Ministry for the Environment
Manatū Mō Te Taiao

# PROACTIVE RELEASE COVERSHEET

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| **Minister** | Hon Chris Bishop | **Portfolio** | Environment |
| **Name of package** | RIS material for Resource Management (Consenting and Other System Changes) Amendment Bill | **Date to be published** | 10 December 2024 |

| **List of documents that have been proactively released** | | |
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| ***Date*** | ***Title*** | ***Author*** |
| 23-Aug-24 | Regulatory Impact Statement: Consenting I package | Ministry for the Environment |

**Information redacted** **YES**

Any information redacted in this document is redacted in accordance with the Ministry for the Environment's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

**Summary of reasons for redaction**

In the above documents, information has been withheld under the following sections of the Official Information Act:

- sS9(2)(g)(i) – to protect the free and frank expression of opinions by or between or to Ministers of the Crown and public servants.

# Appendix 1 – Quality Assurance Statements and Regulatory Impact Statements

1. We have prepared five Regulatory Impact Statements (RISs) to meet Ministry for Regulations requirements. They are:
    a. Improving consent processing efficiency (page 1 to 47)
    b. Clarify how a non-complying activity consent is considered (page 48 to 66)
    c. Clarify and limit the kind of conditions that can be applied to consents and designations (page 67 to 80)
    d. Streamlining change of consent conditions processes for marine aquaculture (page 81 to 102)
    e. Enable council to cost recover for activities directed by national direction (page 103 to 116)

2. All the RIS partially meet the Quality Assurance (QA) criteria, which is detailed below:

***Improving consent processing efficiency RIS (RIS listed at (a) above) QA statement***

3. The Ministry for the Environment and the Ministry for Primary Industries have reviewed the RM Bill 2 – Consenting – improving consent processing efficiency in accordance with the quality assurance criteria.

    *"The panel considers the impact analysis undertaken for the Rm Bill 2 Consenting – improving consent processing efficiency Regulatory Impact Statement (RIS)* ***partially meets*** *the Quality Assurance criteria.*

    *The limitations and constraints of the proposals have been clearly outlined. However, the compressed time frame and limited consultation has constrained the analysis of options and the level of supporting evidence and analysis of the proposed options. The panel considers that more time for consultation and the inclusion of stakeholder feedback could have improved the scope and depth of the impact analysis."*

***Effective council decision-making RISs (RISs listed at (b) to (e) above) QA statement***

4. Representatives from the Ministry for the Environment and the Department of Internal Affairs have reviewed the above Regulatory Impact Analysis in accordance with the quality assurance criteria. The QA statement from this joint panel can be found below:

    *"The panel considers the impact analysis undertaken for the above four RM Bill 2 consenting proposals* ***partially meet*** *the Quality Assurance criteria.*

    *The four RISs have been prepared for the RM Bill 2 consenting proposals under extremely tight time constraints. The limitations and constraints have been clearly outlined, but this has impacted on the scope of the analysis and supporting evidence. A qualitative description has been provided of the costs and benefits which have not been quantified due to data and time limitations.*

*There has been limited consultation and some stakeholder concerns have not been addressed. For example, stakeholders' differing views regarding the proposed option for streamlining changes of consent conditions processes for marine aquaculture remain unresolved.*

*The panel considers that further consultation in the near future could help to mitigate the implementation risks associated with these proposals."*

# Regulatory Impact Statement: RM Bill 2 consenting – improving consent processing efficiency

## Coversheet

| **Proposal**<br><br>Improve consent processing efficiency | **Description**<br><br>The proposal is to amend the Resource Management Act 1991 (RMA) to improve consent processing efficiency, including delivering outcomes to ensure renewable energy generation, transmission and distribution (renewable energy consents) and wood processing facilities consent applications are processed within one-year.<br><br>These are intended to be targeted amendments in the short and medium term, ahead of Phase 3 RM Reform. |
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| **Relevant legislation** | Part 6 and Schedule 4 of the RMA |
| **Policy lead** | Anna Novis and Chyi Sim, RMA Amendment Policy and Legislation (Ministry for the Environment (MfE))<br>Ashleigh Richards, Sally Baguley and Elisabeth Betaillouloux, Infrastructure and Growth (MfE)<br>Nick Gillard, Industrial Use Policy (Ministry of Business, Innovation and Employment)<br>Kurt Barber, Forestry Sector Policy (Ministry for Primary Industries) |
| **Source of proposal** | RM Bill 2 Cabinet decision (CAB-24-MIN-0246 and ECO-24-MIN-0113) and Electrify NZ Cabinet decision (CAB-24-MIN-0151 and ECO-24-MIN-0065) |
| **Linkages with other proposals** | There are various other consenting amendments proposed for RM Bill 2 relating to council decision-making, consent duration and lapse periods that are not part of this RIS. This includes the following proposals which are intended to sit alongside the renewable energy proposals in this Regulatory Impact Statement (RIS):<br>• progress 35-year consent durations for renewable energy and long-lived infrastructure<br>• make the minimum lapse time to give effect to a renewable energy consent 10 years or longer.<br><br>Consenting decisions on renewable energy projects will also be affected by changes being progressed to relevant national direction, including amendments to the National Policy Statements for Renewable Electricity Generation and Electricity Transmission. |
| **Limitations and constraints on analysis** | *Government commitments*<br>The Government has made commitments to require renewable energy consents (excluding hydro) and reconsents (including hydro) to be decided within one-year of application (Electrify NZ) and to boost wood processing by introducing one-year consents to establish new wood processing facilities and streamlining re-consents (Forests for a Strong Economy National Party policy). |

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| | This influences the options analysis in favour of options which align most closely with these commitments.<br><br>*Reduced timeframes for policy development and engagement*<br>Reduced timeframes have:<br>• limited our ability to assess the feasibility of a broader range of options, including (in some instances) non-regulatory options.<br>• limited data and evidence accessed to assess the policy proposals<br>• limited engagement with tangata whenua<br>• limited targeted engagement with local government.<br>Where necessary, the relevant government agencies have worked collaboratively with MfE on the RM Bill 2 proposals. However, the constrained timelines have also resulted in reduced cross-agency consultation timeframes.<br><br>*Data*<br>The analysis in this document draws on a range on data sources including National Monitoring System (NMS) data for 2022/23. There are limitations associated with the NMS data, including:<br>• it covers all processed resource consents, whereas the proposals in this document are focused on consents for major projects which are likely to be more complex and slower<br>• it does not provide a full understanding of differing resource management issues in regions or districts, such as high development activity, sensitive receiving environments, plan content (which drives consents) or processing capacity<br>• it does not categorise consents as wood processing facility consents or renewable energy consents<br>• it is in statutory days rather than calendar days.<br><br>*Other limitations*<br>An indicative non-monetary estimation of costs and benefits has been undertaken but the actual impact of the proposals will be better understood following public input through the Select Committee process.<br>Advice on the options considered in this document will be provided to Ministers to make delegated decisions under Cabinet approvals. The options in that advice may differ slightly from those analysed below following further policy refinement. |
| **Responsible Manager** | Liz Moncrieff, General Manager, Urban and Infrastructure Policy, MfE |
| **Quality Assurance: Impact Analysis** | The Ministry for the Environment and the Ministry for Primary Industries have reviewed the RM Bill 2 – Consenting – improving |

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| | consent processing efficiency in accordance with the quality assurance criteria.<br><br>*"The panel considers the impact analysis undertaken for the Rm Bill 2 Consenting – improving consent processing efficiency Regulatory Impact Statement (RIS)* ***partially meets*** *the Quality Assurance criteria.*<br><br>*The limitations and constraints of the proposals have been clearly outlined. However, the compressed time frame and limited consultation has constrained the analysis of options and the level of supporting evidence and analysis of the proposed options. The panel considers that more time for consultation and the inclusion of stakeholder feedback could have improved the scope and depth of the impact analysis."* |

# Improving consent processing efficiency proposals for inclusion in Resource Management Amendment Bill 2

## Proposals

1. This document analyses proposals to amend Resource Management Act 1991 (RMA) provisions to improve consent processing efficiency (including for re-consents). These proposals include outcomes aimed at processing renewable energy generation, transmission and distribution consents (renewable energy consents) and wood processing facility consents within one-year.

2. The proposals in this document form part of a package of consenting changes being progressed through RMA Amendment Bill 2 (RM Bill 2) to speed up, improve and clarify consenting processes in the short and medium term ahead of Phase 3 RM Reform. Other RM Bill 2 consenting proposals include amendments to council decision-making and to consent duration and lapse periods.

3. Changes relating to renewable energy consents are complemented by amendments being progressed through the national direction programme – particularly to the National Policy Statement (NPS) for Renewable Electricity Generation (NPS-REG) and NPS on Electricity Transmission (NPS-ET). RM Bill 2 and the national direction programme are complimentary workstreams intended to be delivered by mid-2025.

## Objectives

4. The overarching objectives for the resource management reform programme are:

    a. making it easier to get things done by unlocking development capacity for housing and business growth, enabling delivery of high-quality infrastructure for the future (including doubling renewable energy) and enabling primary sector growth and development (including aquaculture, forestry, pastoral, horticulture and mining)

    b. while also safeguarding the environment and human health, adapting to the effects of climate change and reducing the risks from natural hazards, improving regulatory quality in the resource management system and upholding Treaty of Waitangi settlements and other related arrangements.[1]

5. The proposals align with objectives to enable the delivery of high-quality infrastructure for the future and primary sector growth and development. The proposals relating to renewable energy and wood processing facility consents align with the objectives to double renewable energy and enable forestry growth and development.

6. The proposals also consider how the above objectives can be provided in a way which safeguards the environment and human health, improves regulatory quality in the resource management system and upholds Treaty of Waitangi obligations, Treaty settlements and other arrangements.

7. In addition to the overarching RMA work programme objectives, the proposals would assist in delivering the following specific Government objectives:

[1] ECO-24-MIN-0022, CAB-24-MIN-0069.

a. driving investment in renewable energy for New Zealand to meet its emissions reduction targets, including by requiring resource consent decisions within one-year for non-hydro generation projects, and including re-consenting of hydro-generation projects[2]

b. boosting wood processing by introducing one-year consents to establish new wood processing facilities and streamlining re-consents.[3]

8. The Government has not made decisions on prioritisation of the above objectives.

## Assessment criteria

9. The assessment criteria used to evaluate all RM Bill 2 proposals are:

- **Effectiveness** – Extent to which the proposal contributes to the attainment of the relevant high-level objectives, including upholding Treaty Settlements.[4] The proposal should deliver net benefits. Any trade-offs between the objectives should be factored into the assessment of the proposal's overall effectiveness.
- **Efficiency** – Extent to which the proposal achieves the intended outcomes/objectives for the lowest cost burden to regulated parties, the regulator and, where appropriate, the courts. The regulatory burden (cost) is proportionate to the anticipated benefits.
- **Certainty** – Extent to which the proposal ensures regulated parties have certainty about their legal obligations and the regulatory system provides predictability over time. Legislative requirements are clear and able to be applied consistently and fairly by regulators. All participants in the regulatory system understand their roles, responsibilities and legal obligations.
- **Durability & Flexibility** – Extent to which the proposal enables the regulatory system to evolve in response to changing circumstances or new information on the regulatory system's performance, resulting in a durable system. Regulated parties have the flexibility to adopt efficient and innovative approaches to meeting their regulatory obligations. (NB: A regulatory system is flexible if the underlying regulatory approach is principles or performance based).
- **Implementation Risk** – Extent to which the proposal presents implementation risks that are low or within acceptable parameters (e.g. Is the proposal a new or novel solution or is it a tried and tested approach that has been successfully applied elsewhere?). Extent to which the proposal can be successfully implemented within reasonable timeframes.

[2] Electrify NZ commitments as agreed by Cabinet in CAB-24-MIN-0151.
[3] Forests for a Strong Economy, National Party policy document Forests_for_a_Strong_Economy.pdf (nationbuilder.com).
[4] Note that the effectiveness criteria is about the extent that the proposals contributes to the attainment of the Government's high-level objectives for resource management reform outlined at paragraph 4. This therefore includes upholding Treaty Settlements and other arrangements, but not Treaty of Waitangi obligations.

## Overarching Problem

10. There are concerns the total time it takes to process consent applications (including reconsent applications)[5] under the RMA can be long and unpredictable, particularly for major infrastructure projects including renewable energy consents and wood processing consents.[6] Long consenting processes are also recognised as an issue in the 2020 Resource Management Review Panel report.[7]

11. Evidence indicates that since 2014, timeframes to consent major projects have doubled.[8]

12. On average it takes between two to three months for a council to consent a typical infrastructure project, but over a year for an infrastructure project with complex consenting issues.[9] Some renewable energy consents and wood processing facility consents fall into this latter category and experience delays in obtaining consents.

13. Long and unpredictable consent processing timeframes cause uncertainty and increase costs for applicants. Direct consent costs as a proportion of project budgets increased by 70 per cent for consents lodged from 2014/15 to 2018/19.[10]

14. This can be a barrier to applicants' investment decisions and plans to progress projects which would have flow on benefits to the community and natural/built environment. For example, the capital costs of projects, or market conditions for final investment decisions, can change significantly when multiple years are needed to determine a consent application.

15. It is important that timeframes for consent processing are sufficient to ensure robust and good quality decisions are made on consent applications. Changes to improve consent processing efficiency should not come at the detriment of quality decision-making or increase the costs involved in the consenting process.

16. The reasons that consent processes can be long and unpredictable, and the costs associated with this are detailed further below at paragraphs 35 to 46.

## Context: Current policy settings for resource consent applications

*RMA timeframes and standard consenting processes*

17. Councils have responsibility under the RMA to process resource consent applications within a set amount of time. However, there are provisions to waive, extend and pause timeframes which create uncertainty about how quickly a resource consent application will be processed.

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[5] Re-consenting applies to limited time duration consent (ie, water take or discharge consents can only be issued for maximum duration of 35 years).
[6] This document refers to consenting and re-consenting by councils. In some cases, a board of inquiry or the Environment Court may also authorise a resource consent. The RMA also provides for joint hearings by two or more consent authorities.
[7] New Directions for Resource Management in New Zealand: Report of the Resource Management Review Panel June 2020, page 263.
[8] The cost of consenting infrastructure projects in New Zealand: A report for the New Zealand Infrastructure Commission (the Sapere Report), page 16.
[9] The Sapere Report, page 16.
[10] The Sapere Report, page 16.

18. RMA timeframes are measured in ‘working days'.[11] There are approximately 250 total number of workings days in a calendar year. The statutory total number of working days for resource consents vary in length depending on the type of application, whether it is notified, and whether a hearing is held.

19. The length varies from 20 working days for non-notified consents and notified consents that do not go to a hearing to 130 working days for publicly notified consents with a hearing.[12]

20. Fewer councils have processed new resource consents on time since 2018/2019.[13] During 2022/2023, 76.3 per cent of new resource consents were processed within RMA statutory time limits, which is a 4.2 per cent reduction from the previous year and the lowest level of compliance with statutory timeframes.[14]

21. Analysis of National Monitoring System (NMS) data from 2014/15 to 2018/19 shows that the total number of calendar days it takes to process consents is unpredictable and often much longer that the prescribed statutory working day periods. NMS data also shows that notified applications and information requests lead to the longest delays.[15].

22. The RMA has provisions for councils to suspend the processing of an application for a variety of reasons (including requesting further information from the applicant or to waive/extend timeframes.)[16] These powers are used for a variety of reasons, including when the complexity of the application requires longer timeframes to assess, or the applicant requires more time to get information or engage with community (as new information is identified during the processing of consent).

23. These pauses in processing the application by council do not count towards the statutory 'working days' timeframe but could lead to an increase in the total calendar days before a decision is made. Appeals (or objections) on consent decisions can add delay in addition to the statutory timeframe and cause uncertainty.

24. There is also an RMA regulation[17] which requires local authorities to provide a discount on the fees, for resource consent applications not processed within the statutory timeframes set out in the RMA.

25. Timeframes can be calculated differently across different data sources and reports, particularly depending on whether ‘calendar days’ or statutory ’working days’ under the RMA are used.

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[11] Working days under the RMA are not the same as calendar days. RMA working days excludes Saturdays and Sundays, public holidays and days in the period commencing on 20 December in any year and ending with 10 January in the following year.
[12] Resource consent process for non-notified applications, resource-consent-process-for-non-notified-applications.pdf (environment.govt.nz); Resource consent process for notified/limited notified applications, resource-conent-notified-limited-notified-applications-diagram.pdf (environment.govt.nz).
[13] This refers to the financial year (as do following year references in the same format).
[14] Patterns in Resource Management: National Monitoring Data from 2014/15 to 2022/23 (Patterns in Resource Management Report), page 9.
[15] Trends in Resource Management Act Implementation. National Monitoring System 2014/15 to 2018/19 (Trends in RMA Implementation Report), page 9.
[16] Sections 37, 37A and 37B, and s 92,RMA)
[17] Resource Management (Discount on Administrative Charges) Regulations 2010.

26. Most of the Ministry for the Environment's (MfE) data does not cover the time before an application is lodged or after decisions are made. These timeframes vary depending on factors, including community engagement, information gathering and judicial processes for appeals, which are not subject to a statutory timeframe.

*Timeframes for reconsenting under the standard RMA process*

27. RMA consenting timeframes are the same for consenting new activities and existing activities (re-consenting). However, existing activities are allowed to continue to operate while consents are processed.

28. Some plans set up specific consenting frameworks for existing renewable energy activities in their regions and districts so maintenance, upgrades and potentially re-consenting is better enabled.

*Alternative RMA consenting processes*

29. The RMA also provides pathways for the alternative decision-making processes listed below. These are publicly notified processes and are considered by a more independent body (ie, board of inquiry or the Environment Court). The decisions are restricted to point of law appeal to the High Court.

    a. Proposals of national significance can be referred by the Minister for the Environment to a Board of Inquiry or the Environment Court.[18] The board of inquiry process includes a nine-month time limit (from notification date to decision) which does not allow processing of applications to be suspended, except where this is approved by the Minister. [19]

    b. The direct referral process allows applicants to request their consent application be decided by the Environment Court, rather than the relevant council, to avoid the need for a two-stage hearing process.[20]

30. Projects not suitable for these pathways are required to use the standard RMA process or the bespoke legislation identified below.

*Bespoke legislation for faster consenting*

31. There is an existing bespoke pathway under the Natural and Built Environment Act 2023 (NBA) which allows for more efficient consenting, particularly for projects with certain benefits or infrastructure/housing under the RMA.[21]

32. The Government introduced the Fast Track Approvals Bill (FTA Bill) on 7 March 2024. This is intended to provide a more rapid and less costly consenting pathway for infrastructure and development projects with significant regional or national benefits.[22]

[18] Part 6AA, RMA.
[19] Part 6AA of the RMA, and there is no time limit if the proposal is referred to the Environment Court
[20] Sections 87C to 87I, RMA.
[21] This was introduced by the NBA. The legislation was repealed but the NBA fast track was retained in the interim until a legislation to deliver for development is enacted.
[22] The FTA Bill sets out required timeframes for each part of the consenting process to ensure RMA consents are processed more quickly than what is required under the RMA.

33. Based on the FTA Bill, the maximum time limit to process RMA related consents[23] will not exceed the maximum working days under the RMA. There is also no ability to publicly notify and there are restrictions on who may comment. The panel does not have to hold a hearing, and the appeal rights are more restrictive than the standard RMA process.

34. The FTA Bill is currently being considered by the Environment Committee and is expected to be enacted in late-2024.[24]

**Reasons for consenting delays**

35. Targeted engagement with local government representatives suggested that the key reasons consents take more than one-year to process are inadequate applications, further information requests, hearings and complex consenting issues (including complicated or uncertain environmental effects).

36. Some of the reasons why consent processing is delayed, and the associated costs with these delays, are discussed in more detail below.

*Further information is required for robust assessment*

37. Further information requests have been identified by local government practitioners as the most significant reason consents can take more than one calendar year to process.

38. These requests involve the council requesting the applicant to provide further information on their application or commissioning a report. [25] There is no restriction on the number of times a council can seek further information before a decision is made, but councils can only suspend time when further information is requested from the applicant for the first time.[26] The application can also be suspended if the applicant agrees to the commissioning of report.[27]

39. Further information requests are required for a number of reasons, including where the lodged application contains inadequate information or where analysis identifies further matters that require expert analysis or effects that need to be addressed/managed for the consent to be granted.

40. Instead of rejecting an incomplete application, councils often work with applicants to address application deficiencies through requests for further information. This approach means councils reduce the time and costs burden on applicants which would be incurred if the application was rejected and a new application was required or the consent was notified. It also aids relationships with applicants. [28] The cost and time involved in obtaining missing information through further information requests (eg, commissioning a report) is very visible to both the council and applicant. It is also likely to effectively target the missing information.

[23] Not including the time required to seek referral decisions from relevant Ministers.
[24] Once enacted, the FTA Bill would replace the existing RMA fast-track consenting processed currently continued by clause 8, schedule 1 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023.
[25] S 92, RMA.
[26] Prior to the notification of consent, see S 88C, RMA.
[27] S 92(2), RMA.
[28] Feedback from targeted engagement with local government representatives.

41. Requiring consent applications to contain all required information at lodgement increases the cost and time burden on applicants when preparing consent applications. This cost is not as visible to the council or represented in the NMS data. This approach is also likely to be less effective in targeted the missing information.

42. In 2022/23, 52 per cent of applications were reported as having further information requirements. An information request can make a consent take 2.6 times longer to process than a non-notified land use consent.[29] Councils used section 92 of the RMA to ask for a resource consent applicant to provide more information before making a decision on the application 3.6 per cent more in 2022/23. Information is more frequently requested for major projects.

43. Additional pre-application guidance could help reduce consent processing timeframes by frontloading work and avoiding the need to pause processing after a consent is lodged. While the ability to make information requests are an essential part of a robust consent process, further guidance on what information is required to enable a decision could encourage good practice and limit delays associated with information requests.

*Timeframe extensions*

44. Councils can double the statutory timeframes or waive a failure to comply with the statutory timeframes if special circumstances apply (including due to the scale or complexity of the matter) or if applicant agrees.[30] Councils used this power for 51.8 per cent of consents in 2022/23, which is 1.9 per cent less than the previous year.[31]

*Appeals*

45. Appeals can also create uncertainty and delay developers obtaining actionable consents. Approximately 96 consents were appealed in 2022/23, which was approximately 0.02 per cent of the resource consents processed.[32] There is no time limit for Environment Court or higher courts to make a decision,[33] given natural justice and the constitutional inappropriateness of dictating Court timeframes.

46. While the total proportion of consents appealed is small, appeals are more common in large and more complex infrastructure projects, such as renewable generation or transmission. There is no NMS data (from 2018/19 to 2021/22) on appeals for wood processing facility resource consents.

## Delivering for government priorities

47. As outlined earlier, the targeted amendments are intended to support delivery of the following Government priorities:

[29] Trends in RMA Implementation Report, Findings 5, and S1.
[30] Section 37-37A, RMA.
[31] Patterns in Resource Management Report, page 14
[32] NMS data, 2022/23.
[33] There is a time limit for those with rights to appeal to lodge the appeal with the Environment Court – s 121, RMA.

a. Electrify NZ[34] intends to drive investment in renewable electricity generation so New Zealand can double its supply of clean energy and become a lower emissions economy.

b. National Party manifesto commitment to boost wood processing by introducing one-year consents to establish new wood processing facilities.[35]

**Delivering for renewable energy activities**

48. Future electricity demand is projected to increase over the coming decades, surpassing the growth observed in previous decades. The Government aims to double renewable energy by 2050 by encouraging investment in new renewable energy for New Zealand. This is a central element of New Zealand's plan to meet its domestic and international emissions reduction targets.

49. New and existing renewable energy projects require timely consenting to address the increasing electricity demand and facilitate the shift away from fossil fuels. An efficient consenting regime is necessary to maintain the current supply and bringing additional renewable energy projects online.

50. Longer timeframes for consenting decisions can affect the speed at which renewable projects are developed and built. Additional time spent in the consenting process can also lead to higher overall costs for renewable energy projects.

51. To ensure a more efficient processing of renewable energy consents, the Electrify NZ work programme includes proposals for:

    a. a one-year limit to consent new renewable energy consents assets (except hydro)

    b. a one-year limit to reconsenting all renewable energy consents.

52. Analysis of resource consent NMS data related to renewable energy generation from 2022 to 2023[36] found the majority are processed within 12 months (calendar days)[37]. 95 consents (including reconsenting, and for commercial scale only) related to renewable energy generation were assessed and it was found that:

    a. 95 per cent of wind, solar and geothermal resource consents were granted in less than one year (calendar days)

    b. timeframes for the assessment of the remaining 5% of consents varied from just over one year, to two years (one of which was declined, the longest withdrawn, the others granted non notified)

    c. public notification was required for 15 consents, while limited notification was required for a further four

    d. 16 consents took close to one year to process (356 and 365 calendar days). These were all notified and 13 were decided by an independent

[34] https://www.national.org.nz/electrifynz.
[35] https://www.national.org.nz/wood_processing_boost_to_help_rebuild_the_economy.
[36] Key words relating to renewable energy activities were searched through NMS data for these years.
[37] This does not include the appeal time (or objection) in Courts, should this be appealed.

commissioner at a hearing. Fifteen of these were subject to the National Environmental Standards for Sources of Human Drinking Water.

53. While the overall efficiency of the resource consent process is good for renewable energy projects, the delays associated with a small percentage of consents can create challenges for renewable energy development. These delays can increase project costs, create uncertainty for developers, and potentially hinder the timely deployment of renewable energy infrastructure. The problem is particularly pronounced for projects requiring public notification or dealing with sensitive environmental issues.

54. Given the government priority placed on consenting for renewables energy, options will be considered which could be workable for these activities only, but not suitable as a system wide change.

*Consent types*

55. There is significant variation in the type of consents sought for renewable energy generation. Consents for new hydro or geothermal schemes typically involve long-lasting infrastructure, which are technical, costly and lengthy to construct and require a complex decommissioning process. New water-related projects need land-use consents[38] and time-limited water take and discharge consents, which must be re-consented.

56. Other types of renewables like wind and solar will typically require land-use consents, with temporary consents for activities such as earthworks. There are also consents, which are generally smaller in scale compared to new renewable energy activities, to undertake maintenance or upgrades to existing operations.

57. The variety of consents needed for different renewable project types and scales causes significant variations in the time taken to consent renewables. Some consent decisions may be processed in months (within statutory timeframes), while others can take over a year.

*Alternative consenting pathways for renewable energy consents*

58. The new fast track consenting regime will provide a pathway for renewable energy consents where the projects have “significant regional or national benefits”. Given the importance of many renewable generation and transmission projects to New Zealand a significant number of projects are likely to be eligible under this process.

59. The Board of Inquiry pathway[39] is not often the preferred pathway for applicants, as it provides less flexibility in addressing unforeseen issues in the applications or development process than the standard consenting pathway. Some industry stakeholders have also expressed frustration at the lack of certainty about the information that will be required to process the application.

60. Applicants may also request their consent be referred to the Environment Court instead of the council, which can lead to an earlier decision on the consent.[40] This pathway is meant to streamline decision-making for large scale and/or complex

[38] These are not time limited under the RMA, unless a duration is introduced at the time of decision.
[39] Refer to paragraph 29.
[40] Section 87D, RMA.

applications that are otherwise likely to end up in the Environment Court on appeal following the council hearing and decision.

61. There is no specific timeframe under the RMA in which a decision on a directly referred matter must be issued by the Environment Court, as convention is that timeframes are a matter for the judiciary to manage.

**Delivering for wood processing activities**

62. Currently approximately 60 per cent of harvested logs are shipped offshore from New Zealand without any processing[41]. Domestic wood processing boosts employment and adds value by converting raw logs into timber and other wood products. Therefore, it would be beneficial to New Zealand to grow the capacity and productivity of wood processing facilities, as many of our wood processors are currently working at, or near full capacity.

63. Current regulatory settings for resource consents create uncertainty for businesses wanting to gain consents for activities relating to wood processing facilities. It is anticipated that reducing the consent timeframe uncertainty will increase the capacity of wood processing facilities, increasing economic growth and export earnings.

64. The following key drivers of consenting costs were identified by the wood processing sector:

    a. most of the consent costs for applicants relate to seeking expert advice on a wide range of potential impacts, even for very low likelihood probabilities

    b. councils often don't have the required in-house expertise and seek external experts to independently verify the impacts of projects which are often passed on to the applicant

    c. projects that are more complex require additional evidence and consideration, resulting in a more drawn-out consenting processes and more costs incurred by the applicant.

65. The reasons for delays in processing wood processing consents are similar to those key reasons for delays in resource consent processing at large (paragraphs 35 to 46). Evidence shows that these issues are not specific to the wood processing sector, and the evidence does not suggest that timeframes are worse than for other activities; rather they are systematic across the consenting framework under the RMA.

66. Resource consents for wood processing facilities often require multiple consents to manage different environmental effects. The specifics are reliant on how a plan defines the activity or provisions are drafted to manage different environmental effects.

67. The types of resource consents required for wood processing facilities cover a mix of the following:

    a. Discharge permits, for example:

[41] Situation and Outlook for Primary Industries, page 80: Situation and Outlook for Primary Industries June 2024 (mpi.govt.nz).

i. discharging contaminants, odours, aerosols, or other emissions to air

ii. discharging wastewater, stormwater, boiler water, geothermal steam, or contaminates such as leachates or sludge/lime wastes to land or streams

iii. discharge of waste to landfill.

b. Water permits:

i. groundwater or surface water takes

ii. diversion of stormwater (eg, to timber treatment yards).

c. Land use consents:

i. for timber treatment plants, or heavy vehicle movement hours

ii. industrial activity consents – eg, new buildings for sawmills or timber processing sites such as warehouses, timber kiln facilities, temporary wood processing activities

iii. extensions into adjoining lots.

68. Wood processing applications can be complex, both in their environmental impacts, possible mitigation options, effect on communities, and allocation implications. Once submitted they often involve an iterative process between consenting authorities, applicants, and third parties before a decision is made and the consent issued.

69. Analysis of resource consent NMS data related to wood processing activities[42] from 2018/19 to 2021/22 found the majority are processed within 12 months (calendar days).[43] 110 consents (including reconsenting) related to wood processing facilities were assessed and found that:

a. 84 per cent of wood processing consents were granted in less than one-year, and 89 per cent were granted within one and a half years (calendar days)

b. timeframes for assessment of the remaining 11 per cent of consents varied from one and a half years to one taking more than a decade (these were often renewals of existing consents during which facilities were able to continue with existing operations until the reconsent was decided)

c. public notification was required for three consents, while limited notification was required for a further four

d. one consent took over 13 years between lodging and approval. This was a renewal (meaning the holder could continue to operate during assessment) and included periods where the applicant agreed to delay their application. It was a publicly notified consent that had a number of concerns and issues raised in submissions, and represented an iterative process between the consenting authority and applicant to ensure mitigation measures were

[42] Key words relating to wood processing activities were searched through NMS data for these years.
[43] This does not include the appeal time (or objection) in Courts, should this be appealed.

appropriate to the complex nature of the consent, internal resourcing constraints, and amendments being required to the consent conditions both due to comments from the applicant and a change in airshed.

70. A one-year consent timeframe may increase certainty for wood processing industry investors and sends a strong signal about the importance of onshore wood processing.

**There are other existing RMA instruments which can support efficient processing of consents**

71. There are other approaches not involving primary legislative amendments which could improve the efficiency of consenting processes. These include providing direction or guidance to consenting authorities and applicants through national direction or non-statutory guidance, and providing more support to councils in high demand consent application areas.

72. The Government can develop national direction for various domains and topics under the RMA. These instruments can be directive, prescribe policies and requirements to deliver for government priorities and direct local planning documents (includes overriding certain local planning requirements),provide certainty and consistency and accelerate decision making.

73. For example, requirements (including restrictions) that limit information needed at lodgement could be introduced [44] and decision making, including precluding public notification.[45] NPSs can insert new definitions into plans,[46] such as wood processing activities,[47] which may help to introduce consistency in planning documents and drive clearer pathways for those applicants.

74. As part of Phase 2 RM reform, the Government will be amending and developing national direction under the RMA. The package is intended to complement the overall intent and objectives of the changes in RM Bill 2, including the legislative options identified in this paper.

75. Work is currently underway to provide more enabling national direction for renewable energy consents through the NPS-REG and NPS-ET. These may be further complemented by additional standards as part of the Electrify NZ work programme.

76. Introducing a definition for wood processing is not currently part of the national direction work programme.

77. Guidance could help improve consent application quality at lodgement and reduce the need for further information requests to plug information gaps following lodgement.

[44] For instance, Clause 2(1)(g) and 2(2) of Schedule 4 of the RMA (information requirements), and s 104(1)(b)(i) to (iv), RMA

[45] For instance, s 43A allows NES to be developed where a rule may restrict considerations or require/preclude notification of a consent.

[46] Section 58C, RMA.

[47] Analysis will still need to be undertaken about the benefits/value.

# Proposal: improving RMA consent application processing efficiency

## Problem

78. As outlined above, there are concerns that consent application processing timeframes under the RMA are long and unpredictable, particularly for major projects including renewable energy consents and wood processing consents.

## Objectives

79. In addition to the RMA work programme objectives, the proposal seeks to:

- improve consenting processes for all consent types
- provide greater clarity and certainty to all consent applicants, which would assist with simplifying the planning system in accordance with the National Party/New Zealand First Coalition Agreement
- better enable project investment and development.

## Approach to Options

80. The following options are considered in this RIS:

a. Option 1: a suite of non-activity-based amendments to improve consent processing efficiency for all resource consent applications

b. Option 2: achieving one year consent processing timeframes for all renewable energy consents, except consents for new hydro and geothermal, through three possible sub-options:

i. Option 2A: create a one-calendar year timeframe for processing consent applications that cannot be extended.

ii. Option 2B: create a one-calendar year timeframe for processing consent applications, however this timeframe can be extended if requested or agreed to by the applicant

iii. Option 2C: create a one-calendar year timeframe for processing consent applications, however this timeframe can be extended if requested by the applicant, or tangata whenua of the area who may be so affected, through iwi authorities and any takutai moana rights holder[48] in the area.

c. Option 3: achieving one year consent processing timeframes for renewable energy consents (except consents for new hydro and geothermal renewable energy) and wood processing facility consents through three possible sub-options (which mirror sub-options 2A, 2B and 2C but also include wood processing facility consents).

[48] Refers to any holder of rights under the Marine and Coastal Area (Takutai Moana) Act 2011 or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

*Approach to Options 2 and 3*

81. Option 2 is the overarching term used to refer to sub-options 2A, 2B and 2C collectively and Option 3 is the overarching term used to refer to sub-options 3A, 3B and 3B collectively.

82. Option 2 applies to renewable energy consents, except consents for new geothermal and hydro electricity generation.

83. Applying the approach only to renewable energy consents recognises the particular importance of increasing renewable energy supply for addressing climate change and aligns with the governments Electrify NZ commitments.

84. Excluding new hydro and geothermal renewable energy generation activities from the options for a one calendar year consent processing policy recognises that these developments can significantly impact Māori rights and interests in freshwater because they often involve diverting, damming, or altering water flow, potentially affecting the cultural and spiritual connection Māori hold with these taonga (treasures) as guaranteed by the Treaty of Waitangi.

85. The proposal for one year consenting is not a requirement for new hydro renewable energy consents in the Electrify NZ manifesto commitment and is not proposed as part of option 2. As geothermal activities are of similar complexity with similar scale of impact on Māori rights and interests in freshwater, the option also excludes geothermal activity.

86. Option 3 applies to consent applications for wood processing facilities in addition to renewable energy consent applications (excluding consents for new geothermal and hydro electricity generation, as outlined above). Sub-options 3A, 3B and 3C mirror the corresponding sub-options 2A, 2B and 2C.

87. Including wood processing in option 3 recognises the benefits of increased onshore wood processing and aligns with Government priorities. Wood processing converts raw logs into products like sawn timber and is responsible for about three-quarters of the jobs in forestry – nearly 30,000 people.

88. The overall assessment table on pages 40-41 compares Options 2 and 3 to both Option 1 and the status quo.

*Potential approaches that have not been progressed into options*

89. A number of potential approaches have not been progressed into options as they do not meet the objectives or cannot practicably be achieved within the timeframes for RM Bill 2.

90. The following approaches were considered but not progressed:

    a. Legislating for a pre-application stage to ensure good quality applications containing the necessary information are lodged. This was considered complex and better addressed through Phase 3 of the RMA Reform programme.

    b. Addressing delays caused by appeals after a council has decided a consent application. This was not considered due to natural justice issues and judicial timeframes.

c. Applying the amendments to improve consent processing efficiency outlined in option 1, only to specific activities. This approach was not progressed as the changes proposed can be applied effectively to all consents.

d. Constraining existing timeframes in the RMA for application lodgement, further information, and notification, rather than establishing a one-year timeframe. This was considered to be too high-risk for applicants to provide information, complete applications, suggest mitigations, or fund mitigations and risks perverse outcomes of making consenting more difficult.

e. Applying the one calendar year time limit to all consents. This approach was not progressed as it would have significant implementation risks and would be better considered as part of Phase 3 of the RMA Reform programme.

f. Limiting notification of and submissions on renewable energy consents. This approach was not progressed as feedback from industry confirmed a consent processing pathway which provides for notification and submissions is necessary to ensure a 'social license to operate', and the Fast Track pathway could be used where this is not needed.

g. Applying the one calendar year time limit to all renewable energy consents, including new hydro and geothermal. This approach was not progressed as it would have significant risks in terms of Māori rights and interests and the Electrify NZ manifesto did not suggest the approach would relate to new hydro.

h. Applying the one calendar year time limit only to re consenting of renewable energy consents. This approach was not progressed because re consenting is predominantly a feature of hydro and geothermal renewable energy generation, which have been excluded.

i. Excluding only new hydro renewable energy generation and not also exclude geothermal renewable energy generation. As geothermal renewable energy generation consents have similar level of impact for Māori rights and interests, to ensure consistency, we did not consider the approach of excluding hydro, without also excluding geothermal.

j. Local authorities transferring consenting powers for wood processing activities to another entity, such as the Ministry for Primary Industries, Environmental Protection Authority, or a new statutory board. This has been ruled out due to resourcing and funding implications, including cost recovery provisions and compliance/monitoring/enforcement to support consenting decisions. It is unlikely this could be delivered within existing funding, it would require new resourcing and the expertise to process consents may not exist in the short term at an agency level.

## Option 1: Amend the RMA to provide more efficient processes for all resource consent applications

91. Option 1 aims to make RMA consenting processes generally more efficient for all types of consents. It targets parts of the consenting process that evidence and engagement with local government representatives suggest cause delays.

92. This option does not involve including a requirement in the RMA that renewable energy and wood processing facility consents would be processed within one-year (as is proposed in Options 2 and 3). However, by speeding up consenting processes generally it is intended that more renewable energy consents and wood processing facility consents would be processed in under one-year. This would support existing alternative pathways for these consents, including fast-track processes.[49]

93. Option 1 would maintain the status quo, limit the risks of resource management system fragmentation and ensure a more durable system. This option better aligns with the primary intent of the RMA and how RMA planning instruments currently regulate activities.[50]

94. National direction and local planning instruments drive outcomes in consents, including efficient consent processing. These instruments have not been developed with special consenting timeframes for specific activities in mind. While consent pathways have been fragmented to some degree by alternative pathways with differing timeframes for some types of projects (eg, Fast Track consenting), national direction and local planning instruments have not yet been fragmented by an activity-based approach to consent processing timeframes. References to resource management system fragmentation in this RIS refer to this fragmentation

95. Option 1 also avoids precedent setting for particular activities and avoids potential future RMA amendments to enable prioritisation of other types of activity-based consents.

96. The options 2 and 3 analysis details risks of a one-year limit on renewable energy and wood processing facility consenting process, including a greater likelihood that consents will be declined, less flexibility for applicants and the burden shifting to the pre-application stage. Option 1 avoids these risks and provides councils and applicants with more flexibility for consent processes to take longer than one-year where this is desirable (eg, to help the applicant create a social license with the community)

97. This option involves the following suite of amendments to Part 6 of the RMA to speed up consenting processes:

    a. introduce a new requirement into Schedule 4 of the RMA (or similar) that information requirements are to be proportionate to the scale and significance of the proposal

[49] NBA 2023 interim fast-track consenting until the Fast-Track Approval Bill is enacted (anticipated to be towards the end of 2024).
[50] Integrated management of natural and physical resources.

b. clarify the circumstances in which councils can request further information and commission reports to inform consent application decisions,

c. allow councils to return applications to applicants after six months from the date of lodgement if applicants do not respond to:[51]

   i. further information requests

   ii. suspensions for an extended period due to written approval request

   iii. requests for additional fees to conprocess consents

d. enable councils to waive hearing requirements where there is sufficient information to decide the application without a hearing regardless of whether the applicant or a submitter wishes to be heard

e. enable applicants to request to review draft conditions of consent before consent decisions are issued.

98. Similar options were tested with iwi/Māori and stakeholders through the policy design and Select Committee process for the Natural and Built Environment Act 2023 and received mixed responses. Some of these suggestions also came from Te Uru Kahika (Regional and Unitary Councils Aotearoa). [52]

**Information requirements proportionate to scale and significance of proposal**

99. RMA information requirements for resource consents are intended to 'cover all bases' and therefore may identify more information than is required in some circumstances (including for smaller scale consents).

100. Information requirements must be met in sufficient detail to satisfy the purpose for which it is required.[53] This gives councils the ability to determine appropriate levels of information for different scales of activity.

101. The drafting of Schedule 4 of the RMA may not reflect the intention that councils can exercise their discretion to ensure information received at lodgement is proportionate.

102. This option would involve amendments to Schedule 4 to ensure the information required in a consent application at lodgement is proportionate with the scale and significance of the application.

103. This would align with existing requirements in Schedule 4 that the assessment of the activity's effects on the environment includes detail which corresponds with the scale and significance of the effects that the activity may have on the environment.[54]

*Key risks and benefits*

[51] This would include a requirement for councils to notify the applicant of their intention to return the application and an opportunity for the applicant to respond to this.
[52] The Minister Responsible for RMA reform wrote to Māori groups and stakeholders on 28 March 2024 and invited them to provide suggestions for inclusion in RM Bill 2. Te Uru Kahika suggested various amendments, and this is one of the amendments that generally meets the scope criteria of RM Bill 2.
[53] Clause 1, Schedule 4, RMA.
[54] Clause 2(3)(c), Schedule 4, RMA.

104. This change would reduce the information burden on consent applicants in circumstances where meeting all the Schedule 4 requirements in detail is disproportionate to the nature of the proposal. While this amendment would have more benefits for applicants for small scale consents, it will also have benefits for applicants for major infrastructure projects.

105. 'Proportionate' is a subjective assessment. There is a risk that different standards of what amounts to proportionate are applied throughout the country, or even in one council by different employees, which would reduce certainty for applicants. Guidance for councils could help to mitigate this risk.

**Clarify when councils can request further information**

106. The RMA enables councils to request further information following lodgement, either directly from the applicant or to commission a report subject to the applicant's agreement.[55] There are no restrictions on the number of times a council can seek further information before a decision is made, albeit there are restrictions on the number of times they can suspend an application.

107. Efficiency gains could be made by limiting councils' ability to request information to situations where the information is essential to make a decision. This could include requiring consenting authorities to consider the following before requesting further information:

    a. whether the additional information is required to reach a view on whether or not the application meets the objectives and policies set out in national direction or the relevant plan

    b. whether the effects can be adequately assessed from the information currently available

    c. whether the information relates to effects or objectives/policies of the planning documents that are beyond the scope of the activity

    d. whether the information is proportionate to the scale and significance of a matter (including consideration of the consent category)

*Key risks and benefits*

108. This proposal would reduce requests for further information which may be desirable to round out an application but is not strictly necessary for decision-making. It also helps to ensure that any further information is proportionate and does not exceed what is necessary.

109. It therefore strikes a balance between ensuring the council can request the further information needed and providing certainty to applicants that any time delays and costs associated with further information requests will be limited to what is necessary.

110. There are risks associated with this proposal, including:

    a. councils being discouraged from seeking information which would have impacted on decision-making

[55] Section 92, RMA.

b. interpretation issues about what is ‘necessary’ or ‘proportionate’ for a particular application.

**Enable councils to return application if applicant does not respond for an extended time (for further information, written approval and additional payment)**

111. The RMA contains provisions to ensure that consents are not granted where there is insufficient information. Councils are required to publicly notify consents if further information is requested and not received[56] and they may decline an application based on insufficient information.[57]

112. Councils often hold applications for a long period of time even if applicants do not respond to further information requests or do not pay the required administration fees. This creates backlogs, with applications either stagnating and not being processed or forced into expensive notified processes.

113. During targeted engagement, local government representatives suggested councils should be able to return applications where information is not provided to assist councils to deal with applications more promptly. They considered that the current policy settings create an administrative burden on councils as they lack a formal mechanism to return abandoned applications.

114. This amendment involves expanding the ability to return a consent application so if the applicant does not respond to a further information request after a certain time or administrative fees required post lodgement are not paid, the application can be returned. The council would be required to first provide the applicant with notice of this intention and an opportunity to re-engage.

*Key risks and benefits*

115. This proposal would reduce the administrative work councils are required to do when applicants stop engaging in the consent process (eg, following up with applicants and monitoring stagnant applications). This would free up resourcing for other consent applications.

116. Including requirements that the council must notify the applicant of their intention to return the application and providing them with an opportunity to re-engage would help ensure applications are not returned in situations where the applicant is intending to re-engage. This would limit situations where applicants are required to lodge a new application and incur associated fees to progress the same application.

**Discretion to waive hearing requirements**

117. Currently councils are required to hold a hearing if an applicant or submitters requests to be heard, even if there is already sufficient information to make a decision.[58]

118. This proposal would provide councils discretion to determine whether or not to hold a hearing in circumstances where they consider they have sufficient information to make a robust decision. This however does not restrict council from

[56] This generally requires an additional fixed fee to be paid before progressing to full notification.
[57] Section 95C and 104(6), RMA.
[58] Section 100, RMA.

holding a hearing, should they consider it is necessary. For example it may be more effective and efficient for issues and information to be assessed through a hearing.

119. Councils would be required to inform applicants or any other persons (including submitters) whether they will hold a hearing.

120. Councils would also need to consider whether holding a hearing would be in line with sections 6, 7 and 8 of the RMA, any council agreement with iwi/hapū (including any Mana Whakahono a Rohe) and/or Treaty settlement legislation, or a more effective and efficient way for issues and information to be assessed.

*Key risks and benefits*

121. The proposal would speed up consent processing in circumstances where the council considers there is sufficient information to make a decision, yet they are required to hear from submitters or applicants. This may also help to reduce cost.

122. Limiting hearing rights may introduce additional risks of legal challenge, but other rights remain unchanged for applicants/submitter (right to object[59] and appeal rights[60]).

123. There may be circumstances where a hearing is required, for example where it is in line with any council agreement with iwi/hapū (including any Mana Whakahono a Rohe) and/or Treaty settlement legislation.

**Enabling applicants to review draft conditions of consent**

124. The RMA does not specifically enable applicants to review draft conditions of consent before consents are issued. In practice, applicants often request to review draft conditions before decisions are issued to avoid the need to exercise objection rights/appeals. To provide time for the applicant to review the conditions, councils sometimes suspend processing with the applicant's agreement, or the applicant can suspend processing.

125. For notified consents, if the applicant requests to review draft conditions of consent, councils will be required to provide a draft to submitters. Submitters will have the opportunity to provide feedback within the time period specified by council.

*Key risks and benefits*

126. Specially enabling the applicant to request to review draft conditions of consent and suspend the processing for a time period agreed with council will enable a collaborative approach, reduce the use of objection rights/appeals, stop the use of other stop the clock mechanisms for this issue (making statistics more accurate and useful) and enable more efficient processing of consents.

127. There is a risk that applicants (or submitters for notified consents) would litigate consent conditions, increasing delays and costs. This could be mitigated by limiting comments to minor or technical matters (eg, incorrect references to

[59] Section 357, RMA.
[60] Section 120, RMA.

technical documents, or requirements that do not form part of the application). More substantive changes would follow the existing process.

**Treaty implications**

*Information requirements*

128. The proposed amendments could result in less detailed information relating to cultural effects and effects on cultural value being required in consent applications, which may affect the quality of council decision making in relating to these matters. This could also mean there is less consultation with tangata whenua to identify these values. This risk could be mitigated by meaningful engagement with tangata whenua in the development of planning instruments, including national direction. These instruments can signal the information relating to these matters are required in certain circumstances. [61]

*Further information requirements*

129. The proposed amendments to the information requirements would still enable councils to seek further information where:

    a. there are additional issues raised by tangata whenua during the process

    b. a Cultural Impact Assessment (CIA) was lodged with an application which raises questions that need clarifying.

*Hearing requirements*

130. The ability of affected customary rights holders, iwi authorities and tangata whenua to participate in the consenting process could be limited due to the increased discretion whether to hold a hearing where the council considers they have sufficient information to make a robust decision. This may not align with the Treaty principle of participation in some circumstances, which requires the Crown to provide tangata whenua with opportunities to engage with decision-making processes.

131. Councils would be required to consider whether they should hold hearings if this would be in line with council's agreements with tangata whenua (including Mana Whakahono a Rohe) and/or Treaty settlement. However, where there are no applicable agreements/Treaty settlement obligations, councils could decide not to hear from Māori applicants or submitters when they wish to be heard.

## How do the options compare to the status quo/counterfactual?

[61] For example, Dunedin City Council district plan – Chapters A1 and A4 contains cultural value provisions, and they can help resource consent applicants/councils to assess whether a CIA is needed.

| | Option Zero – [*Status Quo / Counterfactual*] | Option One – amend the RMA to provide for more efficient processes for all resource consent applications |
|---|---|---|
| **Effectiveness** | 0 | ++<br>Proposal targets aspects of the consenting process that evidence and engagement show cause delays to consent timeframes. Provides benefits across all types of consents. Likely to help renewable energy and wood processing facility consents be processed faster. However, this option does not require these consents to be processed within one-year and does not direct council to prioritise consents in these areas. This will also reduce the risk of councils de-prioritising other consents such as large-scale housing/subdivision consents or other infrastructure related consents that are not renewable energy. Could result in less detailed information relating to cultural effects and effects on cultural value being required in consent applications, which may result in less consultation with tangata whenua to identify these values and affect the quality of council decision making. |
| **Efficiency** | 0 | +<br>There will be efficiency gains (time and cost) for applicants and councils with information requirements limited to be more proportionate and focused on the information necessary to determine the application. Councils will also not be required to hold a hearing if requested where there is sufficient information increasing efficiency. The option involves amendments to existing council and applicant powers and the regulatory burden is proportionate to the consent process efficiencies. |
| **Certainty** | 0 | +<br>This option will provide more clarity to councils and applicants on consent information requirements and when some existing powers should be appropriate utilised during consent processing. It, however, will not provide certainty that renewable energy and wood processing facility projects will be consented faster than currently, or within one-year. |
| **Durability & Flexibility** | | + +<br>Taking a systems-wide approach will limit the fragmentation of the resource management system, therefore creating a more durable system that applies equally to all consents. It avoids precedent setting for particular activities and avoids potential future RMA amendments to enable prioritisation of other types of activity based consents. The option targets key aspects of the consenting process which can lead to consenting delays but does not create a strict one-year limit therefore providing flexibility to councils and applicants for consent processes to take longer than one-year where this is necessary or desirable (eg, to establish or retain a social license by better consultation with communities). |
| **Implementation Risk** | 0 | +<br>The suite of changes are amendments to when councils or applicants can use certain powers during the consenting process. These changes could be implemented immediately following enactment. Clear drafting/guidance would help ensure the changes are implemented as intended and avoid differing interpretations (eg, of what is ‘proportionate’). Enabling councils to return applications in some circumstances would provide for more accurate data collection on consent processing and therefore more effective policy development in the future. Limited engagement on the proposals, including with Treaty partners, may result in less support and adherence to the changes during implementation. |
| **Overall assessment** | 0 | + + |

## Option 2: Require consent decisions to be issued within 1 calendar year from lodgement for renewable generation and electricity transmission applications

132. As noted above, there are overarching concerns with the RMA processes for consenting and reconsenting are taking too long.

133. The Government has committed to doubling renewable energy by 2050. Improving consent processing is one proposal within the wider Electrify NZ work programme to remove barriers and unlock the investment New Zealand requires to meet its emissions targets.

134. Option 2 explores a subset of options designed to give greater certainty that council decisions for renewable energy consents will be issued within one-year of lodgement. Option 2 does not alter the current statutory timeframe for processing consents, or any of the requirements relating to notification, further information, hearings decisions or appeal. Instead, it looks to provide greater assurance the total time to process consents lodged with councils will be no more than one-calendar year, and therefore encourage robust upfront consent applications and efficient assessments, without applications being 'on hold' for long periods of time.

135. Note these options only affect consent timeframes from lodgement to the initial decision by councils and do not impact appeals or Environmental Court processes.

136. Applying the approach only to renewable energy consents recognises the particular importance of increasing renewable energy supply for addressing climate change and aligns with government commitments. As the approach would apply to only a small percentage of the total consents lodged, the level of change required to implement the approach is commensurate with that expected from RM Bill 2.

137. Excluding new hydro and geothermal renewable energy generation activities from option 2 recognises that these developments are very complex and can significantly impact Māori rights and interests in freshwater because they often involve diverting, damming, or altering water flow, potentially affecting the cultural and spiritual connection Māori hold with these taonga (treasures) as guaranteed by the Treaty of Waitangi. For this reason, the policy for one year consenting is not a requirement for new hydro renewable energy consents in the Electrify NZ manifesto commitment and is not proposed as part of option 2. As geothermal activities are of similar complexity with similar level of impact on Māori rights and interests in freshwater, the option 2 also excludes geothermal activity.

138. Initial engagement with renewable generation developers and local government indicated that while they supported timely processing of consents there was concern that strict adherence to one-year processing timeframe should not come at the expense of a poorer outcomes. Industry suggested that in some instances consent processing timeframes of longer than a year would be appropriate.

*Option 2A: Require renewable energy consents except new hydro and geothermal electricity generation, to be issued within 1 calendar year from the date of lodgement.*

139. This option will introduce a requirement for consent decisions to be issued within one calendar year, which includes any time where statutory timeframes have been extended or put on hold.

140. This option would incentivise applicants, councils and stakeholders to work together to ensure applications lodged are robust and ready for processing without the need for lengthy further information requests, analysis or re design of the proposal.

**Key risks**

141. Key risks of option 2A are:

    a. a greater likelihood that consents will be declined on the grounds that there is inadequate information to determine the application as there is no longer the opportunity of time to work through complexities of applications

    b. less flexibility for applicants, Treaty partners, stakeholders, councils and decisions makers to work together to address issues during the consent process

    c. increased risk of likelihood that consent decisions are appealed

    d. risks consent processing not meeting Treaty settlement obligations created by engagement obligations for affected tangata whenua, iwi authorities and takutai moana groups

    e. additional cost and time during the pre-application process to ensure applications have all issues covered at lodgement as there is less opportunity to address issues ‘during processing’

    f. system fragmentation as a different approach to processing consents would be required for renewable energy generation than for other activities.

142. These risks could be partly mitigated by good practice from applicants and councils, including thorough and robust pre-application engagement with tangata whenua, communities and council.

**Key benefits**

143. A strict one-year requirement increases certainty about how long it takes to get a decision on a renewable energy consent.

144. The strict one-year timeframe will incentivise applicants, councils and stakeholders to work together to ensure applications lodged are robust and ready to be processed at lodgement, rather than relying on lengthy discussions during processing. It will also incentivise processing decisions by councils to be efficient and predictable.

145. There could be cost savings for councils and applicants during processing of applications, however any potential savings are likely to be offset by higher costs pre lodgement to ensure applications lodged are complete.

146. The strict one-year timeframe will reduce the potential for a rush of applications seeking to be allocated space or resource 'first' without fully developing proposals, working with stakeholders and developing a robust assessment of effects before lodgement.

*Option 2B: Require renewable energy consents except new hydro and geothermal electricity generation, to be issued within one calendar year from the date of lodgement.*

*Allow the one calendar year timeframe to be extended if requested or agreed to by the applicant.*

147. This option will introduce a requirement for consent decisions to be issued within one calendar year, which includes any time where statutory timeframes have been extended or put on hold. Option 2B will allow the one calendar year timeframe to be extended if requested by the applicant. In this scenario the standard consenting timeframe provisions in the RMA would govern the consenting timeframe.

148. Option 2B does not provide as much certainty about the time it will take to get decisions on consents for renewable energy generation as the time can be extended if requested by the applicant. However, by allowing the applicant the option of extending the time, there is greater flexibility for parties to work together to resolve issues, if the applicant chooses to. Option 2B ensures the applicant is in control of whether the decisions are issued in one-year or not.

**Key risks**

149. Key risks involved with this option include:
    a. there is still a greater likelihood that consents will be declined on the grounds that there is inadequate information to determine the application, however this risk is less than for option 2A as the applicant is able to request more time to provide further information if doing so is considered preferable by the applicant.
    b. unlikely to have the desired effect of making consent timeframes more efficient, as timeframes can already be extended under section 37 of the RMA with the agreement of the applicant and are currently already less than one-year.
    c. less flexibility for councils to take longer processing consents
    d. less flexibility to delay processing to obtain information from stakeholders unless applicant agrees.
    e. insufficient time to adequately consult with affected tangata whenua, iwi authorities, post settlement governance entities or takutai moana groups[62] where required.
    f. system fragmentation as a different approach to processing consents would be required for renewable energy generation than for other activities.
150. These risks could be partly mitigated by good practice from applicants and councils, including thorough and robust pre-application engagement with communities and council.

**Key benefits**

[62] Refers to any group with rights or arrangements under the Takutai Moana Act or Ngā Hapū o Ngāti Porou Act including CMT groups, PCR groups, applicant groups and ngā hapū o Ngāti Porou.

151. Option 2B will send a strong signal that the intent is for renewable energy consents to be processed in one-year, while also allowing the applicant flexibility to utilise additional time, if doing so would be preferable for them.

152. Option 2B provides less certainty than option 2A about timeframes but will incentivise applicants to supply higher quality and more complete information in their initial application, as well as incentivise councils to become more stringent with their expectations for applications.

*Option 2C Require renewable energy consents except new hydro and geothermal electricity generation, to be issued within one calendar year from the date of lodgement.*

*Allow the one calendar year timeframe to be extended if*

- *Requested or agreed to by the applicant; or*
- *Requested by tangata whenua of the area who may be so affected, through iwi authorities, and any takutai moana rights holder in the area.*

153. This option will introduce a requirement for consent decisions to be issued within one calendar year, which includes any time where statutory timeframes have been extended or put on hold. Option 2C will allow the one calendar year timeframe to be extended if requested by the applicant, or tangata whenua of the area who may be so affected, through iwi authorities; and any takutai moana rights holder in the area.

154. This option will continue to send a strong signal about the intended processing timeframes for renewables energy consents, while also giving applicants flexibility to extend for longer where it is preferable to do so. Option 2C also ensures that any consultation required by Treaty settlement legislation, the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act or the Takutai Moana Act can be undertaken.

**Key risks and benefits**

155. Key risks and benefits of option 2C are mostly similar to option 2B, with the exception that there is less risk consent processing will not meet treaty settlement obligations created by engagement obligations with tangata whenua, iwi authorities and any takutai moana groups in the area.

156. Option 2C provides less certainty about the timeframes for processing renewable consents, as tangata whenua of the area who may be so affected, iwi authorities, and any takutai moana group in the area would also be able to extend time frames.

## How do the options compare to the status quo/counterfactual?

| | *Status Quo* | **Option 2A - Require renewable energy consents except new hydro and geothermal electricity generation, to be issued within 1 calendar year from the date of lodgement** | ***Option 2B - Require renewable energy consents except new hydro and geothermal electricity generation, to be issued within one calendar year from the date of lodgement.***<br><br>***Allow the one calendar year timeframe to be extended if***<br><br>• ***Requested or agreed to by the applicant.*** | ***Option 2C***<br>***Require renewable energy consents except new hydro and geothermal electricity generation, to be issued within one calendar year from the date of lodgement. Allow the one calendar year timeframe to be extended if***<br>○ ***Requested or agreed to by the applicant; or***<br>○ ***Requested by tangata whenua of the area who may be so affected, through iwi authorities, and any takutai moana rights holder in the area.*** |
|---|---|---|---|---|
| **Effectiveness** | 0 | + <br>Meets high-level one-year objective and will support Government objective of driving investment in renewable energy | + <br>Meets high-level one-year objective and will support Government objective of driving investment in renewable energy. | + <br>Meets high-level one-year objective will support Government objective of driving investment in renewable energy. |
| **Efficiency** | 0 | - - <br>Meets high-level one-year objective and supports doubling renewable energy but will fragment RMA, and place additional burden on applicants pre application, and potentially require additional resource from councils. | - <br>Meets high-level one-year objective and supports doubling renewable energy but will fragment RMA. Likely similar costs to applicants / regulators as status quo | - <br>Meets high-level one-year objective and supports doubling renewable energy but will fragment RMA. Likely similar costs to applicants / regulators as status quo |
| **Certainty** | 0 | + <br>Clear and certain timeframe for applicants that cannot be extended | **0** <br>Clear timeframe<br>but ability to extend means similar impact to status quo – will still be an incentive to provide full information to avoid possible extension or decline. | **0** <br>Clear timeframe<br>but ability to extend means similar impact to status quo – will still be an incentive to provide full information to avoid possible extension or decline. |
| **Durability & Flexibility** | **0** | - <br>More restrictive than status quo, more pressure on councils to issue timely decisions and on applicants to lodge complete applications. | **0** <br>Very similar to status quo given existing timeframes in RMA for processing resource consents | **0** <br>Very similar to status quo given existing timeframes in RMA for processing resource consents |
| **Implementation Risk** | 0 | - - <br>Novel solution more restrictive than status quo, increased risk potentially viable consents denied due to inadequate timeframe to obtain all necessary information.<br>May result in there being insufficient time to adequately consult with affected tangata whenua, iwi authorities, post settlement governance entities or groups where required . | **0** <br>Unlikely to have significant implementation risks. Likelihood of higher number of consents declined but mitigated by ability to agree to extended timeframe and making similar to status quo timeframes in practice | **0** <br>Unlikely to have significant implementation risks. Likelihood of higher number of consents declined but mitigated by ability to agree to extended timeframe and making similar to status quo timeframes in practice |
| **Overall assessment** | 0 | - | **0** | **0** |

## Overall assessment of options – renewable energy consents

157. The preferred option within option 2 is option 2C which requires renewable energy consents to be issued within one calendar year from the date of lodgement, except new hydro and geothermal electricity generation. It also allows that timeframe to be extended where requested by the applicant or affected tangata whenua, through iwi authorities, or any takutai moana rights holder in the area who may be affected by the application.

158. The addition of a one calendar year time frame for processing renewable energy consents will provide greater certainty about the time it will take to get a decision on renewable energy consent applications. As there will be less opportunity for application information to be supported by additional information requested during processing, the timeframe will also incentivise applicants to make better applications, and councils to make more efficient decisions about information needed post lodgement.

159. Including the provision allowing applicants to request an extension to the limited one calendar year timeframe will provide much needed flexibility to the process. Indeed, extensions are sometimes requested by applicants themselves under the current system, and it is likely they will see benefits in retaining a similar degree of flexibility alongside the reduced standard timeframe.

160. Including the provisions to also allow tangata whenua of the area, through iwi authorities, and any group in the area who may be affected by the application to request additional time will reduce the risk that a prescribed calendar timeframe will impact on the ability to uphold Treaty settlements which have engagement obligations for affected tangata whenua, iwi authorities and takutai moana groups in the area. Further guidance or national direction may compliment the implementation of option 2C by clarifying the information needed to make decisions on types of renewable energy consents. It is noted there is an existing work programme underway to update national direction for REG and ET and a second stage of national direction work is proposed which would focus on developing National Environmental Standards (NES) under the RMA for different classes of renewable electricity generation and infrastructure.

### *Treaty Impacts*

161. Renewable energy, electricity transmission and electricity distribution activities can have significant adverse effects on Māori rights and interests, cultural values and the relationship of Māori and their culture and traditions with their ancestral lands, waters, sites, wāhi tapu and other taonga.

162. In 2012, Hon Bill English summarised the Crown position as being that it acknowledges that Māori have “rights and interests in water and geothermal resources”.[63] The Crown position is that any recognition must “involve mechanisms that relate to the on-going use of those resources, and may include decision-making roles in relation to care, protection, use, access, and allocation, and/or charges or rentals for use”. Currently MfE has

[63]Deputy Prime Minister Hon Bill English acknowledged in an affidavit to the High Court, on behalf of the Crown that Māori have rights and interests in freshwater and geothermal resources. This occurred in proceedings related to the Crown’s policy to sell shares in up to 49 per cent of shares in four state-owned power companies. It was recorded in the Supreme Court in 2013. *The New Zealand Māori Council and Others v The Attorney-General and Others* (SC 98/2012) [2013] NZSC

responsibility for progressing policy development around these issues." The Supreme Court stated that this should not be an empty exercise.

163. As outlined above at paragraph 84, geothermal and hydro power developments under the RMA can significantly impact Māori rights and interests in freshwater because they often involve diverting, damming, or altering water flow, potentially affecting the cultural and spiritual connection Māori hold with these taonga (treasures) as guaranteed by the Treaty of Waitangi. For this reason, new consents relating to hydro and geothermal energy are treated differently to other renewable energy consents and are excluded from both Electrify NZ (hydro) and policy options proposed here.

164. Restricting consenting timeframes is likely to make it harder to meet settlement obligations for freshwater rights and interests, as undertaking adequate consultation required by settlements can often get drawn out for activities relating to the use and diversion of streams and rivers.

165. Options that enable longer timeframes are more likely to enable fuller tangata whenua involvement in the application process and would be more consistent with Te Tiriti principles of partnership and participation. Indeed, there needs to be adequate time for a CIA to be commissioned and considered in setting consent decisions when tangata whenua are included as an affected party and express an interest.

166. The principle of redress is also an important consideration in the context of the reducing the environmental and cultural harm that can occur due to REG projects where Māori rights and interests are inadequately protected and provided for. It is important to recognise and uphold past redress, and for the Crown to be proactive in avoiding ongoing or compounding breaches of Te Tiriti, which themselves may give rise to the right to redress and do damage to Te Tiriti relationship.

***Option 2A***

167. This option is the most likely to constrain the ability to adequately address Māori rights and interests by limiting timeframes for decisions with no ability to extend to allow time to analyse and address potential conflicts with Māori rights and interests. In particular, it is likely to reduce decision makers' ability to request further information or carry out in-depth analysis of Māori rights and interests in a consent, therefore lessening their capacity to adequately consider these matters in the consenting process.

168. The ability of affected customary rights holders, iwi authorities and tangata whenua to participate in the consenting process could be limited due to the tight timeframe, especially given there is no explicit requirement for engagement with tangata whenua or for applications to include a CIA. This could be seen as cutting across rights in Treaty settlements for management of natural resources. The impacts of an activity could change significantly from when it was first consented and adequate time for consideration of effects may not be provided.

169. The one-year limit may also raise difficulties in undertaking future catchment-wide management and re-allocation, which will be necessary to meet Treaty obligations of partnership, participation and redress, as well as settlement obligations. Existing hydro and geothermal projects that need reconsenting may need to undergo significant changes to their consent conditions in order to address changes in environmental values, municipal water needs and more.

170. When extending hydro and geothermal consents, the proposed one-year restriction may also clash with the 66 Treaty settlements which require councils to have regard to the statutory acknowledgement when considering who is an affected person under section 95E of the RMA. For example, Raukawa Claims Settlement Act 2014 includes a geothermal statutory acknowledgement at section 30 requiring specific involvement in resource consent applications affecting the geothermal area.

171. The rights and arrangements under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (Ngā Hapū o Ngāti Porou Act) and the Marine and Coastal Area (Takutai Moana) Act 2011 link heavily to RMA consenting processes. For example, customary marine title (CMT) groups are provided with a permission right, that requires the consent applicant to have written permission from the CMT group to have an application approved. The Ngā Hapū o Ngāti Porou Act provides additional arrangements including section 16, that requires ngā hapū o Ngāti Porou are notified of all resource consents within, adjacent or directly affecting ngā rohe moana (area specified by Ngā Hapū o Ngāti Porou Act).

172. Finally, this option does not address equity issues for Māori, but consideration of these could be included in upcoming national direction and guidance.

***Option 2B***

173. Like Option 2A, this option may not provide opportunities to address Māori rights and interests or engagement requirements with affected tangata whenua, iwi authorities and takutai moana groups in the area.

174. This option effectively has lighter restrictions on the one-year timeframe by allowing applicants to agree to extensions, which would affect further information requests relating to Treaty settlements and Māori rights and interests. However, it does not specifically address these issues and therefore may still prevent full transparency and equitable involvement of tangata whenua in decision-making.

175. Applicants would have the opportunity to request or agree to extensions. This option may provide some additional protection as applicants would be incentivised to agree to timeframe extension or information request relating to Māori rights and interests in a renewable energy consent where otherwise there is a risk that the consent is declined due to a lack of required information.

176. Like Option 2A, this option does not address equity issues for Māori, but consideration of these could be included in upcoming national direction and guidance.

***Option 2C***

177. Out of the three sub-options for option 2, this option most explicitly enables affected tangata whenua, iwi authorities and takutai moana groups to have their input equitably considered in decision-making for renewable consent projects, especially ones pertaining to freshwater use such as hydro and geothermal.

178. When tangata whenua are included as an affected party and express an interest, CIAs may be commissioned, and stakeholders need an adequate amount of time to consider the project and conditions, as they are often under-resourced and over-engaged. This can be done at early stages of the consenting process and may not always require councils to stop the clock on processing time.

179. However, this option would allow more flexibility for tangata whenua, iwi authorities and takutai moana groups, as they could request extensions to ensure they are able to deliver quality input to renewable projects.

## Option 3: Require renewable energy generation (excluding hydroelectricity) and wood processing facility consents to be processed within one-year of application

180. This option is to amend the RMA to add a specific calendar day timeframe for assessment of resource consents for wood processing facilities in the RMA unless extended with applicant agreement or on the applicant's request.

181. Option 2 addresses the benefits and risks associated with three possible sub options for a one-year consenting time limit for renewable energy consents. This option therefore focuses on the benefits and risks of extending the one-year processing requirement to wood processing facilities. The risks and benefits discussed above for option 2 also apply to option 3 as the types of activities associated are similar.

182. As per option 2, Option 3 assesses three sub-options. These options are designed to give greater certainty that councils will assess activities relating to wood processing facility within one-year of lodgement. Option 3 does not alter the current statutory timeframe for processing consents, or any of the requirements relating to notification, further information, hearings decisions or appeal.

183. Instead, it looks to provide greater assurance the total time to process consents lodged with councils will be no more than one-year, and therefore encourage robust upfront consent applications and efficient assessments, without applications being 'on hold' for long periods of time.

184. As per Option 2, these options only affect consent timeframes from lodgement to the initial decision by councils and do not impact appeals or Environmental Court processes.

185. The risks and benefits which apply to all three options are discussed under the overall assessment section.

*Option 3A: Require renewable energy consents, except new hydro and geothermal electricity generation, and wood processing facility consents to be issued within 1 calendar year from the date of lodgement.*

186. As discussed above in relation to renewable energy consents, there is a risk that imposing a strict one-year timeframe on assessing consents for councils result in more wood processing consents being declined overall due to inadequate applications for activities, council capacity/capability, or the lack of expertise. Wood processing facilities are complex and require numerous consents and finding the expertise to prepare an application can be difficult, especially for smaller operators.

187. The key risks and benefits for Option 3A are the same as those outlined above at paragraphs 141-146 for Option 2A.

*Option 3B: Require renewable energy consents, except new hydro and geothermal electricity generation, and wood process facility consents to be issued within one calendar year from the date of lodgement.*

*Allow the one calendar year timeframe to be extended if requested or agreed to by the applicant.*

188. To mitigate risks, Option 3B enables consenting authorities to extend one-year timeframes for granting wood processing consents with the agreement of applicants.

189. The key risks and benefits for Option 3B are the same as those outlined above at paragraphs 149-152 for Option 2B.

*Option 3C Require renewable energy consents except new hydro and geothermal electricity generation, and wood processing facility consents to be issued within one calendar year from the date of lodgement.*

*Allow the one calendar year timeframe to be extended if*

- *Requested or agreed to by the applicant; or*
- *Requested by tangata whenua of the area who may be so affected, through iwi authorities, and any takutai moana group in the area.*

190. The key risks and benefits for Option 3C are the same as those outlined above at paragraphs 155-156 for Option 3C.

| Wood processing consenting | Option One – [*Status Quo / Counterfactual*] | **Option 3A – Amend the RMA to include a one-year consenting timeframe for renewable energy and wood processing facilities** | **Option 3B – Amend the RMA to include a one-year consenting timeframe, one calendar year requirement and applicants can agree to extensions for renewable energy and wood processing facilities** | **Option 3C – Amend the RMA to include a one-year consenting timeframe. Applicants and affected tangata whenua through iwi authorities, and any takutai moana rights holder in the area can request extensions for renewable energy and wood processing facilities** |
|---|---|---|---|---|
| **Effectiveness** | 0 | + <br> Likely to be more effective at meeting goal of one-year consent timeframes for both government objectives <br><br> This may reduce effectiveness in councils' implementation of plan or for other users/applicants | + <br> Meets one-year consent timeframes for government objectives. <br><br> Unlikely to have meaningfully beneficial impact over status quo as timeframes are already less than six months in the RMA and can be extended on agreement with the applicant | + <br> Meets one-year consent timeframes for government objectives. <br><br> Unlikely to have meaningfully beneficial impact over status quo as timeframes are already less than six months in the RMA and can be extended on agreement with the applicant or through a request from affected tangata whenua, iwi authority or takutai moana rights holder group. |
| **Efficiency** | 0 | - - <br> Less efficient due to fragmentation of RMA, likely to increase cost to applicants due to insufficient time to process consents and more consents being declined | - <br> Less efficient due to fragmentation of RMA. Vagaries of defining wood processing resource consent may cause inefficiency. Likely similar costs to applicants + regulators to status quo | - <br> Less efficient due to fragmentation of RMA. Vagaries of defining wood processing resource consent may cause inefficiency. Likely similar costs to applicants + regulators to status quo |
| **Certainty** | 0 | + <br> Provides certainty for applicants that decisions on assessment will be made within one-year | 0 <br> Similar to status quo – timeframes in RMA for processing resource consents already less than one-year with ability to extend | 0 <br> Similar to status quo – timeframes in RMA for processing resource consents already less than one-year with ability to extend. Timeframes can be extended by others than the applicant, but this can currently occur under the status quo. |
| **Durability & Flexibility** | 0 | - <br> Does not allow discretion for regulators/applicants to meet obligations of granting/declining within one-year with sufficient knowledge base | 0 <br> Similar to status quo – timeframes in RMA for processing resource consents already less than one-year with ability to extend. Sets performance base for councils – but this is longer than currently set in legislation | 0 <br> Similar to status quo – timeframes in RMA for processing resource consents already less than one-year with ability to extend. Sets performance base for councils – but this is longer than currently set in legislation |
| **Implementation Risk** | 0 | - - <br> New and novel proposal – unlikely consenting authorities or applicants will have capability/capacity to meet timeframes. | 0 <br> Unlikely to have significant implementation risks | 0 <br> Unlikely to have significant implementation risks |
| **Overall assessment** | 0 | - | **0** | **0** |

### *Overall Assessment – wood processing facilities*

191. The preferred option within option 3 is option 3C due to the rationale outlined at paragraphs 157-160 above. This option requires renewable energy consents and wood processing facility consents to be issued within one calendar year from the date of lodgement, except new hydro and geothermal electricity generation. It also allows that timeframe to be extended where requested by the applicant or affected tangata whenua, through iwi authorities, or any takutai moana group in the area who may be affected by the application.

*Overall Benefits*

192. Reducing timeframes for the consenting of wood processing facilities may reduce costs and increase certainty for potential investors and industry in this sector. It would create greater clarity and certainty about development timeframes for applicants, regulators, and communities. It would require a high level of engagement and effort in the pre-application process to ensure applications are at a standard where they will not be declined. There can be significant difficulties with renewals of consents and expansion on existing wood processing sites where neighbouring property owners can take steps to limit growth or the continuing presence of the operation. Previous cases have related to significant delays with contacting and addressing concerns from absentee (affected) neighbouring property owners. The one-year consenting timeframe restriction may mean that applicants for renewals do not have to justify their activities at every step of the process to operate within the same footprint.

193. Reconsenting has the impact of providing an incentive for the previous consent holder to remediate land that has been contaminated over decades due to wood processing-related activities. If a consent to continue (or expand operations) is not approved, a community could be faced with a closedown situation, where there are insufficient funds to remediate the land, as it has no effective value in its contaminated state. Making this process more certain could avoid this outcome.

194. The risk of having consents declined if they are not of sufficient quality may have a positive impact on the quality of applications from applicants, given they will be at a higher risk of having applications declined if they are not of sufficient quality. This may have distributional impacts on smaller wood processors who may lack the capacity/capability to produce a good application prior to the application process. These poorer-quality applications can currently be worked through iteratively by consenting authorities with applicants. A one-year limit on consents makes it more likely they will be declined if they are not of a sufficient quality in the pre-application stage.

*Overall Risks*

195. It is likely that to meet a one-year timeframe, consenting authorities will prioritise wood-processing consent applications over applications for other activities. This has two key risks:

    a. Allocation issues: a likely impact of the change is that consenting authorities will allocate emissions to airsheds, water takes from water bodies within management

units, and discharges to water bodies from wood processing facility activities over other activities such as for horticulture, agriculture.

b. Consents for other activities are likely to be delayed due to council capacity and constraints.

196. This option will require a definition of wood processing consents to be developed. There is no currently accepted definition of a wood processing consent, or any national direction to give guidance in this space as per the renewable energy generation options. This could include a wide variety of activities, as outlined at paragraph 67.

197. These may apply to facilities specialising in:

a. sawn timber, including native timber

b. panel products (veneer, plywood, laminated veneer, lumber, particle board, or fibreboard)

c. pulp, paper, and paperboard

d. wood chips

e. production of bio-products, chemicals and materials

f. liquid biofuel production

g. firewood

h. storage of:

i. processed wood products (such as logs or woodchips)

ii. hazardous materials, (such as treated wood, chemicals, biochar)

198. We consider that firewood processing facilities and biofuel-based energy generation could be excluded from this consenting process as they do not produce a long-lived timber product, do not align strongly with delivery of the Government's priorities in unlocking development capacity or infrastructure, the environmental consents for firewood tend to be land use consents rather than the more complex water take or discharge activities, and no firewood-related consents took longer than one-year in the data assessed.

199. If Option 3 is pursued rather than Option 2, there will be an increased level of fragmentation in the RMA and consents for similar activities/allocation across renewable energy and wood processing consents will be prioritised by consenting authorities over other activities.

200. There is an additional implementation risk for wood processing consents that are restricted discretionary or discretionary activities as there is no NPS for wood processing or forestry to provide direction to consenting authorities' planning staff on assessing applications and effects against high-level Government objectives.

### Treaty implications – wood processing

201. Māori have a significant interest in forestry and proposals to streamline resource consenting for wood processors will likely be of interest to Māori in the forestry and wood processing sectors. However, without engagement with tangata whenua it is unclear what the specific benefits of the policy would be.

202. Māori connections to forestry and forest land in New Zealand are cultural and spiritual, as well as commercial. In some instances, these links extend to wood processing facilities directly, and if not, indirectly through the potential effects on the environment from wood processing facilities requiring resource consent.

203. In 2018, around 30 per cent of New Zealand's plantation forestry was estimated to be on whenua Māori. This is expected to grow to 40 per cent as Te Tiriti settlements are completed. Compared to nationally, a higher proportion of Māori land is suited to exotic carbon forests due to it being on land considered marginal, steep and/or erosion prone.

204. Whenua Māori has different characteristics to general title land which make it well suited to plantation and exotic carbon forestry. Whenua Māori tends to be in lower capability land use (LUC) classes compared with general land (65 per cent in LUC 6 and 7, compared with 50 per cent for general land), and many parcels of this land are small and fragmented.

205. Around 230,000 hectares of Māori land has been identified as well suited to forests – and could qualify for registration in the New Zealand Emissions Trading Scheme. Of this, at least 146,000 hectares have been identified as marginal.

206. The constraints on whenua Māori, coupled with recent Treaty settlements, has often resulted in a combination of an under-utilisation of that land, and/or a strong desire to improve the productivity/profitability from that land.

207. Section 8 of the RMA requires consenting authorities to take into account the principles of the Treaty of Waitangi when considering applications. Some relevant considerations could include:

    a. Duty to consult

    b. Duty to actively protect Māori interests

208. A change to timeframes for discharge or water take consents may impact on the ability of tangata whenua to exercise tino rangatiratanga on their land, and to actively use resources. Constraining timeframes reduces the amount of time that Māori customary rights holders, Post-Settlement Governance Entities (PSGEs), and tangata whenua can engage in the process, impacting consultation and the ability to discuss how proposals impact their interests.

## Overall Assessment of Options

Note that Option 2 and Option 3 in the table below are high-level and broad assessments and do not reflect the nuance of the sub-options discussed above. For a more detailed assessment of the sub-options, refer to the Option 2 and Option 3 assessment tables above.

| | **Option Zero – [*Status Quo / Counterfactual*]** | **Option One – general changes to make consenting process faster** | **Option Two – renewable energy consents processed within one-year** | **Option Three – renewable energy consents and wood processing facility consents processed within one-year** |
|---|---|---|---|---|
| **Effectiveness** | 0 | ++<br>Proposal targets aspects of the consenting process that evidence and engagement show cause delays to consent timeframes. Provides benefits across all types of consents. Likely to help renewable energy and wood processing facility consents be processed faster. However, this option does not require these consents to be processed within one-year and does not direct council to prioritise consents in these areas. This will also reduce the risk of councils delaying other consents such as large-scale housing/subdivision consents or other infrastructure related consents that are not renewable energy. | 0<br>Addresses the high-level one-year objective although there are likely to be extensions. Provides relatively limited alterations to the status quo consenting system. In some cases, it may lead to more consents being declined rather than consented faster due to time restriction. | +<br>Addresses the high-level one-year objective although there are likely to be extensions. Meets additional objective of one-year processing of consents for wood processing facilities.<br>Provides relatively limited alterations to the status quo consenting system. In some cases, it may lead to more consents being declined rather than consented faster due to time restriction.<br>The additional activity-based approach for consenting through primary legislation may have an impact on the overall effectiveness of the RM reform objectives, including safeguarding the environment and improving regulatory quality |
| **Efficiency** | 0 | +<br>There will be efficiency gains (time and cost) for applicants and councils with information requirements limited to be more proportionate and focused on the information necessary to determine the application. Councils will also not be required to hold a hearing if requested where there is sufficient information increasing efficiency. The option involves amendments to existing council and applicant powers and the regulatory burden is proportionate to the consent process efficiencies. | +<br>May increase efficiency for applicants for some consents. May cause more burden for applicants and councils when consents are more complex, contentious or of larger scale although possibility of extending timeframe mitigates this. Does not provide significant change from status quo. | +<br>May increase efficiency for applicants for some consents. May cause more burden for applicants and councils when consents are more complex, contentious or of larger scale although possibility of extending timeframe mitigates this. Primary change from status quo is having specific timeframes for renewable energy and wood processing consents. |
| **Certainty** | 0 | +<br>This option will provide more clarity to councils and applicants on consent information requirements and when some existing powers should be appropriate utilised during consent processing. It, however, won't provide certainty that renewable energy and wood processing facility projects will be consented within one-year. | +<br>Strict one-year timeframe provides greater certainty for renewable energy activities. However, the ability for timeframes to be extended by applicant, tangata whenua, iwi authorities and takutai moana groups does reduce certainty of meeting the one-year target in all cases. | +<br>Strict one-year timeframe provides greater certainty for renewable energy activities and wood processing activities.<br>However, enabling timeframes to be extended by applicant, tangata whenua or PSGEs lessens certainty. |
| **Durability & Flexibility** | | + +<br>Taking a systems-wide approach will limit the fragmentation of the resource management, therefore creating a more durable system and avoiding future RMA amendments to enable prioritisation of other types of consents. The option targets aspects of the consenting process which can lead to consenting delays but does not create a strict one-year limit | -<br>More restrictive than status quo, as there may be more pressure on councils to issue timely decisions and pressure on applicants to engage early and lodge complete applications to reduce risk of further information requests. | - -<br>More restrictive than status quo, as there may be more pressure on councils to issue timely decisions and pressure on applicants to engage early and issue complete applications to reduce risk of further information requests. |

| | | | | |
|---|---|---|---|---|
| | | therefore providing flexibility to councils and applicants for consent processes to take longer than one-year where this is necessary or desirable (eg, to establish or retain a social license by better consultation with communities).. | This activity-based approach misaligns with the primary intent of the RMA where planning instruments direct how activities are considered and assessed. | In this option, there are two activities with consenting requirements within one calendar year. This activity-based approach misaligns with the primary intent of the RMA which provide for integrated management approach. Activity based approach is not prescribed in the RMA, and national direction and plans play a key role in this. |
| **Implementation Risk** | 0 | + The suite of changes are amendments to when councils or applicants can use certain powers during the consenting process. These changes could be implemented immediately following enactment. Clear drafting/guidance would help ensure the changes are implemented as intended and avoid differing interpretations (eg, of what is 'proportionate'). Enabling councils to return applications in some circumstances would provide for more accurate data collection on consent processing and therefore more effective policy development. | - Timeframe restriction will likely have wider ramifications with the RMA and may require additional resourcing and guidance for implementation at the local level. | - Timeframe restriction will likely have wider ramifications with the RMA and may require additional resourcing and guidance for implementation at the local level – particularly with specific consent processing timeframes for both **renewable energy consents and wood processing facility consents.** Definition of wood processing consent will need to be developed, and there is a risk of applicants using this definition for other activities if not defined well. This risk can be mitigated through a sufficiently robust and clear definition of a wood processing consent. |
| **Overall assessment** | 0 | **+ +** | **+** | **0** |

### *Overall Assessment*

209. Option 1 is the preferred option as it:

    a. targets key parts of the consenting process that evidence and engagement suggest cause delays

    b. provides benefits to consent processing for all consent types

    c. avoids further fragmentation of the resource management system that would occur under an approach which only applies to specific consent types

    d. avoids increasing the likelihood of consents being declined after the one-year mark if councils do not have sufficient information or are not satisfied a consent can be granted,

    e. provides more flexibility for councils and applicants for consent processes to take longer than one-year where this is desirable (eg, to help the applicant create a social license with the community)

    f. alternative consenting processes are already provided for projects that are complex or significant, including the fast-track process.

210. Option 1 would help support the objectives of Option 2 or 3 and increase the percentage of renewable energy consents and wood processing facility consents decided within one-year without the associated risks of these options. It would provide greater flexibility for councils and applicants; however, this is at the expense of certainty trade-offs for applicants. Option 1 and option 2 or 3 are not mutually exclusive and could be progressed together as a package of changes to speed up consenting processes.

211. The evidence indicates that there are system-wide issues with delays in consenting processes, and most renewable energy consents and wood processing consents are processed within one-year.

212. Increases in consenting timeframes and costs, including the use of further information requests, may have been driven by increased environmental and climate challenges. These challenges mean applicants need to provide more information, including expert advice, or the council requires more time to assess whether a proposal meets the planning outcomes in the planning instruments (including national direction) and the legislation.

213. A multi-faceted approach of both primary legislative amendments are other changes is likely to be most effective in speeding up consent processing. Other changes would include direction or guidance to councils through national direction or non-statutory guidance and providing more support to councils in high demand consent application areas

## Cost/Benefit Analysis is for Option 1 – where this is the preferred option and has the highest qualitative judgement

| **Affected groups**<br>*(identify)* | **Comment**<br>*nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.* | **Impact**<br>*$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.* | **Evidence Certainty**<br>*High, medium, or low, and explain reasoning in comment column.* |
|---|---|---|---|
| **Additional costs of the preferred option compared to taking no action** | | | |
| Consent applicants | Applicants may have their consent applications returned to them in situations where they are intending to re-engage but have not done so. This may incur additional costs filing a new application. | Low – councils are unlikely to return an application in situations where the applicant wishes to progress the application, as there will be a requirement to information/engage before returning. | Medium |
| Councils | Councils would likely be required to provide additional justification/rationale of how further information meet requirements, increasing council time and costs on consent processing.<br>May require additional council resources to work through what information is proportionate and introduce a process so applicants may request to review draft conditions of consent.<br>Councils may also experience resistance from applicants who consider the information requested is not proportionate or wish to be heard where the council considers there is already sufficient information to make a decision. | Medium – councils should be able to make these assessments based on their planning instruments and also practice (i.e. consents that have been previously issued or are being assessed), however increased justification/documentation will likely be required for each further information request.<br>Councils are already receiving similar requests from applicants, particularly to review draft conditions. They are using other provisions to allow for this to occur (i.e. s37 time extensions, agreed to by the applicant). The proposal will provide more legitimacy for councils to enable this practice and may increase its frequency. | Low – difficult to quantify how much more council resource will be required for these matters, and how this is balanced out by benefits of the proposals for resourcing. |
| Treaty Partners and iwi, hapū/Māori | Treaty partners may be unable to be heard in respect of an application where the council considers there is sufficient information to make a robust decision. | Low – there will be requirements for councils to ensure this is consistent with any relevant agreements with treaty partners/ tangata whenua / iwi/hapū/Māori. | Low |
| ‘Affected persons’ and general community | Under the RMA, councils may notify or not notify an application. If there is discernible impact on a person, this person would be known as an ‘affected person’ and they may be invited to submit. However, under this proposal they may not be heard (even if they request to be heard) if councils consider there’s sufficient information to make decision. | Low – councils would need to be satisfied they have enough information to make a decision. If ‘affected persons’ submit they will still have a right to object to the decision/appeal. | |
| Central government | MfE will need to produce non-statutory guidance and support councils. This may also require updates to information collected through the national monitoring system. | Low – this will form part of the business in system stewardship and management. | |
| **Total monetised costs** | There could be some cost for councils to update their forms and system. | No direct cost | Medium |
| **Non-monetised costs** | | Low | Medium |
| **Additional benefits of the preferred option compared to taking no action** | | | |
| Consent applicants | Changes to the information requirements will help to reduce costs (both time and monetary costs) for applicants. | Medium – applicants only need to provide information that is proportionate to the scale and significance of the proposal, and this will benefit smaller scale projects. Any further information request from councils will also need to be targeted. | Medium – NMS data and engagement shows that information requirements are one of the most common reasons for consent processing delays which have associated costs. |

| | | | |
|---|---|---|---|
| Councils | Reduced council resources required to monitor stagnant applications where applicant has disengaged and to hold a hearing where there is already sufficient information to make a robust decision. | Medium – this will provide a clearer understanding of the consent processing information collated by MfE. | Medium – this has been raised in engagement and councils have requested this change. |
| Treaty Partners, iwi/hapū, Māori | Treaty partners applying for consents will experience similar benefits to consent applicants listed above.<br>Should they be engaged by applicants (for written approvals or information), they will have more certainty on prioritisation should they be informed whether applications are 'abandoned' or officially returned. | Low to medium | Low – the experience will differ depending on whether they are consent applicants or 'affected persons'. |
| 'Affected persons' and general community | Affected persons or community would not have to wait for a long period of time and become disengaged. | Low to medium<br>This is subject to the extent of the impact, and not everyone is directly impacted by a consent proposal. | Low – anecdotal. |
| Central government | Currently, there is some understanding about the key reasons for consent delays. Most of these issues may be resolved through stronger planning instruments (i.e. national direction or plans). However, to understand this further, MfE may wish to collect additional data and monitor the proposed changes. The findings will support system stewardship and analysis for what future national direction should contain. | Low<br>Additional information could be collected – particularly on who initiates the suspension/delay. This information, if further evaluated, will benefit future policy development, particularly national direction | Low – this is reliant on whether there will be additional monitoring on the change. |
| **Total monetised benefits** | Not applicable | Nil | Nil |
| **Non-monetised benefits** | | Medium | Low to Medium |

Pages 45-102 of this document have been withheld under s9(2)(g)(i)

Document 8

Regulatory Impact Statement: Consenting I, Enable council to cost recover for activities directed by national direction

# Regulatory Impact Statement: RM Bill 2 Consenting – enable council to cost recover for activities directed by national direction

## Coversheet

| | |
|---|---|
| **Proposal** | **Description**<br>Amend section 36 (administrative charges) to enable local authorities to recover reasonable and fair costs from the consent holder when reviewing conditions on existing resource consents as directed or enabled by a review clause in a National Environmental Standard (NES) or the National Planning Standards. |
| **Relevant legislation** | The key section is s 36 of the Resource Management Act 1991.<br>This section enables local authorities to recover costs and from time to time, fix charges payable for their resource management functions. Section 36(1)(cb) relates directly to consent reviews.<br>*Other sections:* ss 43(1)(f), 58C(2)(d), 128(1)(ba). |
| **Policy lead** | Nicholas Sanders, Ministry for the Environment. |
| **Source of proposal** | On 1 July 2024, Cabinet made decisions to proceed with targeted RMA amendments. This included agreement to *enable cost recovery for councils when reviewing consent conditions directed by national direction.* This will achieve the resource management reform objective of improving regulatory quality. |
| **Linkages with other proposals** | This proposal is part of the wider package of amendments to resource consenting under Resource Management Amendment Bill No.2 (RM Bill 2). This proposal also supports the Government's priority to improve regulatory quality. |
| **Limitations and constraints on analysis** | Policy development for RM Bill 2 has taken place under limitations and constraints which have impacted the quality of analysis provided in the RIS. This has impacted the availability of evidence to assess these proposals and has limited the scope and complexity of the amendments proposed to address the problem. These limitations and constraints include:<br><br><u>Engagement</u><br>• Time and capacity to engage with external parties on the proposal has been limited.<br>• Material from a different policy process has been drawn upon to inform why change is required.<br><br><u>Data and evidence</u> |

| | |
|---|---|
| | • Evidence on the actual cost of consent review is limited as many of the costs are waived by Councils.<br>• Understanding of the issue is limited. |
| **Responsible Manager** | Liz Moncrieff – Urban and Infrastructure Policy, Ministry for the Environment |
| **Quality Assurance: Impact Analysis** | Department of Internal Affairs have reviewed the above Regulatory Impact Analysis in accordance with the quality assurance criteria. The QA statement from this joint panel can be found below:<br><br>*"The panel considers the impact analysis undertaken for this RM Bill 2 consenting proposal **partially meets** the Quality Assurance criteria.*<br><br>*This has been prepared for the RM Bill 2 consenting proposals under extremely tight time constraints. The limitations and constraints have been clearly outlined, but this has impacted on the scope of the analysis and supporting evidence. A qualitative description has been provided of the costs and benefits which have not been quantified due to data and time limitations.*<br><br>*There has been limited consultation and some stakeholder concerns have not been addressed. For example, stakeholders' differing views regarding the proposed option for streamlining changes of consent conditions processes for marine aquaculture remain unresolved.*<br><br>*The panel considers that further consultation in the near future could help to mitigate the implementation risks associated with these proposals."* |

## Problem

1. Local authorities are responsible for the implementation of the RMA and national direction, and to promote the sustainable management of natural and physical resources. Councils can generally recover costs from system users for this implementation, particularly for processing or reviewing resource consent conditions at the request of the applicant or as provided for by section 128 of the RMA, which does not include when a review of conditions is enabled or directed by a national direction instrument.

2. National direction instruments include national policy statements, national environmental standards (NES), national planning standards and section 360 regulations prepared by central government under the RMA. They can cover a broad range of topics or domains and provide direction to RMA users and local authorities on government policy and are used where there are benefits of national or regional consistency, or to support local authorities to achieve the purpose of the Act. This direction is incorporated into local authority planning instruments.

3. The RMA enables NES and national planning standards to contain rules to direct or enable regional councils to review the conditions of a coastal, water, or discharge permit, or a land use consent required under a regional rule (eg, vegetation clearance or activities on the bed of a river).[1] The purpose of reviewing consent conditions is to bring older resource consents up to new performance standards. The RMA does not enable local authorities to cost recover for any review of consent conditions directed (ie, mandatory review) or enabled (ie, optional review) by an NES or the national planning standards. This is a technical gap in the RMA. The inability to cost recover in this instance imposes additional costs on the council (passed on to the community via rates charges) and acts as a disincentive to councils from undertaking condition reviews, when enabled by an NES or the national planning standards.

4. The RMA *does not* enable NES or national planning standards to be developed that can enable territorial authorities to review land use or subdivision consent conditions granted under a district rule. The RMA through s43A(1)(f) (NESs) and s58C(2)(d) (National Planning Standards) restricts this form of rule setting, as well as the need to preserve existing use rights under s10. [2] Therefore, this has not posed a technical gap in the system.

### *Evidence of problem*

5. The Ministry has not undertaken consultation on this proposal but have been made aware of the technical gap through the submissions raised for Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill (Marine Farms Bill). This gap has not been addressed in recent years as existing national direction instruments

[1] Sections 43A(1)(f), 58C(2)(d) and 128(1), RMA.

[2] To note, s10 protects certain existing uses in relation to land, immunising the resource consent from review. s10(4) clarifies that s10 does not apply to regional control of certain land uses (s30(1)(c)), the coastal marine area or certain river and lakebed controls.

have tended not to apply rules to direct or enable reviews on conditions to be undertaken by councils. However, directing or enabling review of conditions of consent may become more common in national direction in the future, including as part of the Phase 2 RMA reform work programme. Closing this gap will also enable conditions of existing, often older consents, to meet new national standards over time.

6. This is particularly relevant to the marine aquaculture sector, because the Marine Farms Bill proposes to include a review of the conditions of consents extended in duration. Officials have considered the submissions raised through the Bill. Despite the Bill having a different purpose and intent (ie, provide greater certainty for marine farmers),[3] the submissions provide a good insight into the lack of ability to cost recover from a review process.

7. The Marine Farms Bill provides for a limited one-time review of the conditions of consent extended under the Bill but does not provide for council cost recovery. Councils and stakeholders[4] raised concerns about the lack of cost recovery for the proposed review clauses under the Marine Farms Bill because it transfers the cost of doing business from private individuals / businesses to councils.[5]

8. Submissions on the Marine Farms Bill also suggested that this technical gap has the potential to limit the effectiveness of national direction if councils are disincentivised or cost prohibited from carrying out reviews to update old consents to new conditions where this is enabled by a national direction but is not mandatory.[6]

9. Waikato Regional Council submitted:

> *Providing a cost recovery mechanism will limit any undue transfer of costs to ratepayers for activities that are normally covered by consent applicants. This way the applicant will have a greater incentive to work with councils to ensure consent conditions are updated to address issues (e.g. biosecurity) that have emerged since the last consent conditions review.*

10. Under current settings, councils may only choose to apply the new conditions to an activity when a replacement consent is applied for, rather than during the term of the original consent, because it is only then that the council can cost recover. This could delay improving activity operations, or the state of the environment in a timely manner. On the other hand, cost recovery could incentivise consent applicants to work more collaboratively with regional councils for mutual benefit.

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[3] The Bill was reported back on 19 July, and they have decided to progress without cost recovery given the Bill has a clear purpose to increase certainty for marine farmers.

[4] Regional councils, Taituara Local Government Professionals, Resource Management Law Association and the New Zealand Planning Institute.

[5] Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill, Departmental Report for the Primary Production Select Committee (July 2024) p.11, 23-24. 51132464588d673f69d60e059bf6ca8592ab7037 (www.parliament.nz)

[6] Ibid. p.23

11. Without amending the RMA, any cost incurred by the council for consent condition reviews falls onto the ratepayer or community in general. The cost of consent reviews varies considerably. Based on the National Monitoring System (NMS) data 2022/2023, 48 council led reviews were undertaken which most closely approximate consent condition reviews by national direction.[7] The majority (45) of charges were waived, and the average charge for the remaining three consent reviews were $1,500.[8]

12. Amending the technical gap will likely incentivise councils to undertake reviews once conditions within an NES or the national planning standards have been developed, including for the Marine Farms Bill. This will support national consistency and provide consent holders with streamlined conditions and update old consents with new conditions common to all relevant consent holders.

13. In general, the ability for councils to cost recover for consent reviews enabled through national direction has multiple benefits, including the application of the users pay principle (non-beneficiaries are not obligated to pay for the use of the system).

## Objectives

14. Cabinet have agreed to the following high-level objectives:

- Unlocking development capacity for housing and business growth
- Enabling delivery of high-quality infrastructure for the future
- Enabling primary sector growth and development (including aquaculture, forestry, pastoral, horticulture, and mining)

*While also:*

- Safeguarding the environment and human health
- Adapting to the effects of climate change and reducing the risks from natural hazards
- Improving regulatory quality in the resource management system
- Upholding Treaty of Waitangi obligations, settlements and other arrangements.

The objective of this policy proposal is primarily focused on improving regulatory quality in the resource management system.

### *Assessment Criteria*

15. The assessment criteria used to evaluate all proposals are:

[7] s 128, RMA.

[8] National Monitoring System dataset 2022/23, Ministry for the Environment.

| Criteria | Explanation |
|---|---|
| **Effectiveness** | Extent to which the proposal contributes to the attainment of the relevant high-level objectives, including upholding Treaty Settlements. The proposal should deliver net benefits. Any trade-offs between the objectives should be factored into the assessment of the proposal's overall effectiveness. |
| **Efficiency** | Extent to which the proposal achieves the intended outcomes/objectives for the lowest cost burden to regulated parties, the regulator and, where appropriate, the courts. The regulatory burden (cost) is proportionate to the anticipated benefits. |
| **Certainty** | Extent to which the proposal ensures regulated parties have certainty about their legal obligations and the regulatory system provides predictability over time. Legislative requirements are clear and able to be applied consistently and fairly by regulators. All participants in the regulatory system understand their roles, responsibilities and legal obligations. |
| **Durability & Flexibility** | Extent to which the proposal enables the regulatory system to evolve in response to changing circumstances or new information on the regulatory system's performance, resulting in a durable system. Regulated parties have the flexibility to adopt efficient and innovative approaches to meeting their regulatory obligations. (NB: A regulatory system is flexible if the underlying regulatory approach is principles or performance based). |
| **Implementation Risk** | Extent to which the proposal presents implementation risks that are low or within acceptable parameters (e.g. Is the proposal a new or novel solution or is it a tried and tested approach that has been successfully applied elsewhere?). Extent to which the proposal can be successfully implemented within reasonable timeframes. |

## Options

16. The following options have been considered by the Ministry for the Environment (MfE) to address the problem.

    a. **Option 1:** Status quo – *retain the current provisions of section 36 of the RMA.*

        i. No changes to section 36, which sets out the cost recovery provisions for councils. The RMA does not currently enable local authorities to recover the reasonable and fair costs incurred for reviewing consent conditions to implement a national direction.

        ii. Local authorities continue to be unable to recover cost of reviewing consent conditions to implement a national direction.

b. **Option 2:** (MfE preferred option): *Amend the RMA to enable regional councils (including unitary councils) to cost recover the reviews of consent conditions that are directed or enabled by a review clause in an NES or the National Planning Standards.*

i. Amend the RMA to enable regional councils to fix administrative charges for reviewing resource consent conditions by direction of a NES or the National Planning Standards, which would be payable by the consent holder.

ii. The consent holder will be required to pay the administrative charge to the regional council for their services in reviewing and updating the consent to new conditions, unless it is waived.

iii. The Option exclusively applies to regional councils and applies only to resource consents required by a regional rule. This would include water, coastal and discharge permits, and land-use consents granted under a regional rule. Examples of land-use consents granted by regional councils could include soil disturbance, vegetation clearance or activities on the bed of a lake or river (ie, dam).

iv. This Option will *not* apply to land use or subdivision consents granted under district plan rules, issued by territorial authorities. This is because the RMA only allows condition reviews for permits/consents granted under regional rules.[9] There is a general expectation that a land use consent under a district rule, without a review condition will not be subject to a review.[10] The RMA through s43A(1)(f) (NESs) and s58C(2)(d) (National Planning Standards) restricts this form of rule setting, as well as the need to preserve existing use rights under s10. Since consents issued by territorial authorities are immunised from review, cost recovery changes for territorial authorities are not required.

## How do the options compare to the status quo/counterfactual?

| **Key for qualitative judgements:** | |
|---|---|
| ++ | much better than doing nothing/the status quo/counterfactual |
| + | better than doing nothing/the status quo/counterfactual |
| 0 | about the same as doing nothing/the status quo/counterfactual |
| - | worse than doing nothing/the status quo/counterfactual |
| - - | much worse than doing nothing/the status quo/counterfactual |

[9] Section 128(1), RMA.

[10] Resource Legislation Amendment Bill 2015 Departmental Report No.2.

| | **Option 1: Status quo –** *retain s 36* | **Option 2:** *Amend the RMA to enable regional councils to cost recover for consent reviews enabled by a NES or the National Planning Standards.* |
|---|---|---|
| **Effectiveness** | 0 | **++**<br>Broad application – no specific activity or national direction.<br><br>Will achieve object to enable cost recovery on consent reviews enabled by national direction as well as improve regulatory quality in the system.<br><br>Re-balances the financial burden currently placed on local authorities and their ratepayers for new and existing national direction requiring the review of consent conditions.<br><br>Regional councils are more likely to undertake consent reviews and update the consent to NES model conditions when there is an incentive to cost recover. |
| **Efficiency** | 0 | **+**<br>Provides for more efficient process if regional council can adequately recover costs and subsequently, can better resource implementation.<br><br>Minimises cost burden on the regulator (council). |
| **Certainty** | 0 | **+**<br>Provides regional councils greater certainty they can recover the costs of reviewing consent conditions enabled by national direction.<br><br>This may increase cost for existing consent holders if cost recovery is enabled and new national directions are further established that have review clauses. However, this is consistent with cost recovery for reviews under the RMA |
| **Durability & Flexibility** | 0 | **+**<br>*Enables* cost recovery rather than *requires* it, so councils can be flexible in their approach.<br>This is likely relevant in the future RM system. |
| **Implementation Risk** | 0 | **+**<br>Lower cost burden for local authorities to implement national direction. |
| **Overall assessment** | **0** | **+** |

### *Overall Assessment*

17. Option 2 is the preferred option as it would be better than the status quo and it supports the objectives for Bill 2, particularly in relation to improving regulatory quality, upholding Treaty settlements and safeguarding the natural environment. In the multi-criteria analysis, this proposal assessed highly for effectiveness.

18. Option 2 is better than doing nothing because economic and environmental benefits are conferred to regional councils by enabling adequate cost recovery. Regional councils and their communities specifically benefit from Option 2 because:

    a. The cost of carrying out consent reviews by national direction would be internalised by the resource user, and no longer passed onto the community via rates, enhancing community welfare. The application of the user pays principle also confers economic benefits such as allocative efficiency, because regional resource users are paying for the administrative costs of maintaining their rights to use, develop or extract, often commons resources. This has positive distributional effects and helps prevent situations such as the tragedy of the commons, or marginal distortions (ie, councils are punished financially for undertaking work that has marginal social benefits).

    b. If regional councils are incentivised to undertake more reviews because it can cost recover, it is more feasible that resource consents will be brought up to new conditions that meet a national standard, conferring environmental benefits such as applying new consent conditions that better mitigate adverse effects or improve the state of the environment.

19. Further, without intervention, consent holders may disproportionately benefit from absent charges on consent condition reviews in comparison to regional councils and other consent holders. It is expected that council services such as processing and reviewing resource consents will be cost recoverable so that plan implementation is a cost neutral exercise. Consent holders benefit from working with regional councils to reduce the risks associated with their activity (ie, environmental, commercial, cultural relationship risks), without bearing the full cost under the status quo. There are more costly methods to update consent conditions, such as re-consenting, so this Option is both effective in updating consents to new operating conditions while doing so at a relatively small charge for the consent holder (approximately $1,500). Option 2 provides the best relief for this issue and more equitable outcomes.

20. The status quo (Option 1) will insufficiently provide for an effective cost recovery framework that considers the costs and financial burden that national direction implementation can impose on councils.

21. The overall benefits of Option 2 are positive and will contribute to the objectives of providing for more effective cost recovery for local government resource management services and improving regulatory quality. It would be a lasting system improvement.
22. As an outcome of this intervention, officials anticipate that local authorities will be more incentivised to review the conditions of consents when enabled by national direction if regional councils can recover the reasonable and fair costs of their services.

23. Option 2 would support the Government policy objectives that will be delivered through the national direction package, which is part of Phase 2 reforms. An example is that the NES-Marine Aquaculture could be amended to allow for more effective conditions for existing consents (through consent review). Cost recovery will incentivise council uptake of those reviews, issue more relevant and effective conditions and improve the effectiveness of national direction.

## Cost/Benefit Analysis

*Key assumptions applied in this cost-benefit analysis:*

- That prices (including labour costs) will remain stable in the short to medium term
- New regulations in the future will continue to require regional councils to carry out consent reviews
- All regional councils provide equal value of services and fix administrative charges equally.

| **Affected groups** | **Comment**<br>*nature of cost or benefit* | **Impact**<br>*High, medium, low, None* | **Evidence Certainty**<br>*High, medium, low, None* |
|---|---|---|---|
| **Additional costs of the preferred option compared to taking no action** | | | |
| **Consent holders** | If a consent is reviewed, this is likely to be a one-off cost.<br>Charges payable by the consent holder largely reflect transactional costs.<br>Charges fixed for reasonable costs of processing review. Charges beyond fair and reasonable costs are not payable by the consent holder (ie, not a tax). | Medium. | Medium.<br>No current cost recovery mechanism for national direction implementation at consents level.<br>Average charge for s 128 council reviews is $1,500 if fee is not waived.[11] |
| **Regional councils** | Regional councils will need to update their fees and charges framework and publish this. Minor exercise.<br>Some information / data will need to be collected pursuant to section 35. | Low. | High.<br>Current statutory requirements under Local Government Act 2002 and RMA. |
| **Treaty Partners** | No direct impact on Treaty partners. | None | None |
| **Community and rate payers** | No additional cost | None | No evidence. |
| **Total non-monetised costs** | *One-off cost for consent holders.* | *Low.* | *Medium.* |

[11] National Monitoring System dataset 2022/23, Ministry for the Environment.

| Additional benefits of the preferred option compared to taking no action | | | |
|---|---|---|---|
| **Consent holders** | Consent holders paying for the reasonable and fair costs of their consents being reviewed is more equitable and economically efficient.<br>Holders legally can continue to undertake activities in accordance with their resource consent giving effect to national direction. | Medium. | High.<br>Aligns with good practice guidance principles from the Auditor-General (2021).[12] |
| **Regional councils** | Regional councils and ratepayers will benefit from adequate cost recovery.<br>Confers ongoing benefits each time a consent is reviewed.<br>Regional councils can recoup the costs for their services for updating consents. This confers savings for the ratepayer and community. | High. | Medium.<br>During development of Marine Farms Bill, SC heard directly from councils they are disincentivised from carrying out reviews without proper cost recovery in place. |
| **Treaty Partners** | Treaty partners are likely to experience and can expect better resource management functions from regional councils if cost recovery is improved.<br>Treaty partners will not be processing consents or be able to directly benefit from cost recovery improvements. | Low. | Medium.<br>No interactions with existing Treaty settlements or other arrangements. |
| **Community and rate payers** | Any cost to review consents required by national direction would not be imposed on rate payers but on those who are consent holders (i.e. using the resources)<br>Improved national direction effectiveness can support more efficient operations at the community level. | Medium | Low. |
| **Total non-monetised benefits** | *Ongoing benefits for local authorities and central government.*<br>*Overall net national benefits from proposal compared to status quo.* | *Medium.* | *Medium.* |

[12] Setting and administering fees and levies for cost recovery: Good practice guide. (*Controller and Auditor General*), August 2021. (Published under the authority of Public Audit Act 2001).

## Treaty implications

24. Iwi/hapū have not been consulted on the options for this proposal.

25. No impacts have been identified on existing Treaty settlements or arrangements.

26. The RMA is important to Māori because it affords recognition and protections that were established under the Treaty of Waitangi through New Zealand law. This proposal maintains the rights and protections for Māori within the RMA and seeks to improve the Act's administration. An improved administrative system has benefits for both Māori and the community.

27. Some iwi/hapū groups are also consent holders and would be required, like all other relevant consent holders, to have their consent reviewed when a national direction requires this. However, the process for regional councils to update their administrative charges is not an open process so it would not allow for iwi/hapū input into those decisions, nor is the consent review process notified to specific Māori groups, limiting Māori participation. However, future national directions seeking to include review clauses will likely be subject to extensive engagement with iwi/hapū and Māori.

28. Some iwi or hapū have agreements with their regional council where it has a role in the resource consent process, including providing written comment on reviews. This proposal does not amend the RMA to enable Māori to cost recover for their work and involvement in the process and may incur additional costs if regional councils are incentivised to carry out more reviews, and more reviews are undertaken with iwi and hapū involvement.

## Consultation

29. Affected groups (ie, consent holders and regional councils) have not been consulted on options for this proposal. However, the Ministry recognises council concerns about the lack of cost recovery provision for consent reviews.

30. Through submissions to the Primary Production Select Committee on Resource Management (Extended Duration of Coastal Permits for Marine Farms), officials were made aware of this gap in the cost recovery framework.[13] This was discussed earlier in this analysis.

## Implementation

31. Officials anticipate that this policy will be straightforward to implement by regional councils. RMA cost recovery is well-established, and this amendment provides a relatively small change, and councils will fix relevant fees using the relevant provisions under the RMA and Local Government Act 2002.

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[13] Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Bill, Departmental Report for the Primary Production Select Committee (July 2024) p.11, 23-24. 51132464588d673f69d60e059bf6ca8592ab7037 (www.parliament.nz)

32. Regional councils will need to make some administrative changes once this policy change is enacted, such as updating their fees and charges framework and publishing this. This can be included in their routine reviews of fees and charges for their other services (including but not limited to RMA related charges).

33. This amendment to the RMA can take immediate legal effect but will require over time new consent conditions framework to be developed in national direction (such as the NES-MA) to take full effect in resource consents.

34. The Ministry was unable to carry out engagement with regional councils or consent holders on this proposal and have been unable to undertake a full analysis on the implementation risks. The key risk associated with this proposal is that administrative charges set by territorial authorities will be variable across each region and also for each consent. As there has been no engagement with consent holders on this proposal, there is a risk of challenges to regulatory compliance if there is a perception that this cost recovery method is unfair or disproportionate. However, officials consider this risk to be *low* and will be mitigated by the engagement undertaken by central government when developing a NES or the national planning standards, including proposing a new review clause .

## Monitoring

35. There is some data collected on cost recovery under the NMS such as charges for resource consent applications and s 128 reviews. Future NMS surveys may need to be updated to capture cost recovery for consent reviews enabled by national direction upon its enactment.