *territorial authority*. This is a different role and is defined under the [Local Government Act 2002](#).

- requesting further, more detailed information on OPs beyond what is required under section 176A of the RMA. The matters to be addressed in OPs primarily relate to physical parameters of the public work but there is a provision requiring OPs to *show any other matters to avoid, remedy or mitigate any adverse effects on the environment*. That catchall provision is used to treat the OP process as akin to a resource consent application. For example, territorial authorities have requested exact details regarding landscaping species on a plan, or detailed schematics, or building detail such as materials and colours.

Infrastructure funding policy

9. There has been a growing concern about territorial authorities seeking that Vote Education be used to fund other infrastructural needs. One example is the recent Tauranga City Council case where the Environment Court held that financial contributions could (in certain circumstances) be imposed on a new school development. The debate about the financial contributions delayed the school considerably and that in turn increased the cost of development significantly. While it is understandable that councils need to fund infrastructure, the imposition of financial contributions on school designations ignores the benefits that schools bring to communities. It is for this reason that an exemption for education has been added to the Resource Management Amendment Bill.
10. Within the education portfolio there have also been situations where land purchased by the Crown for education purposes has come under pressure to be used for local infrastructure (such as roading and reserves) where the responsibility for providing and funding such local infrastructure rests with the territorial authority.
11. These examples tend to indicate that territorial authorities sometimes treat the provision of schools as a typical private development, rather than a Crown public work to provide vital social infrastructure, appropriately located, for a community. The benefits of schools not only include the immediate social infrastructure they provide, but also the wider benefits of reducing the need for parents, caregivers and students to travel outside of their local areas which places additional demand on roading and infrastructure elsewhere.

Integrating timing and sequencing of infrastructure

12. Establishing new schools in urbanising, greenfields areas, comes with the challenges of integrating the school build with the location, sequencing with the introduction of utilities and coordinating with other infrastructure (particularly transport and three waters).
13. It is sometimes possible for the Ministry to provide an on-site interim solution for wastewater and stormwater if it needs to construct a school before reticulated services are available. The Ministry is less able to provide interim roading solutions given that it does not own or control the roads. It can be disappointing when road controlling authorities seek to impose conditions that delay the opening of a school until after they have fulfilled their responsibilities to provide new or upgraded transport infrastructure rather than working with the Ministry to sequence transport infrastructure.

Effects on New Zealand schools

14. In isolation, the individual matters discussed above may only lead to small delays, however, when these issues are combined through the notice of requirement and the outline plan stages they can result in significant time delays, added costs and uncertainty in securing designations for new schools and redevelopments of existing schools. In some instances, this can delay construction of a new school or an upgrade by more than one or two years.

15. To maintain the balance of the education network, and introduce additional capacity where and when it is needed, requires prudent and efficient use of education funding often starting before the full demand materialises. In that context a delay of one or two years can have negative effects on surrounding schools where their capacity continues to be placed under pressure.
16. As you will be aware, education is highly emotive and political. Parents want the best education for their children and know that each child only gets one shot at their education. When existing schools come under pressure due to network capacity issues, this can result in larger class sizes, stretched resources and the community can easily become disillusioned with both the state education system and the government of the day.

Solutions and Options

Restructure the RMA to recognise the role Crown public works play in improving urban development outcomes

17. It would be clearer for all participants in the resource management system if the RMA was restructured to consolidate the public works provisions (i.e. designations and proposals of national significance) in a standalone Part of the RMA.
18. Logically, this Part would sit after [Part 5](#) (Standards, policy statements, and plans) but before [Part 6](#) (Resource Consents) to specifically recognise that designations are a zoning, or land use tool, rather than the grant of a permission for a particular proposal that is not permitted under the relevant plan.
19. There are a large number of requiring authorities that perform different roles and functions. These include private sector companies that, as a result of historic privatisation, assumed responsibility for functions previously provided by the state. Requiring authorities who are Ministers of Crown however, still retain a distinct role in providing core state infrastructure that enables community wellbeing (state schools are a good example of this). The review could consider whether there should be a distinction between private sector requiring authorities and Ministers of the Crown who provide core state infrastructure.
20. Such a restructure would be an opportunity to provide a straightforward and simplified process that operates as a self-contained checklist for confirming and managing designations. Although not an exhaustive list, specific focus might be given to clarifying:
 - if the general extensions of time under [section 37A](#) apply to designations and, if so, that a requiring authority's consent to an extension of time should also be required in relation to NoRs and Ops;
 - in [section 196](#), when a NoR must be notified once the decision to notify it has been made;
 - whether, in [section 181](#), minor alterations to designation are to be managed in the same way as a minor amendment to a district plan (under [clause 16](#) of [Schedule 1](#)). Currently a territorial authority can alter a designation (provided it is a minor change to the effects on the environment and that the territorial authority and the requiring authority all agree). If a requiring authority wishes to alter its designation more substantially, [section 181\(1\)](#) refers back and applies the provisions for establishing a new designation, - similar to varying a resource consent under [section 127](#). In contrast [clause 16\(2\)](#) empowers a local authority to amend its proposed policy statement or plan, without using the [Schedule 1](#) process, to alter any information, where such an alteration is of minor effect, or correct any minor errors.

- that under [section 176A](#), OPs are provided to allow territorial authorities to certify that the proposed school complies with the conditions of the designation. Clarifying that only territorial authorities have the power to request changes to an OP would reduce the incidence of Council controlled organisations and private developers seeking conditions on designations that attempt to widen the scope of [section 176A](#) and require consultation with, or approval by, these entities at the subsequent OP stage.

Building local authority capacity

21. Many of the problems encountered in the education portfolio come from a territorial authority being unfamiliar with the designations process. I expect that a restructure and amendments along the lines suggested above would make the foundations for designation provisions easier to understand and implement.
22. The review also provides an opportunity to build capacity in local authorities and provide more clarity around the roles and responsibilities of requiring authorities and territorial authorities. It may also provide the opportunity to confirm statutory timeframes for the stages within the designation process. This would both help improve consistency across New Zealand and assist the school development process.

Integration of various different types of infrastructure

23. The scope of the review includes spatial planning across the RMA, [Local Government Act 2002](#) (LGA) and [Land Transport Management Act 2003](#) (LTMA). This provides the ability to investigate opportunities for better spatial integration and sequencing across different types of central and local government infrastructure. For example this could include requiring regional land transport plans and other strategic documents prepared under the LTMA or territorial authority's three waters planning to specifically consider how proposed transport or water networks will integrate with, and respond flexibly to, proposed schools as a result of projected local population growth.

Funding infrastructure in New Zealand

24. Central government, local government and private developers all have responsibilities for providing and maintaining infrastructure in New Zealand. Vote Education has however experienced pressures to fund or provide land for local authority infrastructure - indicating that the roles and funding responsibilities are unclear. This broader division of responsibility for infrastructure funding needs to be considered by the Department of Internal Affairs in its review of infrastructure funding of public works and social infrastructure (currently underway).
25. It may be that it would help to have clear definitions of private developer or private development in the RMA and LGA that make clear that schools are not developments that generate revenue or an increased demand for local government infrastructure. Rather, schools are a different form of (social) infrastructure that respond to population growth and also service the local community. Having a clear demarcation of these responsibilities would ensure that Vote Education is used for education purposes and not for funding local authority infrastructure.