Ministry for the Environment
Manatū Mō Te Taiao

PROACTIVE RELEASE COVERSHEET

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		
Date	***Title***	***Author***
20-Sep-24	Regulatory Impact Statement: Consenting II package	Ministry for the Environment Ministry for Business, Innovation and Employment Ministry for Primary Industries Ministry of Transport

Information redacted **NO**

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.

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Appendix 1 – Quality Assurance Statements and Impact Statements

Regulatory Impact Statements

1. We have prepared three Regulatory Impact Statements (RISs) to meet Ministry for Regulations requirements. They are:
    a. Providing more certainty on consent durations for renewable energy and certain long-lived infrastructure, and lapse periods for renewable energy (page 1 to 42)
    b. Providing more certainty on consent durations for wood processing facilities (page 43 to 64)
    c. Managing discharges under s 70 of the Resource Management Act (page 65 to 99)

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

Providing more certainty on consent durations for renewable energy and certain long-lived infrastructure, and lapse periods for renewable energy

3. *"This Regulatory Impact Statement (RIS) has been reviewed by a panel of representatives from Ministry of Business, Innovation and Employment Hīkina Whakatutuki, Ministry for Primary Industries Manatū Ahu Matua, and Ministry for the Environment Manatū Mō Te Taiao. It has been given a 'partial meets' rating against the quality assurance criteria for the purpose of informing Cabinet decisions.*

   The panel notes that the RIS sets out well the context and the options within the limitations. However, constraints imposed by the policy development process (ie the limited time available to undertake the analysis and the inability to conduct consultation with affected groups) have meant that the criteria cannot be fully met. In some cases, the evidence base is missing on which to form a clear understanding of the policy problem, and its causes, which limits the analysis of options to address them."

Providing more certainty on consent durations for wood processing facilities

4. *"This Regulatory Impact Statement (RIS) has been reviewed by a panel of representatives from Ministry of Business, Innovation and Employment Hīkina Whakatutuki, Ministry for Primary Industries Manatū Ahu Matua and Ministry for the Environment Manatū Mō Te Taiao. It has been given a 'partial meets' rating against the quality assurance criteria for the purpose of informing Cabinet decisions.*

   The panel notes that the RIS sets out well the context, objectives and the problem definition within the limitations. However, constraints imposed by the policy development process (ie the limited time available to undertake the analysis and the inability to conduct consultation with impacted groups) have meant that the criteria cannot be fully met. In

some cases, the evidence base is missing on which to form a clear understanding of the policy problem, its causes, and the options available to address them.

Managing discharges under s 70 of the Resource Management Act

5. *"The Ministry for Primary Industries Regulatory Impact Analysis (RIA) Panel has reviewed the 'Managing discharges under s70 of the Resource Management Act' regulatory impact statement (RIS) and considers that it fully meets the RIA quality assurance criteria. It clearly sets out the uncertainty created by recent court decisions, and the risks if this uncertainty is not proactively managed while acknowledging it is difficult to calculate the potential impact if councils' concerns were realised. While specific consultation has not been undertaken, the Ministry for the Environment has engaged with councils on the concerns created by the potential implications of recent court cases."*

Climate Implications Policy Assessments

Providing more certainty on consent durations for renewable energy and certain long-lived infrastructure, and lapse periods for renewable energy

Providing more certainty on consent durations for wood processing facilities

6. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that CIPA requirements do apply to this proposal, as it is likely to have a significant emissions impact. Further comments can be found below:

    - It is not possible to accurately quantify the emissions impact of this proposal at this stage due to its high-level nature.
    - This proposal aims to extend the duration and lapse periods of consents for renewable energy schemes, and provide additional consent certainty for certain long-lived infrastructure projects, and wood processing facilities. The intent is to reduce regulatory barriers to the deployment of these types of projects.
    - This proposal aligns with the Government's broader priorities of increasing capacity for renewable energy and supporting forestry development.

Managing discharges under s 70 of the Resource Management Act

7. The CIPA team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Regulatory Impact Statement: RM Bill 2 consenting – providing more certainty on consent durations for renewable energy and certain long-lived infrastructure, and lapse periods for renewable energy

Coversheet

Proposal
 	
Increasing consent durations for renewable energy generation and other long-lived infrastructure, and increasing lapse periods for renewable energy generation
	Description
	
	The proposal is to amend the Resource Management Act 1991 (RMA):
	• to enable 35-year default consent durations for the following activities:
	  ○ renewable energy generation, transmission and distribution (renewable energy consents)
	  ○ certain long-lived infrastructure
	• so that the minimum lapse time to give effect to a renewable energy consent is 10 years or longer

Relevant legislation	Sections 123 to 126 of the RMA
Policy lead	Oliver Rathmill and Chyi Sim, RMA Amendment Policy and Legislation (Ministry for the Environment (MfE)) Ashleigh Richards, Infrastructure and Growth (MfE) Nick Gillard, Industrial Use Policy (Ministry of Business, Innovation and Employment (MBIE)) Oscar Casswell-Laird and Rebecca Beals, Ministry of Transport (MOT)
Source of proposal	The proposals are to implement Cabinet decisions (ECO-24-MIN-0113 and ECO-24-MIN-0065 refers). The relevant proposals in this Regulatory Impact Statement (RIS) are to amend the RMA so renewable energy consents and certain long-lived infrastructure have a default duration of 35 years, and amend the default lapse period for relevant renewable energy from 5 to 10 years.[1] This document also provides an analysis for wood processing facility to have default consent duration (minimum of 20 years). This was not part of any Cabinet decision but will be considered for inclusion once further decisions are made.
Linkages with other proposals	There are various other consenting amendments proposed for Resource Management Amendment Bill 2 (RM Bill 2) relating to more efficient consenting processes, council decision-making,

	and lapse periods that are not part of this RIS. Together these amendments are intended to achieve improved consenting outcomes for system-users. 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. The consenting proposals related to renewable energy generation and wood processing facilities are linked to those considered in the *Regulatory Impact Statement: RM Bill 2 consenting – improving consent processing efficiency.* The overall package of decisions on renewable energy generation in RM Bill 2 proposals give effect to the Government's Electrify NZ commitments.
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: **Overall** *Pace of reform* The Government has agreed to make this policy change, alongside other targeted amendments to the RMA and national direction, through a bill which will be enacted by the end of the year. This timeframe limits the identification of options, level of analysis, collation and review of evidence, and engagement with industry, councils, iwi, hapū and Māori, and other stakeholders. It also influences the options analysis in favour of options which align most closely with Government coalition commitments. *Outstanding decisions* This RIS was developed when several decisions from Government were still to be made. These include the Government's direction on freshwater and the inclusion of wood processing projects. **Renewable energy generation** *Engagement*

	Targeted engagement was carried out with industry in early 2024 on early iterations of this proposal. This took the form of two workshops led by MfE and MBIE with industry stakeholders, and targeted consultation was undertaken with local government groups, planners, lawyers, and key stakeholders. No additional engagement was carried out on this proposal, which is in part due to limited timeframes to deliver RM Bill 2. *Data and evidence* Evidence that the current 35-year maximum consent duration is restricting renewable electricity generation developments' life is mostly anecdotal, Evidence shows that many time-limited consents are granted for 35-year duration.
Responsible Manager	Liz Moncrieff, General Manager, Urban and Infrastructure Policy, MfE
Quality Assurance: Impact Analysis	This Regulatory Impact Statement (RIS) has been reviewed by a panel of representatives from Ministry of Business, Innovation and Employment Hīkina Whakatutuki, Ministry for Primary Industries Manatū Ahu Matua, and Ministry for the Environment Manatū Mō Te Taiao. It has been given a 'partial meets' rating against the quality assurance criteria for the purpose of informing Cabinet decisions. The panel notes that the RIS sets out well the context and the options within the limitations. However, constraints imposed by the policy development process (ie the limited time available to undertake the analysis and the inability to conduct consultation with affected groups) have meant that the criteria cannot be fully met. In some cases, the evidence base is missing on which to form a clear understanding of the policy problem, and its causes, which limits the analysis of options to address them.

Increasing consent durations and lapse periods for certain activities in Resource Management Amendment Bill 2

Proposals

1. This document analyses proposals to amend Resource Management Act 1991 (RMA) provisions to increase the duration and lapse periods of consents for renewable energy generation, transmission and distribution (renewable energy consents), certain long-lived infrastructure and wood processing facilities.

2. These proposals 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 Resource Management Reform (RM Reform). Other RM Bill 2 consenting proposals include amendments to council decision-making and to consenting processes.

3. Changes relating to renewable energy consents are complemented by amendments being progressed through the national direction programme – particularly to the National Policy Statements on Renewable Electricity Generation and Electricity Transmission. RM Bill 2 and the national direction programme are complementary workstreams intended to be delivered by mid-2025.

4. The proposals will implement Cabinet decisions (ECO-24-MIN-0113 and ECO-24-MIN-0065 refers) to amend the RMA so renewable energy consents and other long-lived infrastructure have a default duration of 35 years and amend the default lapse period for relevant renewable energy from 5 to 10 years.[1]

5. There is an accompanying Regulatory Impact Statement (RIS) on the proposal for wood processing facilities to have a minimum of 20 years default consent duration. This has not yet been agreed by Cabinet but will be considered prior to introduction.

Objectives

Objectives of RM Bill 2

6. The overarching objectives for the RM Reform programme are to:

    a. make 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 reduce the risks from natural hazards, improving regulatory quality in the resource management system, and upholding Treaty of Waitangi settlements and other related arrangements.[1]

[1] The list and broad scope of policy decisions can be found in the Cabinet papers.

Alignment of the proposals with Government objectives and priorities

7. 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 consents align with the objectives to double renewable energy (Electrify NZ) to meet climate targets.

8. 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.

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. 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 and 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 (eg, 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.

Overarching Problem

10. Infrastructure (including renewable energy assets) are typically designed for longevity to amortise the high, up-front costs of construction over the long life of the asset. Shorter consent durations can create uncertainty for developers, and potentially hinder the timely deployment of renewable energy and other long-lived infrastructure.

11. The requirement to re-consent necessary activities within the operational lifetime of an asset can lead to both increased uncertainty regarding its ongoing viability and additional costs for infrastructure providers.

12. Renewable energy and long-lived infrastructure projects can have long lead times for investment and delivery of specialised components. The existing RMA lapse period timeframes can sometimes be too short to give effect to these projects.

13. These issues need to be considered within the broader context of New Zealand's significant, interconnected infrastructure challenges, including:[2]

    a. Infrastructure deficit

    b. Climate change adaptation and mitigation

    c. Population change

    d. Fiscal constraints

    e. Technological change

    f. Natural resource pressure.

14. Addressing these issues is anticipated to require a combination of increased investment, better use of existing infrastructure, and innovative solutions.[3]

Consent duration

General

15. Resource consents are required before undertaking an activity that is not permitted (or prohibited) by a planning instrument (including national direction and local council plans) and the RMA. There are five types of resource consents,[4] and the processing of consents is split between regional councils and city/district councils.[5] This is driven by how resources and land are managed under the RMA (Appendix 1).

16. Once a consent is issued, it authorises the use of a resource or land. In some cases, there will be an 'expiry' depending on the types of consent. Land use and subdivision consents are typically in perpetuity, and consents permitting the use of a resource have a default minimum time duration and a maximum duration of 35 years. There are a range of factors, including applicant's choice or discretion of the issuing council, that may mean consents have a duration that is less than the maximum duration. Section 123 sets out default minimum duration periods for different types of resource consent

[2] Te Waihanga and Sense Partners, 2021, New Zealand's Infrastructure Challenge – Final Report, Infrastructure Trends in New Zealand, 2023, KPMG and Infrastructure | The Treasury New Zealand.
[3] Rautaki Hanganga o Aotearoa is New Zealand's Infrastructure Strategy 2022-2052.
[4] Section 87, RMA.
[5] Note unitary councils have the functions of both regional and district/city councils.

(based on the kind of resources/use, and not activity specific). The RMA usually does not provide for an activity specific approach, given the RMA framework and the roles of planning instruments.

Time-limited consents are processed by councils with regional functions

17. Time-limited consents are primarily for resources that are 'public' and the 'commons', to reflect how resources are managed under the RMA (ie, land use consents are usually on private land and therefore are granted in perpetuity, unless stated otherwise (exceptions for the occupation rights of beds of lakes/rivers)).

18. All time limited consents are processed by regional councils (under section 13 land use consents, section 12 coastal permits (such as occupation of coastal marine area (includes aquaculture but excludes reclamation), section 14 water permits (water takes, damming, diversion of waterbodies).

19. Some consents are in the 'time-limited' category, as they are no longer needed once construction for an activity has been completed. No further replacement consents would be required. An example of this is diversion of waterbodies under section 14 of the RMA.

20. Land use consents/subdivision consents that are issued in perpetuity are by city/district councils. Regional councils also regulate land use activities, particularly for natural resource outcomes (ie, earthworks may result in silt and sediment run-off to stream and have impacts on biodiversity and freshwater quality).

Limited consent duration allows for re-evaluation of an activity as the environment or other circumstances change (including planning/strategic direction set out in a local or national direction instrument)

21. The primary rationale for the RMA time-limited consents is to allow for an assessment of whether the environmental effects of an activity are still acceptable as environment, technology and economic circumstances change.

22. For instance, shared expiry dates for common activities (eg, water takes) enable a strategic re-assessment of resource allocation in-line with the broader intent of planning instruments or priorities (eg, in a catchment where there are competing uses for water or reduced availability of water).

23. This process occurs near the end of the consent period and is one of councils' primary tools to manage the allocation of resources.

24. Councils can review conditions of consent in specific circumstances under section 128 of the RMA.[6] There are restrictions in the review process. Councils cannot review duration of consent and must ensure the relevant activity is still viable after the change. This recognises the need to provide consent holder certainty.

[6] We heard this anecdotally but noted this is observed in practice. Very few consent reviews are undertaken, given up to 40,000 consents (new) are issued each year. Section 128 of the RMA enables councils to review the consent conditions in certain circumstances to address specific significant adverse effects that might arise during the exercise of the consent. This provides decisionmakers with a level of flexibility to respond to a specific environmental issue or events but cannot be used to materially alter the consents nature during its duration.

The RMA does not provide for an activity specific approach as this is the role of planning instruments

25. An activity such a 'state-highway' is likely to trigger a range of consents, such as a land use consent for earthworks, discharge permit to discharge stormwater to land, water permit to divert a stream, or a land use consent for the bridges to occupy beds of river. Out of this bundle, not all consents would be time-limited or require replacement consents.

26. The duration of a consent is usually determined by the 'effects' of the activities and guided by the policy framework set out in relevant documents, including local planning instruments, national direction, and other relevant documents such as an iwi environmental management plan or infrastructure strategy.

27. The decision to issue a certain duration consent is informed by a range of factors, including: the type of activity and its effects (see also paragraph 48), the operative provisions of a local planning instrument, notification process for a consent, and mitigation measures (for effects management) proposed by an applicant.

28. Local planning instruments are developed through a robust process which includes public notification, hearings, expert advice/evaluations, and in some instances appeals to the Courts. During the development of these planning instruments, there are specific considerations and participatory requirements including iwi authority / tangata whenua consultation and/or consideration of iwi or hapū environmental management plans. This will influence the policy framework in a local planning instrument, which will consequently influence the consent decision, including its duration.

29. Some local planning instruments have developed policy frameworks which support the decision-making process on duration. This can include presumptions of duration for certain activities. For instance, Policy 15 of the Waikato Regional Plan is an example of how a natural resource (water) is managed over time. It outlines the council's approach on duration of consents to take surface and ground water to no longer than 15 years, other than certain activities including, but not limited to, domestic/municipal supply, electricity generation, pulp mills and so on.

30. Treaty settlement legislations also may include specific provisions to allow for certain groups to participate in plan development or consenting, which may influence the outcome of a policy or consent decisions relating to duration.

National direction can direct duration for consents for certain activities

31. National direction including national policy statements, national environmental standards and national planning standards can direct or provide policy frameworks for the issuance of duration of consent.[7]

32. This can be very directive, such as developing a rule to prescribe a default duration consent to be issued, or directly insert a policy or similar into a local planning instrument on 'presumption' of duration for certain time limited consents (similar to policy 15 of Waikato Regional Plan outlined above).

[7] Sections 43A, 45A and 58C RMA.

33. Existing national direction does not have directive policy on consent durations. However, the current review of national direction may provide direction to build on any changes in the primary legislation.

Consultation with local government groups

34. Through targeted consultation, local government groups[8] raised the following key themes on extending consent durations:

    a. case law already directs councils to provider the longest duration which is appropriate, and justification is required for shorter durations

    b. consent reviews are often fraught and shorter consent durations are therefore sometimes an easier option where appropriate

    c. changes to consent duration could be more effectively achieved through national direction

    d. it is important that any policies to extend consent duration only captures appropriate activities and avoids locking up resources that could otherwise be available.

There is a clause in the RMA which provides for an activity specific approach

35. Section 123A is an exception for aquaculture activities. This clause is an activity specific approach for when an aquaculture activity requires a coastal permit under section 13 of the RMA. Its approach differs from the section 123 RMA approach where it is 'silent' on what the 'default' is and sets out a range of minimum duration of 20 years to 35 years, and any reduction in duration of consent can only be provided for if:

    a. the applicant has requested a shorter period; or

    b. a shorter period is required to ensure that adverse effects on the environment are adequately managed; or

    c. a national environmental standard expressly allows a shorter period.

36. The above acknowledges the legislative architecture of the RMA which is driven by effects management and the role of national direction in setting duration of consent.

37. Section 123A was intended to incentivise marine farmers to invest in consent applications, and to recognise the significant initial investment needed (and length of time required to see returns for some species) for aquaculture activities.[9]

The scope of the options will focus on time-limited consents for certain activities

38. This part of the RIS is focussed on the 'time-limited' consents processed by councils with regional functions for renewable energy and certain long-lived infrastructure – that would require replacement during a project's operational and maintenance phase.

[8] This included conversations with a special interest group made up of consents managers, team leaders and principals from regional and unitary councils and a small group of council practitioners (with city/district council planning background).
[9] Aquaculture legislative reforms 2011 Guidance note 1 - Aquaculture planning and consent (mpi.govt.nz).

39. This is generally because land use consents are issued in perpetuity and consents required during construction do not require replacement once it is completed.

Challenges for renewable energy generation and long-lived infrastructure

What is renewable energy?

40. The RMA defines renewable energy as "energy produced from solar, wind, hydro, geothermal, biomass, tidal, wave, and ocean current sources" and this is generally understood. Renewable energy as an activity is embedded in planning instruments as they have implemented the existing national direction on renewable energy (and other associated national direction).

41. Wind, solar, hydro and geothermal are the most frequently used of these and the lifespan of these assets varies from 25-30 years for wind and solar, 30-40 years for geothermal, and over 100 years for hydro. At the end of these lifespans, assets can be renewed, and equipment upgraded to continue electricity generation.

42. In this document, the term renewable energy includes transmission and distribution infrastructure that is essential to connecting a renewable energy asset[10] to the grid. This ensures the policy proposals capture the full extent of the Electrify NZ manifesto.

What is long-lived infrastructure?

43. The RMA definition of infrastructure[11] is convoluted, and its definition refers to five other pieces of primary legislation.[12] Furthermore, several RMA national direction instruments also have definitions of, or related to, infrastructure which are relevant to the issues in this RIS (Appendix 2).

44. Many categories of infrastructure such as roads, pipes, hydro-electricity generation (if built, managed, and maintained to a high standard) can be expected to have 100-year lifespans.[13]

45. Long-lived infrastructure is not currently defined in the RMA or in secondary legislation. Phase 2 are for targeted amendments to the RMA that have a more immediate impact and could potentially be transferred into the future system. Therefore, any changes to the definition of the RMA may have a broad impact on existing and future planning instruments and may result in perverse outcomes if this is not considered holistically.

46. In this document, it is considered that certain long-lived infrastructure that would benefit from longer duration consents are infrastructure that meet the following criteria:

    a. provides a public benefit, such as those delivered by network utility operators defined under section 166 of the RMA; and

    b. is of a specific infrastructure type which is expected to have a more than 50 years life span, including:

[10] Where the primary use of the renewable energy asset is for renewable energy generation.
[11] Section 22, RMA.
[12] Refer to the interpretation sections in Telecommunications Act 2001, Radiocommunications Act 1989, Airport Authorities Act 1966, Civil Aviation Act 1990, and Port Companies Act 1988,
[13] Infrastructure requires long-term strategic thinking - Āpōpō (apopo.co.nz) and Build or maintain? | Research & insights | Te Waihanga.

i. Ports

ii. Roads

iii. Rail infrastructure

iv. Telecommunications network

v. Electricity transmission

vi. Gas transmission.

47. Any additional infrastructure which meets the above criteria can be added through a regulation (recommendation from the Minister for the Environment, in consultation with Minister of Infrastructure, to the Governor General). This will form part of the proposals.

Variability and inconsistency

48. The environmental effects of renewable energy generation, its distribution and transmission network and other long-lived infrastructure vary greatly according to the:

    a. receiving environment

    b. reversible or irreversible nature of the effect

    c. activity proposed

    d. scale and size of the project

    e. phase in the project's lifecycle where it is anticipated – construction, operation or decommissioning.

49. Different types of resource consents are often needed for one infrastructure project. These consents may have different durations throughout the project's lifecycle.

50. A project may also require permissions under other acts (such as the Building Act 2004, the Wildlife Act 1953 and the Conservation Act 1987), with varying durations and requirements. This RIS only focusses on amending the RMA duration.

51. Long-lived infrastructure assets are likely to encounter changing environmental conditions under which they operate. For assets that require water take and discharge consents there may be further complications regarding the allocation of scarce resources with other users. This is especially applicable in catchments which are already overallocated, such as in Hawkes Bay, where a local approach may be more appropriate.

52. Consent durations for renewable energy activities vary depending on the type of activity (table 1).

Table 1: Types of time-limited consents for different renewable energy projects

Types of renewable energy	**Types of time-limited consents that may be needed (up to 35 years)**
Wind and solar generation	These projects sometimes need discharge consents due to discharge during construction earthworks (sediment discharge permit) and discharge of stormwater,

	wastewater, or other contaminants (during construction and sometimes during operational)
Hydroelectricity generation and geothermal energy generation	Water takes and discharge consents to operate
Transmission or distribution infrastructure connected to renewable energy generation projects	Coastal permits for those located within the coastal marine areas

53. Long-lived infrastructure may also require a variety of consents according to the function of the infrastructure and the nature of the receiving environment. Replacement consents are often required if the infrastructure occupies the coastal marine area or a riverbed. This is appropriate in some cases, but where an infrastructure asset is unlikely to be altered, removed or demolished in a 35-year timeframe, the costs of frequent reconsenting may be unnecessary or cause additional uncertainty.

54. Analysis of national water allocation statistics data related to industrial scale hydroelectric consents from 1991 to 2018[14] found the majority fall within the 30- to 35-year duration timeframe. 35 consents were assessed, and it was found that:

    a. 35 percent of industrial scale hydroelectric were granted with a 35-year duration

    b. 32 percent were granted with a 30–34-year duration

    c. 11 percent were granted with a 20–29-year duration

    d. the remaining 20 percent were granted with a duration up to 19 years, with a range of 7 to 19 years.

55. The above data does not capture how those durations are determined, including whether an applicant requested a shorter duration, or if an initial shorter duration for common expiry date as part of water allocation policy. We heard from discussions with local government that when an initial shorter duration is used in practice it does not negate a longer consent duration upon next renewal.

56. Analysis of data[15] from the Waikato Region, where hydro, geothermal, solar and wind are common, shows that the majority of the consents for these renewable energy generation projects are issued with a 35-year duration.

Time-limited consents, particular those impacting on freshwater have a broad impact on Māori rights and interests, Treaty settlement legislation and other arrangements

[14] Key words relating to hydro schemes were searched through the data for these years [link].
[15] Draft Waikato Regional Energy Inventory, approved for consultation by Waikato Regional Council April 2024 [link].

57. These activities can be located in areas which impact or use resources which affect Māori, and Treaty settlements and other arrangements. Freshwater use is particularly relevant, especially for hydro and geothermal renewable energy.[16]

58. Hydro and geothermal renewable energy generation activities are 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.

59. Treaty settlements do not generally have provisions that directly address duration of consents; however, they provide various pathways to influence the duration of the consent. These include:

    a. development of iwi or environmental management plans which may influence council planning documents

    b. consultation or information provided during the plan development or consenting processes which informs the effects of an activity on cultural values or similar.

60. Many hydro or geothermal consents are issued with a 35-year duration. Consents issued for a shorter timeframe may have been a response by councils to address effects on Māori rights and interests. A blanket consent duration of 35-years for renewable energy consents would not allow for this approach.

61. Changes to default consent durations could impede the ability for Māori to make material progress on their freshwater interests related to economic development. Once granted, consents effectively allocate that resource for the duration of the consent. Existing or new actors to the generation sector would have a greater ability to lock-in water consents and advance projects that Māori might have otherwise wanted to participate in. Ultimately, long consent durations 'lock-in' the effects of a project and this may lead to an overall less desirable regime with little opportunity for it to be revisited.

62. Additionally, there is potential for negative impacts from long consent periods to aspects of the natural environment considered taonga by Māori. Longer consent periods reduce the ability for Māori groups to revisit the terms of a consent. While it is very unlikely critical hydro consents would be declined in the re-consenting process - conditions could be revisited or part of a consent application could be declined if the environmental effects and effects on Māori values were shown to be overly adverse.

63. A review of conditions must be initiated by the council through Section 128. Māori would have to negotiate through side agreements with generators or Mana Whakahono ā Rohe to be part of a review process. There is opportunity to consider the wider consent review processes through Phase 3, which may alleviate concerns from long consent durations. However, we have not heard from Māori groups on this matter.

[16] Specific settlement provisions include: Nga Wai o Maniapoto (Waipa River) Act 2012, section 8 (Vision and Strategy) provides that section 18 of the Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 applies to the Waipā River, that is, any person carrying out functions or exercising powers under the RMA in relation to the Waikato.

64. Renewable energy projects can also benefit iwi, hapū and Māori by providing significant opportunities to advance development opportunities on their lands or in partnership with others.

35-year default durations for renewable energy and certain long-lived infrastructure consents

65. This section contains options and analysis for the proposal to provide greater certainty of consent duration for renewable energy generation and certain long-lived infrastructure by introducing a default duration of 35 years.

Options: 35-year default durations for renewable energy and long-lived infrastructure consents

66. The options considered are listed below.

    a. Option 1 is to retain the status quo and not make any changes to consent durations in the RMA.

    b. Option 2 includes a subset of options designed to give greater certainty that council decisions for renewable energy consents and certain long-lived infrastructure will be issued with a duration of 35 years.

    c. Option 2A is to require renewable energy consents and certain long lived infrastructure consents to be issued for a maximum duration of 35 years, but the consent duration issued can be shorter if the applicant requests a shorter period.

    d. Option 2B is to require renewable energy consents and certain long-lived infrastructure consents to be issued for a maximum duration of 35 years, but the consent duration issued can be shorter if:

        i. the applicant requests a shorter period; or

        ii. a national direction instrument expressly allows a shorter period or provides a policy on when and/or how a shorter period is appropriate; or

        iii. a shorter consent duration is required to ensure that adverse effects on natural and physical resources having historical or cultural value are adequately managed.

    e. Option 3 is to change the presumption so that renewable energy consents and certain long lived infrastructure consents will be issued for a minimum duration of 20 years to a maximum duration of 35 years, but the consent duration issued can be shorter if:

        i. the applicant requests a shorter period; or

        ii. a national direction instrument expressly allows a shorter period, or provides a policy on when and/or how a shorter period is appropriate; or

        iii. a shorter consent duration is required to ensure that adverse effects on the environment are adequately managed; or

iv. council planning instruments provide specific direction on consent duration.

We are not excluding hydro and geothermal energy activity from the time limited policy

67. Options 2 and 3 do not exclude consents associated with hydro or geothermal activities. Excluding these consents would mean only consents for discharges and those in the coastal marine area (ie, only a few time-limited consents) would be captured. These consents are not as frequently used in renewable energy developments, or as vital to the operation of an asset, so the policy would be ineffective in addressing the Electrify NZ commitment to increase the minimum duration of consents for all renewable energy to 35 years.

68. We note that the Government have excluded hydro and geothermal from other consenting reforms. However, for the reasons discussed above, including hydro and geothermal in this proposal for extending consent duration will likely have the greatest impact on Māori (and other water users) because long duration consents will lock-in environmental effects and allocation of freshwater resources (both water takes and discharges).

Potential approaches that have not been progressed into options

69. Early policy work deemed several potential approaches would not be progressed into options as they do not meet objectives or cannot practicably be achieved within the timeframes for RM Bill 2.

70. The following approaches were considered but not progressed.

    a. *Require renewable energy consents to be granted a 35-year duration, excluding hydro or geothermal consents.*

       This approach would not enable longer consents for renewable energy projects that would require them the most (hydro and geothermal) and would not deliver on the Government's objective for *Electrify NZ*. It would also not offer sufficient flexibility for applicants to apply for shorter consent durations if required and therefore increase the risk that consents maybe declined and it

    b. *Amend the RMA to strengthen the provisions for councils to review conditions of consent (sections 128 to 132).*

       This proposal could be an effective way of increasing the flexibility a council has to review the consent conditions to address specific significant adverse effects that might arise during the exercise of the consent. This can be very complex as the review process is designed in a manner to provide a high level of certainty for consent holder.

       There are benefits in improving the process to review conditions of consent to be more adaptable to the changing environment, but this is better suited in Phase 3 where a more holistic approach can be undertaken.

    c. *Provision of non-regulatory guidance material to improve the consistency of best practice in decision making authorities.*

Whilst potentially of great value to decision making authorities and applicants this proposal would not address the certainty aspect of the assessment criteria and ensure that regulated parties have certainty about their legal obligations.

This proposal may also address some concerns regarding practice raised by industry stakeholders that some consenting authorities can undertake reconsenting as if the asset was not already constructed and part of the environment.

d. *Address duration of time limited consents through wider RMA replacement.*

This proposal would not meet the timeframes for the Government's work programme for Phase 2 of RM Reform. However, proposals that were not considered in detail for RM Bill 2 may be appropriate to reconsider for Phase 3.

e. *Set a default consent duration of longer than 35 years for renewable energy and certain long-lived infrastructure consents, only for occupation consents (such as those that occupy the coastal marine area or riverbeds) and other time-limited consents such as those to take water or discharge to water or air.*

This intent of this approach is to better align the duration of specific resource consents issued under the RMA with the minimum 50-year design life of structures required by the Building Act 2004.

The RMA currently sets the maximum duration of time-limited resource consents to 35 years. This proposal would fundamentally change that restriction, and so is likely to go significantly beyond the specific and targeted scope of Phase 2 of RM Reform.

This option would give applicants the greatest possible certainty of the lifespan of infrastructure and provide the opportunity to rationalise the duration of resource consents with the minimum 50-year design life established by the Building Act 2004. To provide certainty that this extended duration is appropriate, the kinds of infrastructure and the maximum duration length would need to be carefully considered.

A longer duration would also increase the likelihood of the occupied environment changing over time, such as from the impacts of climate change, so that the resource consent is no longer appropriate. This is likely to require alternative mechanisms for regular review of the affected resource consents to determine their appropriateness to continue, including options to modify consents where necessary.

For these reasons, it is considered the option is more appropriate for Phase 3.

Option 1: status quo - the counterfactual

71. There is no 'presumption' for what the default duration is for time limited consents. The duration of consents would be determined based on the considerations set out in a planning instrument, and/or the level of impact of the use on the environment (effects). Consents can be reviewed in certain circumstances set out in RMA section 128.

72. As outlined above, the RMA enables national direction to provide direction to councils on consent duration.[17] This includes expressly requiring a consent to be issued with a certain duration and provide for a policy framework for consent authority to determine the duration. However, currently no national direction instruments provide direction on consent duration.

73. Phase 2 also contains a national direction programme which will include amendments to the National Policy Statement for Renewable Energy Generation (NPS-REG), National Policy Statement for Electricity Transmission (NPS-ET) and future work on national environmental standards. Direction on consent duration renewable energy generation and certain long-lived infrastructure could be developed in the forthcoming national direction.

Key risks

74. This will not provide for additional certainty for operators, including obtaining their replacement consents, particularly if there is no relevant policy that would provide certainty for operators. Some of these risks could be mitigated if policy framework is provided for in the forthcoming national direction.

Key benefits

75. This will preserve the integrity of existing planning instruments by councils, which have gone through a robust process of evaluation, public consultation, expert advice, and hearings, and in some instances appeals to the courts. These planning instruments represent community views, and other interested parties including iwi authorities, and tangata whenua.

76. The planning instruments are also key instrument for councils to manage the natural resources and other relevant matters. Councils can continue to evaluate and have the flexibility to tailor duration based on their planning instruments and information they receive.

77. This will also ensure consistency with Treaty settlement legislation and other arrangements.

Option 2: Set a default consent duration of 35 years

78. Option 2 explores a subset of options designed to give greater certainty that council decisions for renewable energy consents and certain long-lived infrastructure will be issued with a duration of 35 years.

79. Option 2 removes the ability for decision makers to issue a shorter duration, though it does not prevent consents from being declined, or conditions being reviewed periodically under section 128(1). This option only applies to consents where renewable energy and certain long-lived infrastructure are the main activity.

80. As outlined earlier, this option will include all renewable energy including hydroelectricity and geothermal and will only apply to ‘time limited’ consents under the RMA (not including land use consents issued in perpetuity by default).

[17] Section 43A RMA for national environmental standards and section 45A for national policy statements.

81. Local government practitioners[18] do not support introducing a default 35-year duration for the following reasons:

    a. Many large infrastructure applications obtain a 35-year duration consents already under the current RMA, and many existing plans already provide the policy framework to provide certainty (ie, controlled activity (must grant) for solar farms).[19]

    b. The current approach allows flexibility to consider individual circumstances and allow for more efficient allocation of natural resources (including what is directed in a planning instrument/prioritisation of certain activities).

    c. Consent holders could apply for a replacement consent (long lead in time before expiry) if they wish to maintain a forward duration for security and investment purposes.

82. We have heard from some industry participants that they may not take advantage of the 35-year or longer consent durations because it might contradict their social licence.

83. Given the time-limited consents often involve the use of natural resources, including freshwater, there is an increased risk/likelihood of:

    a. This approach misaligning with local planning instruments policies and natural resources management in the interim period. New plan changes may be required to respond to the change, and to plan for more efficient allocation of resources or how councils manage these consents in their region. This may increase cost for councils and community.

    b. The approach to cut across Treaty settlements and other arrangements. This applies where the policy in local planning instruments have been informed through requirements in the legislation which allows for participation and considerations of iwi planning documents. There will also be less flexibility for iwi authorities influence consent decisions to reduce duration.[20]

    c. Councils seeking more information, impose more conditions, undertake more consent reviews (which can be costly and currently done sparingly).[21]

    d. Consents being appealed.

84. Certain users (not renewable energy generation operators/infrastructure operators) may not be able to obtain consents if there is limited allocation.

85. resulting impact on the natural environment and biodiversity.

    a. System fragmentation as a different approach to consent durations would be required for certain activities than for other activities.

[18] We have undertaken engagement with council practitioners with key questions/workshops for their views on longer duration consent, and tools to mitigate some of the risks they identified in July and August 2024. These views do not represent councils' views, but of local government practitioners.
[19] Bay of Plenty Regional Council.
[20] Through section 95E of the RMA as an 'affected persons.'
[21] Understood from meetings with local government practitioners (specialises in consenting) in July and August 2024.

Option 2A: Require renewable energy consents and certain long-lived infrastructure to be granted a default 35-year duration, unless the applicant has requested a shorter period

86. Option 2A is designed to give greater certainty that council decisions for the duration of time-restricted renewable energy consents will be issued with a 35-year duration.

87. This option will introduce a requirement for consents to be granted a 35-year duration, unless the applicant has requested a shorter period.

88. This option would provide certainty for applicants. Only the applicant has the power to reduce the duration of consent.

Key risks

89. Key risks of option 2A (in addition to the risks identified above) are:

    a. Less discretion for councils to use this mechanism (reduce duration) where appropriate to address adverse effects of the certain activities on the environment or to achieve a specific outcome outlined in their planning instrument.

    b. Increased likelihood that consents will cut across Treaty settlements and other arrangements, for specific reasons outlined above.

    c. Increased risk that consents decisions are declined or appealed.

90. 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.

91. These risks can be further mitigated as the applicant could address submitters/stakeholder's concerns. This may be used where operators have established relationships and agreements to maintain with affected tangata whenua, iwi authorities and customary marine title groups, or other stakeholders.[22]

Key benefits

92. The applicant will have additional investment certainty and confidence.

93. This may also potentially reduce cost for the consent holder given the reduced need to replace their consents in shorter intervals.

[22] We have heard during consultation with local government practitioners such as Waikato Regional Council that shorter duration consents have successfully been used this way.

Option 2B: Require renewable energy activity and long-lived infrastructure to be granted a default 35-year duration unless:

- the applicant has requested a shorter period; or
- shorter duration is needed to ensure adverse effects effect on natural and physical resources having historical or cultural value are managed; or
- a national direction instrument expressly allows a shorter period, or provides a policy on when and/or how a shorter period is appropriate

94. This option retains the applicant ability to request for a shorter duration (in Option 2A). This option recognises the role of national direction in the current system and provide additional ability for the Government to direct or enable flexibility.

95. This option also recognises the need to be more consistent with Treaty settlement legislation and other arrangements where participation will inform consent authority on the impact of the activity, particularly on resources having historical or cultural value.

96. The key difference in this option from Option 2A is this allows some flexibility through national direction, instead of being primarily driven by applicant's behaviours.

Key benefits

97. Applicant has additional certainty the consent, should it be granted, will have the maximum duration of 35 years. This will support the investment certainty.

98. This provides additional flexibility, particularly for central government to develop national direction (secondary legislation) that can provide for regional or local circumstances. The process of developing national direction also allows for engagement on the technicality of the provisions.

99. This also align with the existing powers of national direction where they can guide or direct decisions on consents. Councils, when assessing consent decisions, will be guided by national direction, if relevant policy exists.

100. This has some alignment with section 123A(2) of the RMA for aquaculture activity, which allows reducing consent duration to under 20 years if adverse effects on the environment needs to be adequately managed, and if national direction expressly provides for it. There are some minor differences where the discretion to reduce duration is more restrictive in this option, as this option only proposes shorter duration if adverse effects relating to cultural or heritage values need to be adequately managed.

101. It will incentivise applicants to work together with tangata whenua to ensure adverse effects on cultural values/historical values are adequately managed. This reduces the risk that Treaty settlement obligations created by engagement obligations for affected tangata whenua, iwi authorities and customary marine title groups would not be met.

Key risks

102. Key risks of option 2B (in addition the risks outlined under Option 2):

    a. There is still a level of risk of misalignment with other planning outcomes in the relevant local planning instruments. These plans were developed with various stakeholders, community and Māori.

    b. Other system users would not be able to influence the consent decision on duration, particularly if their use is impacted given the more limited allocation of resources is available, or adverse effects such as odour or similar may impact them.

Option 3: Require renewable energy consents and long-lived infrastructure to be granted a minimum 20-year and maximum 35-year duration, unless:

- the applicant has requested a shorter period; or
- a shorter period is required to ensure that adverse effects on the environment are adequately managed; or
- a national direction instrument expressly allows a shorter period, or provides a policy on when and/or how a shorter period is appropriate; or
- council planning instruments provide a specific direction.

Key benefits

103. This better preserves the integrity of the council planning instruments and the approach on RMA effects management, particularly where Māori participation (including those directed in a Treaty settlement legislation) have influenced the plan content (when compared to Option 2). This provides additional flexibility for councils to implement their plan as it was intended at the time of development.

104. This approach also allows a more holistic consideration of the adverse effects on the environment which is informed by site specific, or locality specific information gathered for the application.

105. This still provides some level of certainty of minimum duration of 20 years will be issued for these types of consent.

Key risks

106. This may still give rise to the variability and consistency issues that currently exist in the system, albeit it is acknowledged these are to address site or locality specific issues.

107. There is a level of risk this option will not make a lot of impact on status quo, given most of the time limited consents are already granted for 20 years to 35 years.

108. This may also add complexity given the additional considerations that are required, but the complexity may be minimal as these considerations are often taken as part of the overall decision making under s 104 of the RMA and other relevant provisions.

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

	Option 1: Status Quo	Option 2A: Require renewable energy consents and certain long-lived infrastructure to be granted a default 35-year duration. This can be reduced if the applicant has requested a shorter period.	Option 2B: Require renewable energy consents and certain long-lived infrastructure to be granted a default 35-year duration. This can be reduced in specific circumstances, including applicant's request, management of adverse effects relating to historical or cultural values, and enabled by national direction.	Option 3: Require renewable energy consents and long-lived infrastructure to be granted a minimum 20-year and maximum 35-year duration. This can be reduced in specific circumstances if applicant requests, management of adverse effects on the environment, enabled by national direction and council planning instruments.
Further description		• 35-year durations would be standard for certain activities • Only applicant can request shorter duration with certainty • Other RMA requirements continue to apply, including review of conditions of consent, and consent can still be declined	• 35-year durations would be standard for certain activities • Applicant can request shorter duration • Shorter duration consent could be issued if national direction provides for this • Allow affected tangata whenua to influence duration of consent • Other RMA requirements continue to apply, including review of conditions of consent, and consent can still be declined	• A range of 20 to 35-year durations would be standard for certain activities • Applicant can request for shorter duration • Short duration consent could be issued if national direction or council planning instruments provide for this. • Other RMA requirements continue to apply, including review of conditions of consent, and consent can still be declined
Effectiveness	0	0 • Supports Government policy objective of driving investment in renewable energy and certain infrastructure • Provides the most certainty for operators • This is unlikely to uphold Treaty settlement legislation and other arrangements	++ • Supports the Government policy objective to drive investment in renewable energy and certain infrastructure • This also provides more certainty for applicant • Incentivise applicant to work with potentially affected tangata whenua, and better support consistency with Treaty settlement legislation and other arrangements • Does not explicitly support safeguarding the environment	+ • Provides for the Government policy objective to drive investment in renewable energy and certain infrastructure • This is more consistent with the Treaty of Waitangi, Treaty settlements and other arrangements, given the council planning instruments and effects management would influence shorter duration • Explicitly supports safeguarding of the environment
Efficiency	0	-- • It is more efficient for operators, given the new default of maximum duration • May potentially reduce the frequency to renew consents for the operators • This is likely to misalign with the RMA approach, and council plans may need to be updated to reflect the change • Other system users who are not renewable energy/certain infrastructure operators may not be allocated with the required resources	-- • Similar to Option 2A • This option does not provide for the same level of efficiency (when compared to Option 2B) for the operators, given the potential need to engage with affected tangata whenua to agree on duration	- • Provide additional efficiency than status quo, given the minimum 20-year duration consent • Better upholds the integrity of existing planning system and principles of subsidiarity • Provides for other system users
Certainty	0	- • High level of certainty for the operators, and councils do not need to further assess whether a shorter duration is needed unless operators request for a shorter duration • Increased risk that consents are declined, or decisions are appealed • Reduce certainty for other system users	- • Similar to Option 2A • Provides some certainty for affected tangata whenua	+ • Slightly more certainty for operators than status quo • All participants in the regulatory system retain similar roles, responsibilities and legal obligations to the status quo
Durability & Flexibility	0	-- • The legislative approach reduces ability for the system to respond to changing circumstances	-	0 • Most closely retains a regulatory approach that is principles based

		or new information (ie, climate change, water use) • There is a lack of flexibility for other parties to influence, including central government	• The legislative approach reduces ability for the system to respond to changing circumstances or new information (ie, climate change, water use) • Provides additional flexibility for central government to develop secondary legislation (national direction) that can provide for regional or local circumstances • This also provide some flexibility for affected tangata whenua to influence duration	• There is flexibility for system to respond to changing circumstances or new information (ie, climate change, water use) • Provides some flexibility for affected tangata whenua and other system users to influence duration
Implementation Risk	0	- • Councils will be clear with the requirements and therefore ease of implementation at consenting is low • The risk would be low to medium, if councils choose to undertake new plan changes to implement this change	+ • Generally aligned with the established approach under RMA section 123A(2), and the empowering provisions of national direction under the RMA • Reduces implementation risk if there is inconsistency in approach through the development of national direction • The risk would be low to medium, if councils choose to undertake new plan changes to implement this change	++ • This closely aligns with the established approach under RMA section 123A • The approach is similar to how consents are currently considered under the RMA before substantive decisions are made (see RMA section 104) • The risk for plan changes may be lower as many plans already have some form of framework to guide decisions on consent duration
Overall assessment	0	--	0	+

Overall Assessment: Consent durations

109. Option 3 is the preferred option because:

    a. It provides a good level of certainty over the status quo for renewable energy and certain long-lived infrastructure operators by setting out that consent durations will have a minimum of 20 years, with a clear pathway for the maximum of 35 years. Whilst also providing for other Government RM reform objectives (safeguarding the environment and human health, and upholding Treaty settlements and other similar arrangements).

    b. This option is also likely to provide sufficient durability and flexibility that recognises local circumstances, other system users and the overall balance and purpose of the RMA. It includes a mechanism to uphold Treaty of Waitangi, Treaty settlement legislation, and other arrangements and incentivises applicants to work with tangata whenua to ensure adverse effects on cultural values/historical values are adequately managed.

    c. It does not fully align with the Government's priority of wanting a default on 'maximum duration' of 35-years for all renewable energy and certain long-lived infrastructure projects. However, applying this approach to the evidence on consents for renewable energy projects indicates that a minimum consent duration of 20 years will provide an opportunity for an uplift to the 20% of projects granted with the shortest consent durations. Thereby reducing uncertainty for operators whilst still providing for the strategic re-assessment of resource allocation (eg, water takes) in line with the broader intent of planning instruments or priorities.

    d. This option still generally fits within the general approach to consent durations in the RMA and recognises the role and nature of planning instruments and stakeholders in the system. It reflects current practice through an established approach (section 123A) to address consenting issues for a specific sector, reducing challenges for implementation.

Cost/Benefit Analysis

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *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 face less enabling durations if council planning documents or national direction prescribes it.	Low – national direction is only likely to prescribe less enabling durations where genuine need exists. Some regional plans already prescribe shorter durations so the impact of this is reduced.	Low
Councils	Councils would likely be required to provide rationale of how a longer or shorter duration has been assessed. A national direction may change the direction for durations, to which council plans and assessments would need to adjust to. Councils may need to amend their plans through plan changes.	Low - councils should be able to make these assessments based on their planning instruments, national direction and practice (ie, consents that have been previously issued or are being assessed). Anecdotal evidence tells us Councils are already assessing durations based on similar factors.	Medium
Treaty Partners and iwi, hapū/Māori	Treaty partners may find their rights and interests in freshwater are impeded for longer by longer durations.	Medium– there will be requirements for councils to ensure this is consistent with any relevant agreements with Treaty partners/ tangata whenua / iwi/hapū/Māori.	Medium – consultation with post settlement governance entities required to understand full extent
‘Affected persons’ and general community	Affected persons or community may find resources such as water allocation is ‘locked away’ for longer periods than the status quo.	If ‘affected persons’ submit they will still have a right to object to any duration decision/appeal.	Medium
Central government	MfE will need to produce non-statutory guidance and support councils.	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 system.	No direct cost	Medium
Non-monetised costs		Low	Medium
Additional benefits of the preferred option compared to taking no action			
Consent applicants	Certainty of durations, and a clear framework for shorter or longer if implemented in national direction, council planning documents or subject to specified adverse effects will help to reduce costs (both time and monetary costs) for applicants.	Medium	Medium
Councils	Reduced council resources required to re-consent assets with a less than 35-year consent duration.	Low – Durations could still have a wide range, and the RMA will set a range of 20 -35 years.	Medium
Treaty Partners and iwi, hapū/Māori	Treaty partners applying for consents will experience similar benefits to consent applicants listed above. Treaty partners with rights or interests affected by a project will know these are to be considered through the application process.	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’ and general community may have more clarity around when assets will need to be reconsented and environmental impacts of such assets could be relitigated. This also applies to when resources allocated by consent for such assets will again be available for allocation.	Low – there is a national reliance on power generation and long-lived infrastructure and more certainty as to when allocated resources will be reassessed does not mean their use rights will necessarily be redistributed.	Low
Central government	Currently, there is some understanding about the key reasons for shorter durations. However, to understand this further, MfE may wish to collect additional data and monitor the proposed changes. The	Low – additional information could be collected, particularly on reasons for shorter durations. 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

	findings will support system stewardship and analysis for what future national direction should contain.		
Total monetised benefits	Not applicable	Nil	Nil
Non-monetised benefits		Low	Low

Context: RMA consent lapse dates

110. Section 125 of the RMA defines when consents lapse. A consent lapses after a specified period unless it has been implemented or the council grants an extension.

111. Section 125 provides that consents will lapse on the dates specified on the consent, or if no date is specified, after three years for consents authorising aquaculture activities in a coastal marine area and five years for all other consents. For all consents relevant to the proposals considered in this RIS section 125(1)(a) applies and the default lapse period is five years after the date of commencement of the consent, unless the consent authority grants an extension to the applicant.

Reasons why current lapse timeframes are a challenge for renewable energy generation and long-lived infrastructure

112. The current legislative settings under section 125 set an expectation that consents issued need to be implemented within five years, unless a different lapse date is issued with the consent.

113. Some renewable energy proposals are issued with a longer lapse periods, commonly seven to ten years. This often happens due to applicant requests. There are no clear criteria in the RMA to guide decisions on this. In practice, this involves considerations whether the default five years is sufficient to enable the approved development. Councils may also extend lapse period in accordance with the criteria and established case law.

114. Renewable energy projects can have long lead times for investment and delivery of specialised components, such as wind turbines. Associated approvals (ie, for roading under the Local Government Act 2002) also contribute to these lead times. In some cases, finance to build projects may not be available until consents are granted.

115. Analysis of National Monitoring System data for the 2022/23 year shows that there were approximately 327 applications to extend consent lapse periods.[23]

116. Empirical evidence from discussions with industry groups during targeted engagement in early 2024 highlighted three main issues with the current lapse period system:

    a. Councils do not always grant applicants longer lapse periods.

    b. Lapse periods of seven to ten years can sometimes be too short to give effect to renewable energy projects, especially larger ones.

    c. Applying for lapse period extensions can be an uncertain, costly and lengthy process.

117. Industry noted that the five-year standard was not appropriate for all renewable energy consents, and that even ten years was sometimes too short for them to give effect to consents for larger projects.

[23] These are applications under RMA section 125.

118. However, ten years appears to be an adequate period for many developers to implement their consent. Mercury's Turitea wind farm is currently the largest wind farm in New Zealand and was granted a ten-year lapse period by an independent Board of Inquiry in 2011. The project was completed before the consent lapse and began operating in 2021.

119. Industry submissions from 2023 on this topic from the proposed NPS-REG and NPS-ET were not unanimous. Some submitters found the five-year standard to be an appropriate timeframe. Some generally supported increasing the standard lapse periods beyond five-years while other requested the standard be set to seven years, ten years, or more than ten years.

120. Local government groups noted that longer lapse periods are already possible and normally granted (case law sets a low bar for lapse period extensions). These groups expressed concerns that longer lapse periods could lock-up resources and that this may be better addressed through national direction.

121. Options will be considered which could be workable for renewable energy, given the government priority placed on consenting for renewable energy.

122. This section contains options and analysis for the proposal to extend default lapse periods for relevant renewable energy consents to ten years from the current five years.

Longer lapse periods, particularly those impacting on freshwater have a broad impact on Māori rights and interest, Treaty and Treaty settlement legislation

123. These activities can be located in areas which impact or use resources which impact Māori, and Treaty settlements and other arrangements. Freshwater use is particularly relevant, especially for hydro and geothermal renewable energy.[24]

124. Default lapse periods of ten years will allocate resources for a longer period of time, potentially before the Crown has addressed Māori rights and interests matters.

125. There are some Post-Settlement Governance Entities (PSGEs) with settlements that provide strong participation rights in the resource consenting process who would see their participation rights as being diluted through a default lapse period of ten years, particularly where the adverse effects of activities are not well known and the Crown is yet to address Māori rights and interests matters, such as allocation.

126. Renewable energy projects can have positive effects for iwi/hapū in providing significant opportunities to advance development opportunities on their lands or in partnership with others. Changes to primary legislation to enable longer lapse periods could reduce costs and increase certainty for such development opportunities.

[24] Specific settlement provisions include: Nga Wai o Maniapoto (Waipa River) Act 2012, s8 (Vision and Strategy) provides that section 18 of the Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 applies to the Waipā River, that is, any person carrying out functions or exercising powers under the RMA in relation to the Waikato.

Options: minimum 10-year consent lapse period for renewable energy

127. The options considered to respond to this policy proposal are:

    a. Option One – status quo: no changes to lapse periods in the RMA

    b. Option Two – set a default lapse period of 10 years for:

        i. Option 2A – renewable energy consents, where shorter or longer can be requested by the applicant.

        ii. Option 2B – renewable energy consents, where shorter or longer can be requested by the applicant; or national direction provides policy on when a shorter or longer lapse period is appropriate.

        iii. Option 2C – renewable energy consents (excluding hydro and geothermal consents), where a shorter or longer lapse period can be requested by the applicant; or national direction provides policy on when a shorter or longer lapse period is appropriate.

Potential approaches that have not been progressed into options

128. 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.

129. The following approaches were considered but not progressed:

    a. *Changes to the test for extensions in lapse period RMA section 125 (1A), including amendments which would not require substantial progress on a consent to be made.*

    While this option would make it easier to obtain an extension of the lapse date, it does not address the core issue of lapse dates specified within the consent and may increase the regulatory burden for applicants and decision makers. Evidence also shows a small number of consent applicants seek extensions to lapse periods and these extensions are usually granted.

    b. *A default lapse period beyond 10 years.*

    This option would go beyond the Government's Electrify NZ manifesto commitment and would prescribe a lapse longer than the majority of lapse periods industry suggested during consultation. A period beyond 10 years can currently be achieved and greater than 10 years is not excluded within the option sets which were progressed.

    c. *Undertake this change in Phase 3 of the RM reform.*

    This proposal would not meet the timeframes for the Government's work programme for Phase 2 of RM Reform. However, proposals that were not considered in detail for RM Bill 2 may be appropriate to reconsider for Phase 3.

Option 1: status quo - the counterfactual

130. The current system allows developers to apply for an extension to its lapse periods.[25] This approach is quite flexible, as it gives developers the ability to extend the lapse period if the consent hasn't been given effect to within the initial timeframe.

131. The council must consider whether substantial progress or effort has been made towards giving effect to the consent, whether the applicant has obtained approval from persons who may be adversely affected, and the effect of the extension on persons who may be adversely affected or on the relevant planning provisions.[26]

132. As outlined above, evidence shows that a small number of consent applicants seek extensions to lapse periods, and these extensions are usually granted.

Key risks

133. Key risks of this option include:

    a. maintains uncertainty about whether extended lapse periods will be granted for some projects

    b. maintains the same level of regulatory burden for regulators and developers caused by higher rates of applications for lapse extensions

    c. does not provide the level of certainty outlined in Electrify NZ Manifesto commitment for lapse period.

Key benefits

134. Key benefits of this option include:

    a. retains a system-wide approach to lapse periods and avoids system fragmentation from introducing different lapse period requirements for renewable energy consents

    b. provides more flexibility for lapse periods for renewable energy consents to be less than 10 years where appropriate

    c. avoids locking-up resources for longer periods where this is not appropriate or necessary.

Option 2: Require renewable energy consents to have a lapse period of 10 years

135. Option 2 explores a subset of options designed to give greater certainty that lapse periods for renewable energy consents will be issued as 10 years. Option 2 does not change existing provisions on extending lapse period, nor does it prevent consents from being declined. These options only apply to consents where renewable energy is the main activity.

136. As noted above, there are concerns that lapse periods are too short. Short lapse periods can increase uncertainty and impose additional costs on developers. This

[25] RMA section 125(1A)(b).
[26] RMA section 125(1A)(b).

affects the speed of renewable developments. Additional time spent applying for lapse period extensions or re-applying for consent also increases the total cost of renewable energy projects.

137. The Government has committed to doubling renewable energy by 2050. Increasing the time an applicant has to give effect to a consent before it lapses is one proposal that will support the wider Electrify NZ work programme to unlock the investment New Zealand requires to meet its emissions targets.

138. Extending the default lapse period beyond five years increases the risk developers may not utilise consents to "land bank" or engage in anticompetitive behaviour. Anti-competitive behaviour cannot be addressed under the RMA, however, the proposed policies do not extend the default beyond 10 years, which is already commonly achieved under the status quo, as heard during consultation.

139. Option 2C excludes new hydro and geothermal renewable energy generation activities to recognise that these developments are complex and can significantly impact Māori rights and interests in freshwater. This is detailed further under Option 2C below.

140. Initial engagement with renewable energy developers, local government and resource management practitioners indicated varied support for requiring renewable energy consents to have a lapse period of 10 years. Some local and regional councils did not see lapse periods as an issue as consent holders can ask for an extension using the existing RMA framework, though both councils and industry noted that consent certainty and more time to give effect to a consent would be helpful to wind developers who have long lead times on parts such as turbines.

Option 2A: Require a 10-year lapse period for renewable energy consents, shorter or longer can be requested

141. This option will introduce a requirement for a 10-year lapse period for all consents where renewable energy is the main activity, and applicants will have the ability to request shorter or longer lapse periods.

142. This option would provide certainty for applicants and decision makers that a 10-year lapse period must be granted. Flexibility exists for the applicant to request a longer or shorter lapse period. This may be used where operators have established relationships and agreements to maintain with affected tangata whenua, iwi authorities and customary marine title groups, or other stakeholders. It may also be used to address the concerns of submitters and enable consent to continue through processing, though there is no requirement for it to be used.

143. Longer timeframes to give effect to consents can make it more difficult to assess the impact of renewable energy proposals on the receiving environment (due to a longer elapsed time), which may in turn may affect Māori rights and interests in resources such as freshwater, and Treaty settlements.

Key risks

144. Key risks of option 2A are:

    a. less discretion for decision makers to enact a shorter lapse period where required

b. extends uncertainty around development timeframes for regulators and communities

c. could incentivise developers to wait longer than necessary to give effect to their consent at the most cost-efficient time, or to use longer lapse periods to "land bank"

d. if related to water takes, can lock up a water allocation for the entirety of the lapse period. This can impact on allocation of freshwater, and Māori rights and interests in fresh water, and Treaty settlements

e. unutilised consents make it difficult to assess the cumulative effects of new applications

f. increased risk that consent decisions are appealed

g. system fragmentation as a different approach to consent durations would be required for renewable energy consents than for other activities.

145. Risks a to g can already exist in the current system and Option 2A simply makes these risks more likely.

Key benefits

146. Key benefits of Option 2A are:

a. directly addresses the Electrify NZ manifesto commitment of setting a minimum lapse period of 10 years for renewable consents

b. provides the most certainty to developers that their consents will obtain lapse periods of at least 10 years

c. more certainty results in lessened costs overall and projects are more likely to progress through to final investment decisions.

Option 2B: Require a 10-year lapse period for renewable energy consents, shorter or longer can be requested, national direction can direct when a shorter or longer lapse period is appropriate

147. This option will introduce a requirement for a 10-year lapse period for all consents for renewable energy. Applicants will have the ability to request shorter or longer lapse periods and when considering any application for extension of a lapse period for a renewable energy consent.

148. A shorter or longer lapse period can also be specified in national direction via a policy framework to guide decisions on lapse periods. This provides additional ability for the Government to direct or enable flexibility in lapse periods.

149. Option 2B builds on the certainty provided by Option 2A and provides a more enabling pathway for directing flexibility in lapse periods. National direction could be developed to provide additional certainty to applicants around how lapse periods will be assessed.

Key benefits and risks

150. This option would provide certainty for applicants and decision makers that a 10-year lapse must be granted. The benefits and risks are similar to those of Option 2A. In addition, national direction can be used to specify activities for which longer lapse periods are appropriate. This addresses industry feedback around differences in need for lapse periods, such as for wind generation versus solar generation.

Option 2C: Require a 10-year lapse period for renewable energy consents (excluding hydro and geothermal), where a shorter or longer lapse period can be requested by the applicant; or national direction provides policy on when a shorter or longer lapse period is appropriate

151. This option will introduce a requirement for a 10-year lapse period for all consents (excluding hydro and geothermal) where renewable energy is the main activity. As for Option 2B above, applicants will have the ability to request shorter or longer lapse periods. A shorter or longer lapse period can also be specified in national direction.

152. Option 2C excludes new hydro and geothermal renewable energy generation activities as these developments are 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 a standard 10-year lapse period for hydro is not proposed as part of Option 2C. As geothermal activities are of similar complexity with similar level of impact on Māori rights and interests in freshwater, the Option 2C also excludes geothermal activity.

153. As mentioned above, we have heard that wind developers have a particular need for longer lapse periods and this option would still be enabling for wind energy.

Key benefits and risks

154. This option would provide certainty for applicants and decision makers that a 10-year lapse must be granted. The key benefit of this option is that it addresses the risk that consents for hydro or geothermal projects lock up a water allocation for the entirety of a 10-year lapse period.

155. The remaining benefits and risks are like those of Option 2B, with the addition of the below:

    a. does not fully address the Electrify NZ manifesto commitment of setting a minimum lapse period of 10 years for renewable energy consents

    b. maintains uncertainty about whether extended lapse periods will be granted for hydro and geothermal projects

    c. maintains a level of regulatory burden for regulators and developers caused by rates of applications for lapse extensions in relation to hydro and geothermal projects.

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

	Option One – [*Status Quo / Counterfactual*] Section 125: A consent lapses when specified in the consent. Where not specified default period is five years. Applicants may apply to extend lapse period.	**Option 2A** Renewable energy consents: local authority must grant 10-year lapse period, but: • applicant can apply for a longer or shorter lapse period.	**Option 2B** Renewable energy consents: local authority must grant 10-year lapse period, but this can be longer or shorter if: • the applicant has requested a longer or shorter lapse period, or • a national direction provides policy on when a shorter or longer lapse period is appropriate.	**Option 2C** Renewable energy consents (excluding hydro and geothermal): local authority must grant 10-year lapse period, but this can be longer or shorter if: • the applicant has requested a longer or shorter lapse period, or • a national direction provides policy on when a shorter or longer lapse period is appropriate.
Effectiveness	0	+ Meets high level longer default lapse period objective and will support Government objective of driving investment in renewable energy.	++ Meets high level longer default lapse period objective and will support Government objective of driving investment in renewable energy. Further tools enable extension beyond this where appropriate.	+ Meets high level longer default lapse period objective and will support Government objective of driving investment in renewable energy, but geothermal and hydro projects will still be bound to status quo pathway.
Efficiency	0	+ Meets high level longer default lapse period objective and supports doubling renewable energy but will fragment the RMA. More efficient for both applicant and councils given less need for extensions.	++ Meets high level longer default lapse period objective and supports doubling renewable energy but will fragment the RMA. More efficient for both applicant and councils given less need for extensions and increased clearer direction to grant extensions where applied for.	+ Meets high level longer default lapse period objective and supports doubling renewable energy but will fragment the RMA. More efficient for both applicant and councils given less need for extensions, though hydro and geothermal projects will still be bound to status quo pathway.
Certainty	0	+ Clearer outcomes for councils and applicants as less discretion – clear presumption of 10-year lapse (rather than enabling wider range with minimum period where not specified).	+ Clearer outcomes for councils and applicants as less discretion – clear presumption of 10-year lapse (rather than enabling wider range with minimum period where not specified).	+ Clearer outcomes for councils and applicants as less discretion – clear presumption of 10-year lapse (rather than enabling wider range with minimum period where not specified).
Durability & Flexibility		0 Not significantly different from status quo.	+ Increased flexibility by more clearly enabling extensions for renewable energy consents.	0 Similar to status quo given does not apply to geothermal and hydro.
Implementation Risk	0	-- Low implementation risk – simple change to default lapse period. Some risk in lack of engagement on policy with PSGEs which is required prior to changing primary legislation. May result in impacts of Māori freshwater rights and interests given freshwater allocation would be uncertain for the entirety of the lapse period.	-- Some implementation risk from changing way in which councils consider applications for extensions. Some risk in lack of engagement on policy with PSGEs which is required prior to changing primary legislation. May result in impacts of Māori freshwater rights and interests given freshwater allocation would be uncertain for the entirety of the lapse period.	- Some implementation risk from changing way in which councils consider applications for extensions. Some risk in lack of engagement on policy with PSGEs which is required prior to changing primary legislation.
Overall assessment	0	+	++	+

Overall Assessment: Lapse periods

156. Option 2B is the preferred option as it:

    a. Provides a good level of certainty over the status quo for renewable energy operators by setting out that lapse periods will be granted for 10-years, with a clear pathway for longer or shorter than this.

    b. General alignment with the Government's Electrify NZ commitment to set minimum lapse times to 10 years. However, it provides a pathway to address further certainty for applicants within national direction. This approach also reflects evidence from industry and councils that shorter lapse periods are appropriate for some types of renewable energy, ensuring operators have the flexibility in lapse times they require on a project-by-project basis and to uphold relationships with stakeholders.

    c. Still broadly fits within the approach to lapse periods in the RMA and recognises the role and nature of planning instruments and stakeholders in the system.

Cost Benefit Analysis for Option 2B – where this is the preferred option and has the highest qualitative judgement

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *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 face less enabling lapse periods if national direction prescribes it.	Low – national direction is only likely to prescribe less enabling lapse periods where genuine need exists.	Medium
Councils	Councils would likely be required to provide rationale of how a longer or shorter lapse period has been assessed. A national direction may change the direction for lapse periods, to which council assessments would need to adjust to.	Low - councils should be able to make these assessments based on their planning instruments, national direction and practice (ie, consents that have been previously issued or are being assessed). Councils are already assessing lapse periods, and the proposal will provide more guidance to councils on appropriate lapse periods.	Medium
Treaty Partners and iwi, hapū/Māori	Treaty partners may find their rights and interests in freshwater are impeded by longer uncertainty, as unutilised consents for freshwater use lock-up water allocation.	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	Affected persons or community may find they are subject to longer periods of uncertainty, as unutilised consents may 'hang' over them.	If 'affected persons' submit they will still have a right to object to any lapse period decision/appeal.	Low - anecdotal
Central government	MfE will need to produce non-statutory guidance and support councils.	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 system.	No direct cost.	Medium
Non-monetised costs		Low	Medium
Additional benefits of the preferred option compared to taking no action			
Consent applicants	Certainty of lapse periods, and a clear framework for shorter or longer if implemented in national direction will help to reduce costs (both time and monetary costs) for applicants.	Medium	Medium
Councils	Reduced council resources required to extend lapse periods where an unachievably short lapse period was initially granted.	Low - councils generally granting lapses in-line with applicant's request. Some extensions would still be required due to unforeseeable events on the applicant's part.	Low – anecdotal
Treaty Partners and iwi, hapū/Māori	Treaty partners applying for consents will experience similar benefits to consent applicants listed above.	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' and general community may have more clarity on expectations of development timeframes for renewable energy projects.	Low	
Central government	Currently, there is some understanding about the key reasons for shorter lapse periods. 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 – additional information could be collected, particularly on reasons for shorter lapse periods. 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		*Low*	*Low*

Treaty implications

157. Renewable energy, regionally and nationally significant infrastructure and long-lived infrastructure 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.

158. 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".[27] 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 responsibility for progressing policy development around these issues." The Supreme Court stated that this should not be an empty exercise.

159. As outlined above, 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 Te Tiriti.

160. Longer consent durations and longer lapse periods are likely to make it harder to meet settlement obligations for freshwater rights and interests, particularly because this would result in resources being locked away for longer periods.

161. Options that enable tangata whenua involvement in duration decision-making 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.

162. 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 infrastructure 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.

Consultation

163. Targeted consultation was undertaken with local government groups,[28] planners, lawyers and key stakeholders on the options in this RIS from June to August 2024. Some of these groups also provided written feedback which was considered.

164. Key themes and comments from this consultation has been mentioned where relevant in problem definition and options above.

[27] 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

[28] This included conversations with a special interest group made up of consents managers, team leaders and principals from regional and unitary councils and a small group of council practitioners (with city/district council planning background).

165. In March 2024, the Minister Responsible for RMA Reform initiated engagement with local government, targeted Māori groups (including PSGEs) and sector stakeholders through letters. The letters included an offer of engagement for feedback to inform the RM Bill 2 amendments with a short turn around.

166. In mid-July, MfE sent letters to PSGEs, PSGE groups yet to settle their historical Treaty claims, Mana Whakahono ā Rohe groups and Ngā Hapū o Ngāti Porou. These letters provided information about the proposed scope areas for RM Bill 2 and the national direction programme and invited the groups to identify priority areas that they would like to meet with officials to discuss. We have had some high-level discussions with these groups on the proposals for RM Bill 2.

167. The timeframes to engage on the options in this RIS has been limited. In particular, the benefits and costs for Māori on these options need to be thoroughly investigated through engagement and consultation with iwi, PSGEs and other Māori stakeholders. There could be benefits for Māori in an RMA system that better enables renewable energy, regionally and nationally significant infrastructure and long-lived infrastructure. Equally there could be costs cultural values, sites of significance and other RMA section 6 matters to Māori that need to be properly investigated thoroughly through engagement.

Implementation

168. The proposals will be given effect through the legislation that amends the RMA (RM Bill 2). Guidance material will be provided to support the implementation of the changes, so that there is greater consistency in the consideration and issuing of consent durations for renewable energy and long-lived infrastructure.

169. MfE will work with councils during the policy implementation and provide support on the guidance where practicable. Each council has a relationship manager from MfE who can assist with implementation support either directly, or by putting them in contact with the appropriate person.

170. There is also an opportunity for councils and the Ministry to come together to discuss practice at Local Government Implementation Group meetings.

Monitoring

171. Councils will be responsible for the ongoing operation of the changes as part of their function under the RMA.

172. Following implementation, MfE will monitor progress as part of regular engagement with councils and reporting workstreams.

173. MfE will continue to collect information from councils on their implementation of the RMA each year through the National Monitoring System, including durations set for resource consents. This will allow for analysis of whether the proposals have improved the length of durations granted.

Appendix 1: different types of resources, consents and responsible authorities under the RMA

Table 2 Resource consent types and durations

Consent type (section 87)	Activities (sections 9, 11, 12, 13, 14, 15)	Duration under RMA (sections 123, 123A)	Responsible authority
Land use consent	Activities for the use of land (section 9)	Unlimited, unless otherwise specified	Regional councils, district/city councils
	Activities for certain uses of the beds of lakes and rivers (section 13)	5 years unless otherwise specified, but no longer than 35 years	Regional councils
Subdivision consent	Subdivision including leasehold, cross lease and freehold conversions (section 11)	Unlimited, unless otherwise specified	District/city councils
Coastal permits	General activities: occupation, disturbance in the Coastal Marine Area, clearing vegetation or aquatic habitats etc (section 12)	5 years unless otherwise specified, but no longer than 35 years	Regional councils
	For aquaculture	No less than 20 years (unless requested by applicant to be shorter) (section 123A)	Regional councils
	For reclamations	Unlimited, unless otherwise specified	Regional councils
Water permits	Water takes, damming, diversion of waterbodies	5 years unless otherwise specified, but no longer than 35 years	Regional councils
Discharge permits	Discharges into water, or onto or into land nearby water	5 years unless otherwise specified, but no longer than 35 years	Regional councils

Appendix 2 – definition of infrastructure in RMA national direction

Infrastructure in national direction

1. The NPS-REG defines renewable electricity generation as generation of electricity from solar, wind, hydroelectricity, geothermal, biomass, tidal, wave, or ocean current energy sources.[29]

2. The NPS-ET defines electricity transmission as part of the national grid of transmission lines and cables (aerial, underground and undersea, including the high-voltage direct current link), stations and sub-stations and other works used to connect grid injection points and grid exit points to convey electricity throughout the North and South Islands of New Zealand.[30] Electricity distribution is not covered by the NPS-ET.

3. For the proposals in this RIS the renewable energy generation activities associated with the NPS-REG, and the electricity transmission activities in the NPS-ET are combined in the concept of renewable energy consents. This is to ensure that both the critical generation and distribution of renewable energy is considered holistically in any changes to consent duration.

4. The National Policy Statement on Urban Development (NPS-UD) provides a definition of nationally significant infrastructure.[31]

5. The National Policy Statement of Freshwater Management (NPS-FM), National Policy Statement on Highly Productive Land (NPS-HPL) and National Policy Statement on Indigenous Biodiversity (NPS-IB) all provide a definition of specified infrastructure, which are not identical but are somewhat consistent in their treatment of regionally and nationally significant infrastructure (Table 2).

Table 3 National direction definitions of regionally significant infrastructure

174. Instrument	175. Specified infrastructure definition
176. NPS-FM	specified infrastructure means any of the following: (a) infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002) **(b) regionally significant infrastructure identified as such in a regional policy statement or regional plan** (c) any water storage infrastructure (d) any public flood control, flood protection, or drainage works carried out: 177. (i) by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or 178. (ii) for the purpose of drainage by drainage districts under the Land Drainage Act 1908 (e) defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990 179. (f) ski area infrastructure
180. NPS-HPL	specified infrastructure means any of the following: (a) infrastructure that delivers a service operated by a lifeline utility: **(b) infrastructure that is recognised as regionally or nationally significant in a National Policy Statement, New Zealand Coastal Policy Statement, regional policy statement or regional plan:**

[29] National Policy Statement for Renewable Electricity Generation (2011) – New Zealand Legislation
[30] National Policy Statement on Electricity Transmission (2008) – New Zealand Legislation
[31] National Policy Statement on Urban Development 2020 (environment.govt.nz)

	(c) any public flood control, flood protection, or drainage works carried out: 181. (i) by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or 182. (ii) for the purpose of drainage, by drainage districts under the Land Drainage Act 1908
183. NPS-IB	specified infrastructure means any of the following: (a) infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002): **(b) regionally or nationally significant infrastructure identified as such in a National Policy Statement, the New Zealand Coastal Policy Statement, or a regional policy statement or plan:** (c) infrastructure that is necessary to support housing development, that is included in a proposed or operative plan or identified for development in any relevant strategy document (including a future development strategy or spatial strategy) adopted by a local authority, in an urban environment (as defined in the National Policy Statement on Urban Development 2020): (d) any public flood control, flood protection, or drainage works carried out: 184. (i) by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or 185. (ii) for the purpose of drainage, by drainage districts under the Land Drainage Act 1908: (e) defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990.

6. As can be seen the identification of regionally significant infrastructure has been a matter of subsidiarity for regional authorities to consider and identify in their plans and policy statements. RM Bill 2 does not propose to amend this practice, or existing national direction, we note that greater consistency between definitions in different legislative and national direction instruments would be valuable.

7. It is also noted that the Fast-track Approvals (FTA) Bill sets out eligibility criteria for projects to be considered under the proposed legislation. This includes for Ministers to consider in section 17(2)(d) their "significant regional or national benefits" and in section 17(3) provides wide-ranging considerations to meet this criterion.[32] The FTA Bill does not propose altering the duration of consents beyond that already stated in the RMA.

[32] Fast-track Approvals Bill 31-1 (2024), Government Bill 17 Eligibility criteria for projects that may be referred to panel – New Zealand Legislation

Resource Management Amendment Bill no.2 – RIS & TIA Template

Regulatory Impact Statement: RM Bill 2 consenting – more certainty on consent durations for wood processing facilities

Coversheet

Proposal Providing more certainty on consent duration for wood processing facilities	Description This regulatory impact statement (RIS) is an addendum to the RIS for providing more certainty on consent duration (for renewable energy and long-lived infrastructure) and consent lapse periods (only for renewable energy). This RIS uses similar content and approach (including content and risks) as the renewable energy and certain long-lived infrastructure given the similarity in the challenges they face. This RIS recognises and acknowledges the differences in the nature (including the types of resource consents), the lifespan of the relevant asset, its problem definition to ensure the analysis is more fit for purpose/targeted. The proposal includes a proposed second amendment to the Resource Management Act 1991 (RMA) to streamline wood processing facility consents. The proposed option (Option 2C) is to require wood processing facility consents to be granted a minimum 20-year and maximum 35-year duration, unless: a. the applicant has requested a shorter period; or b. a shorter period is required to ensure that adverse effects on the environment are adequately managed; or c. a national direction instrument expressly allows a shorter period, or provides a policy on when and/or how a shorter period is appropriate; or d. a shorter period is required to align with other existing consents held by the applicant for the same wood processing facility.
Relevant legislation	Sections 123 to 126 of the RMA
Policy lead	James Kilbride, Forestry Sector Policy (Ministry for Primary Industries)
Source of proposal	Cabinet agreed to the strategic direction for the Forestry portfolio, including the four key roles for forestry and wood processing in supporting the Government's objectives to grow New Zealand's economy and exports, add value, and lift productivity [CAB-24-MIN-0181]. Cabinet noted this will require a targeted mix of policies. This will be one of the policies to achieve the above strategic direction.

	Specific to wood processing, RM Bill 2 Cabinet decision (CAB-24-MIN-0246 and ECO-24-MIN-0113) agreed to enable new wood-processing facility consents to be decided within one year of application and streamline the process of consenting these facilities. The Minister of Forestry has directed officials to seek a new minimum default duration of 20 years for wood processing activity consents in the RMA [B24-0395 refers]. Extending the minimum consent duration for wood processing facilities will streamline the process of consenting these facilities.
Linkages with other proposals	There are various other consenting amendments proposed for RM Bill 2 relating to more efficient consenting processes, council decision-making and lapse periods that are not part of this RIS. Together these amendments are intended to achieve improved consenting outcomes for system users. The consenting proposals related to wood processing facilities are linked to those considered in the *Regulatory Impact Statement: RM Bill 2 consenting – improving consent processing efficiency.* The definition of wood processing facility in this RIS will align with the above proposals. This proposal should also be read alongside the regulatory impact statement: '*RM Bill 2 consenting – improving consent processing efficiency*'.
Limitations and constraints on analysis	Policy development for RM Amendment 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 apply to wood processing facility consent durations, are outlined below: **Wood processing facilities** *Engagement* Targeted engagement was carried out with the wood processing sector in early 2024 on consenting issues being faced by the sector. No additional engagement has been carried out on this proposal, which is in part due to limited timeframes to deliver the RMA Amendment Bill 2. *Data and evidence* Evidence that the current 5-year minimum consent duration is restricting development of the wood processing sector is limited to anecdotal evidence, and no specific examples were provided by industry during targeted engagement. There are no known

	case studies that specifically focus on consent durations for wood processing facilities that can inform this RIS, and any data relating to this has been difficult to obtain within the limited time for RM 2 as the data is not consistently or centrally recorded.
Responsible Manager	Shannon Tyler, Forestry Sector Policy Manager, Primary Sector Policy, Ministry for Primary Industries
Quality Assurance: Impact Analysis	This Regulatory Impact Statement (RIS) has been reviewed by a panel of representatives from Ministry of Business, Innovation and Employment Hīkina Whakatutuki, Ministry for Primary Industries Manatū Ahu Matua and Ministry for the Environment Manatū Mō Te Taiao. It has been given a 'partial meets' rating against the quality assurance criteria for the purpose of informing Cabinet decisions. The panel notes that the RIS sets out well the context, objectives and the problem definition within the limitations. However, constraints imposed by the policy development process (ie the limited time available to undertake the analysis and the inability to conduct consultation with impacted groups) have meant that the criteria cannot be fully met. In some cases, the evidence base is missing on which to form a clear understanding of the policy problem, its causes, and the options available to address them.

Increasing consent durations for certain activities in Resource Management Amendment Bill 2

Proposals

1. This document (Annex One to the Regulatory Impact Statement for Renewable Energy consent duration and lapse period) analyses proposals to amend Resource Management Act 1991 (RMA) provisions to increase the duration of consents for wood processing facilities.

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 consenting and re-consenting processes.

3. The specific proposal considered in this RIS for wood processing facilities relates to streamlining re-consenting of existing facilities by introducing a default duration of 20 years.

4. This proposal aligns with the Cabinet agreement on the strategic direction for the Forestry portfolio, including the four key roles for forestry and wood processing in supporting the Government's objectives to grow New Zealand's economy and exports, add value, and lift productivity [CAB-24-MIN-0181]. Cabinet noted this will require a targeted mix of policies.

5. There is no explicit Cabinet decision that a 'minimum' duration of 20-year duration will be provided for wood processing facilities. Cabinet agreed to "*enable new wood-processing facility consents to be decided within one year of application and streamline the process of reconsenting these facilities*". A minimum duration will help streamline re-consenting of existing facilities by reducing how often wood processing operators need to apply for consent (CAB-24-MIN-0246 and ECO-24-MIN-0113).

6. This proposal will help streamline re-consenting of existing facilities (CAB-24-MIN-0246 and ECO-24-MIN-0113), and the Minister of Forestry has directed officials to seek a new minimum default duration of 20 years for wood processing activity consents in the RMA [B24-0395 refers].

Objectives

Objectives of RM Bill 2

7. The purpose of RM Bill 2 is to streamline and simplify the operation of the RMA, as set out in the primary RIS.

8. 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); and

b. 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.

9. The proposals align with objectives to enable the delivery of high-quality infrastructure for the future and primary sector growth and development. The proposal to streamline wood processing facility consents aligns with the objective to enable forestry growth and development.

10. 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.

Objectives for wood processing facility consents – enabling primary sector development and growth

11. In addition to the overarching RMA work programme objectives, this proposal would assist in delivering the specific Government objective to boost wood processing by streamlining re-consenting of existing and new wood processing facilities (CAB-24-MIN-0246 and ECO-24-MIN-0113).

Assessment criteria

12. The assessment criteria used to evaluate all RM Bill 2 proposals are set out in the primary RIS:

- **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.

Overarching Problem

13. New Zealand faces several significant and interconnected infrastructure challenges, as set out in the primary RIS.

14. The underlying problem facing the wood processing sector regarding consent duration is uncertainty. It is hard to secure finance and make medium to long term business decisions with the uncertainty that your wood processing facility may only be granted consent for the (default) 5-year duration.

15. Processed wood products contributed $2.97 billion to New Zealand's export revenue in 2023, with this projected to increase to $3.1 billion by 2028[1]. There are numerous pressures facing the sector, including supply-side shocks, high global interest rates (and resulting slowdowns in construction markets), high energy costs, and international regulatory barriers.

16. Wood processing facilities are typically designed for longevity to amortise the high, up-front costs of construction over the long life of the asset. Shorter consent durations can create uncertainty for investors, developers, and potentially hinder the timely deployment of plant upgrades and the investment of new capital, which is necessary to maintain domestic and international competitiveness.

17. The requirement to re-consent wood processing facilities within the operational life of an asset creates a degree of uncertainty about the ongoing viability of a plant, and it adds additional costs for wood processors.

18. Wood processing facility projects can have long lead times from the original planning to the commencement of production, due to the complexity of the project, the size of the capital / investment to be raised and the delivery of specialised components. These issues contribute to challenges facing the wood processing sector.

19. Addressing these issues is anticipated to require a combination of increased investment (both domestic and international), better use of existing infrastructure, and innovative solutions.

20. The sector has seen underinvestment and low productivity growth over the past twenty years, impacting on domestic and international competitiveness. Uncertainty around consent approvals and the duration of consents impacts on investment certainty and the willingness of financial institutions to support companies.

21. Attracting overseas capital and investors (in a competitive international market for wood processing investment) requires clear regulatory settings, that provide investors with certainty that their investment will be secure (for a known period).

22. Drawing on these challenges, a key problem that this proposal is seeking to address is: "providing the regulatory certainty that wood processing investors, and financial

[1] mpi.govt.nz/dmsdocument/62637-Situation-and-Outlook-for-Primary-Industries-SOPI-June-2024

institutions, are seeking, to invest in long term assets that raise the productivity and competitiveness of New Zealand's wood processing sector."

Consent duration

General

23. Resource consents are required before undertaking an activity that is not permitted (or prohibited) by a planning instrument (including national direction and local council plans) and the RMA - as set out in the primary RIS.

Challenges for wood processing facilities

What is a wood processing facility?

24. There is currently no accepted definition of a wood processing consent, or any national direction to give guidance in this space, as per the renewable energy generation options.

25. Wood processing facilities[2] means facilities specialising in:

    a. long-lived wood products production, including -

        i) sawn timber, including native timber, or

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

        iii) pulp, paper, and paperboard, or

        iv) wood chips, and

    b. production of bio-products, chemicals, and materials, and

    c. storage of processed wood products and hazardous materials.

Variability and inconsistency

26. The environmental effects of wood processing facilities vary greatly according to:

    a. the receiving environment,

    b. the reversible or irreversible nature of the effect,

    c. the activity proposed,

    d. the scale and size of the project, and

    e. the phase in the project's lifecycle where it is anticipated – construction, operation or decommissioning.

27. Different types of resource consents are often needed for one wood processing facility project. These consents may have different durations throughout the project's lifecycle. This paper only focusses on amending the RMA duration.

[2] Relevant Ministers have agreed on a broad definition for wood processing facilities through BRF-5124

Current consent durations are a challenge for wood processing facilities

28. A shorter duration for some permits can create uncertainty for developers, and potentially hinder the development of wood processing facilities, and subsequently the forestry sector.

29. Increasing the time intervals for reconsenting of certain timebound consents to a default of 20 years could provide greater certainty for the sector when making decisions on wood processing facility investments.

30. A shorter consent period (for example, 10 years) may result in the first few years of a new wood processing facility financing the start-up phase of the operation with high finance costs associated with the shorter consent duration. With a longer consent period, an investor will have more confidence that they will have time to recover their investment and make a positive return from a processing facility. This is more likely to produce a more balanced processing scene, with investment in sectors which may have a lower internal rate of return, such as sawmilling.

31. As outlined earlier, consent duration is dependent on its effects and how the policy framework provides for it.

32. Consent durations for wood processing facilities vary depending on the type of activity they permit. 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.

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

    a. Discharge permits, for example:

        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, and

        iii) discharge of waste to landfill.

    b. Water permits:

        i) groundwater or surface water takes, and

        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, and

        iii) extensions into adjoining lots.

34. Wood processing facilities may also require resource consents for: noise levels at the boundary, boiler facilities, and stockpiles (both height and wastewater management from these stockpile sites).

35. The various consents required for a wood processing facilities can have different durations. For example, during the construction phase of a wood processing facility a stormwater discharge consent may require a 5-year duration, whereas an air discharge consent duration should align with the useful life of capital assets in the facility.

36. The effects of noise, and often traffic movement, are important for future proofing wood processing facilities. In several instances, urban encroachment on a number of mills (even rezoning from industrial to residential) has put pressure on councils to reduce the operating limits, when consents are renewed. This issue is often exacerbated by reverse sensitivity issues resulting from encroaching development. A longer duration consent protects existing operators from subsequent changes to adjoining land use activities.

37. Wood processing applications can be complex. Management of environmental impacts, possible mitigation options, effect on communities, and allocation implications can all be part of the bundle of resource consents required for a wood processing facility. Once submitted they often involve an iterative process between consenting authorities, applicants, and third parties before a decision is made and the consent issued.

38. While wood processing facilities need land use consents for their main infrastructure, they often need air discharge consents to operate, which are limited to a 35-year maximum duration, with a default minimum duration of 5 years.

39. One wood processing facility resource consent (that took over 13 years to be approved) that was granted a 20-year consent duration was a renewal (meaning the holder could continue to operate during assessment) and included periods where the applicant agreed to delay their application.

40. The complexity associated with this 13-year consent highlights the need for consent duration to be longer than the default period of 5 years. A consent for a 5-year duration after taking 13 years to get the consent approved would be inefficient. A minimum 20-year consent duration will increase certainty for wood processing industry investors and sends a strong signal about the importance of onshore wood processing.

41. Due to tight timeframes, targeted engagement has been very limited. Consent data obtained from Canterbury Regional Council shows that recent new consents, likely related to wood processing and granted since 2020, have been granted for periods ranging from 5 years to 25 years in Canterbury. The majority of consents are 20-25 years, except where there are extenuating circumstances justifying a shorter period – e.g. to align with existing consents, or due to site redevelopment.

42. Although we have not been able to obtain specific consent data for the Central North Island, discussions with consent managers from the Waikato Regional Council and the Bay of Plenty Regional Council support the findings demonstrated through Canterbury's consent data.

20-year default durations for wood processing facility consents

43. This section contains options and analysis for the proposal to provide greater certainty of consent duration for wood processing facility consent by introducing a default duration of 20 years.

Options: Wood Processing Facility Consent Durations

44. The options considered to respond to this policy proposal are:

    a. Option 1 – status quo: no changes to consent durations in the RMA, noting that the Government has:

        i) A Fast-Track Approvals Bill[3] before Select Committee, which allows for joint Ministers to specify restrictions which apply to an activity (s 23(1)(b)), including its duration, subject to s 123 and 123A of the RMA (s 38(4)).

        ii) Committed to repeal and replace the RMA with a new resource management system based on the enjoyment of private property rights (National-ACT Coalition Agreement). This includes retaining the ability to develop standard conditions through Fast-Track Consenting, National Environmental Standards or updated Planning Standards.

45. The RMA national direction is empowered to set requirements relating to duration of consent or to provide for policy framework to guide consent decisions (further detailed in the renewable energy/long-lived infrastructure RIS).

    b. Option 2 – Set a default consent duration of 20 years:

        i) Option 2A – Require wood processing facility consents to be granted a 20-year duration, unless the applicant has requested a shorter period.

        ii) Option 2B – Require wood processing facility consents to be granted a 20-year duration, unless:

            - the applicant has requested a shorter period; or
            - shorter duration is needed to ensure adverse effects effect on natural and physical resources having historical or cultural value are managed; or
            - a national direction instrument expressly allows a shorter period, or provides a policy on when and/or how a shorter period is appropriate.

        iii) Option 2C – Require wood processing facility consents to be granted a minimum 20-year and maximum 35-year duration, unless:

            - the applicant has requested a shorter period; or
            - a shorter period is required to ensure that adverse effects on the environment are adequately managed; or

[3] Fast-track Approvals Bill 31-1 (2024), Government Bill Contents – New Zealand Legislation

- a national direction instrument expressly allows a shorter period, or provides a policy on when and/or how a shorter period is appropriate; or
- a shorter period is required to align with other existing consents held by the applicant for the same wood processing facility.

Potential approaches that have not been progressed into options

46. Early policy work deemed several potential approaches would not be progressed into options as they do not meet objectives (for example, non-regulatory options) or cannot practicably be achieved within the timeframes and agreed scope of RM Bill 2 (such as developing new national direction for wood processing facilities).

47. Approaches to streamline wood processing facility consenting that were considered but not progressed are set out in the primary RIS, including:

    a. Amend the RMA to strengthen the provisions for councils to review conditions of consent (s 128 to s 132).

    b. Provision of non-regulatory guidance material to improve the consistency of best practice in decision making authorities.

    c. Address duration of time limited consents through wider RMA replacement.

48. Options to streamline wood processing facility consents in the context of the limitation and constraints outlined earlier, are confined to options to legislate a minimum consent duration of 20 years.

Option 1: status quo - the counterfactual

49. The counterfactual for wood processing facility consent duration is outlined in the primary RIS. There is no ‘presumption’ for what the default duration is for time limited consents. The duration of consents would be determined based on the considerations set out in a planning instrument, and/or the level of impact of the use on the environment (effects). Consents can be reviewed in certain circumstances set out in s 128 of the RMA.

Key risks and benefits

50. The key risks and benefits of the counterfactual for wood processing facility consent duration are outlined in the primary RIS – it will not provide for additional certainty for operators, but it will preserve the integrity of existing planning instruments by councils,

Option 2: Set a default consent duration of 20 years.

51. Option 2 explores a subset of options designed to give greater certainty that council decisions for wood processing facility consents will be issued with a duration of 20 years.

52. Option 2 removes the ability for decision makers to issue a shorter duration, though it does not prevent consents from being declined, or conditions being reviewed periodically under s128(1). This option only applies to consents where wood processing is the main activity.

53. Many consent applications for large wood processing facilities already obtain a 20-year duration under the current RMA.

54. The current approach allows flexibility to consider individual circumstances and allow for more efficient allocation of natural resources (including what is directed in a planning instrument/prioritisation of certain activities).

55. Consent holders could apply for a replacement consent (long lead in time before expiry) if they wish to maintain a forward duration for security and investment purposes.

56. Some industry participants may choose not take advantage of the 20-year consent durations because it might contradict their social licence. Wood processing activities can be heavily polluting (e.g. soil contamination, laminates discharged into drinking water) and many operators are conscious of their impacts on rural communities.

57. Given the time-limited consents often involve the use of natural resources (including freshwater), there is an increased risk/likelihood of:

    a. This approach misaligning with local planning instruments policies and natural resources management in the interim period. New plan changes may be required to respond to the change, and to plan for more efficient allocation of resources or how councils manage these consents in their region. This may increase cost for councils and community.

    b. The approach to cut across treaty settlements and other arrangements. This applies where the policy in local planning instruments have been informed through requirements in the legislation which allows for participation and considerations of iwi planning documents. There will also be less flexibility for iwi authorities influence consent decisions to reduce duration.

    c. Councils seeking more information, impose more conditions, undertake more consent reviews (which can be costly and are currently done sparingly).

    d. Consents being appealed.

    e. Certain users may not be able to obtain consents given there is limited allocation.

    f. Overallocation and the resulting impact on the natural environment and biodiversity.

    g. System fragmentation as a different approach to consent durations would be required for certain activities than for other activities.

Option 2A: Require wood processing facility consents to be granted a default 20-year duration, unless the applicant has requested a shorter period.

58. Option 2A is designed to give greater certainty that council decisions for the duration of time-restricted wood processing facility consents will be issued with a 20-year duration.

59. This option will introduce a requirement for consents to be granted a 20-year duration, unless the applicant has requested a shorter period.

60. This option would provide certainty for applicants. Only the applicant has the power to reduce the duration of consent.

Key risks

61. Key risks of option 2A (in addition to the risks identified above) are:

    a. Less discretion for councils to use this mechanism (reduce duration) where appropriate to address adverse effects of the certain activities on the environment or to achieve a specific outcome outlined in their planning instrument.

    b. Increased likelihood that consents could cut across Treaty settlements and other arrangements, for specific reasons outlined above.

    c. Increased risk that consents decisions are declined or appealed.

62. 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.

63. These risks can be further mitigated as the applicant could address submitters/ stakeholder's concerns. This may be used where operators have established relationships and agreements to maintain with affected tangata whenua, iwi authorities and customary marine title groups, or other stakeholders.

Key benefits

64. The applicant will have additional investment certainty and confidence.

65. This may also potentially reduce cost for the consent holder given the reduced need to replace their consents in shorter intervals.

Option 2B: Require wood processing consents to be granted a default 20-year duration, with exceptions.

66. This option would require wood processing consents to be granted a default 20-year duration, with exceptions unless:

    a. the applicant has requested a shorter period; or

    b. shorter duration is needed to ensure adverse effects effect on natural and physical resources having historical or cultural value are managed; or

    c. a national direction instrument expressly allows a shorter period, or provides a policy on when and/or how a shorter period is appropriate.

67. This option retains the applicant ability to request for a shorter duration (in Option 2A). It recognises the role of national direction in the current system and provides additional ability for the Government to direct or enable flexibility.

68. This option also recognises the need to be more consistent with treaty settlements legislation and other arrangements where participation will inform the consent authority on the impact of the activity, particularly on resources having historical or cultural value.

69. The key difference in this option from Option 2A is this allows some flexibility through national direction, instead of primarily driven by applicant's behaviours.

Key risks

70. Key risks of option 2B (in addition the risks outlined under Option 2):

    a. There's still a level of risk of misalignment with other planning outcomes in the relevant local planning instruments. These plans were developed with various stakeholders, community and Māori.

    b. Other system users would not be able to influence the consent decision on duration, particularly if their use is impacted given the more limited allocation of resources is available, or adverse effects such as odour or similar may impact them.

71. 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

72. Applicant has additional certainty the consent, should it be granted, will have the maximum duration of 20-years. This will support the investment certainty.

73. This provides additional flexibility, particularly for central government to develop national direction (secondary legislation) that can provide for regional or local circumstances. The process of developing national direction also allows for engagement on the technicality of the provisions.

74. This also align with the existing powers of national direction where they can guide or direct decisions on consents. Councils, when assessing consent decisions, will be guided by national direction, if relevant policy exists.

75. This has some alignment with section 123A(2) of the RMA for aquaculture activity, which allows reducing consent duration to under 20 years if adverse effects on the environment needs to be adequately managed, and if national direction expressly provides for it. There are some minor differences where the discretion to reduce duration is more restrictive in this option, as this option only proposes shorter duration if adverse effects relating to cultural or heritage values need to be adequately managed.

76. It will incentivise applicants to work together with tangata whenua to ensure adverse effects on cultural values/historical values are adequately managed. This reduces the risk that treaty settlement obligations created by engagement obligations for affected tangata whenua, iwi authorities and customary marine title groups would not be met.

Option 2C: Require wood processing facility consents to be granted a minimum 20-year and maximum 35-year duration, with further exceptions:

77. This option would require wood processing facility consents to be granted a minimum 20-year and maximum 35-year duration, unless:

    a. the applicant has requested a shorter period; or

    b. a shorter period is required to ensure that adverse effects on the environment are adequately managed; or

c. a national direction instrument expressly allows a shorter period, or provides a policy on when and/or how a shorter period is appropriate; or

d. a shorter period is required to align with other existing consents held by the applicant for the same wood processing facility.

78. This option provides more certainty than the current RMA policy, in that a wood processing consent must be granted for a duration between 20-year's minimum and 35 years' maximum, with specified exceptions.

79. This option only applies to consents where wood processing is the main activity.

Key risks

80. This option has the same risks as Option 2A.

81. Allowing councils to consider site-specific effects such as soil contamination or water allocation when granting a shorter consent period may result in variability in consent durations, as wood processing activities tend to have complex environmental impacts.

Key benefits

82. This option ensures that councils can still grant consents that relate to the expected duration of the wood processing activity. Limiting councils to always provide a 20-year consent could result in misalignment between consents for different activities – for example, a 20-year stormwater consent being granted for a construction activity that is unlikely to take longer than 5 years.

83. It would also reduce the risk of a consent for an activity not aligning with existing consents – for example, where a discharge consent during an upgrade or period of increased operations for an existing wood processing facility for the same period as an existing discharge consent.

84. Some activities relating to wood processing facilities are likely to result in soil contamination, water contamination, air pollution, or other adverse and complex environmental effects that could risk public acceptance of these activities. Allowing councils to manage site-specific impacts of activities where there is evidence of likely significant adverse effects could reduce the likelihood of significant negative environmental or health impacts, while still allowing for longer consent durations.

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

Example 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

	Option One – [*Status Quo / Counterfactual*]	Option 2A: Require wood processing facility consents to be granted for a default 20-year duration. This can be reduced if the applicant has requested a shorter period.	Option 2B: Require wood processing facility consents to be granted a default 20-year duration. This can be reduced in specific circumstances, including: • by the applicant's request, • to manage adverse effects relating to historical or cultural values, and • expressly allowed by a national direction.	Option 2C: Require wood processing facility consents to be granted a minimum 20-year and maximum 35-year duration, unless a shorter period is: • requested by the applicant • required to ensure adverse environmental effects are managed • specifically directed in a national direction instrument • a shorter period is required to align with other existing consents held by the applicant for the same wood processing facility
Further description	Land use consents unlimited S123(c) / (d) - Duration of consent is what is specified in consent up to a maximum of 35 years. If duration is not specified, 5-year default duration applies.	• 20-year durations would be standard for wood processing facility consents. • Applicant can request shorter duration with certainty; decision makers would have few effects-based reasons to refuse. • Review of conditions over time can still address rule/standard changes (e.g. e if air shed changes) • Consents can still be declined	• 20-year durations would be standard for wood processing facility consents. • Applicant can request shorter duration. • Shorter duration consent could be issued if national direction provides for this. • Allow affected tangata whenua to influence duration of consent. • Other RMA requirements continue to apply, including review of conditions of consent, and consent can still be declined.	• 20-year duration consents are typical for large wood processing facility consents, and in some instances 35-years may be appropriate. • Applicant can request for shorter duration • Short duration consent could be issued if national direction provides for this, or if required to align with other existing consents for the same wood processing facility, or to manage site-specific effects such as soil contamination or water allocation • Other RMA requirements continue to apply, including review of conditions of consent, and consent can still be declined. • Explicitly ensures environmental effects are managed, such as site-specific soil contamination or water allocation issues
Effectiveness	0	+ • Supports Government policy objective of streamlining consents for wood processing facilities, and the Government objective of enabling primary sector growth and development. • Provides the most certainty for operators.	++ • Supports the Government policy objective of enabling primary sector growth and development. • This also provides more certainty for the applicant than the status quo. • Incentivise applicant to work with potentially affected tangata whenua, and it better supports consistency with treaty settlement legislation and other arrangements.	++ • Supports the Government policy objective of enabling primary sector growth and development. • This is more consistent with the Treaty of Waitangi, treaty settlements and other arrangements, given the council planning instruments and effects management would influence shorter duration. • Ensures alignment between existing consents and new consents, and reduces risk of negative site-specific effects, potentially increasing operators' social licence.
Efficiency	0	0 • It is more efficient for operators, given the new default of maximum duration.	- • Similar to Option 2A. • This option does not provide for the same level of efficiency (when compared to Option 2A) for the	++ • Provide additional efficiency than status quo, given the minimum 20-year duration consent.

		• May potentially reduce the frequency to renew consents for the operators. • This is likely to misalign with the RMA approach, and council plans may need to be updated to reflect the change. • Other system users who are not wood processing facilities may not be allocated limited resources.	operators, given the potential need to engage with affected tangata whenua to agree on duration.	• Better upholds the integrity of existing planning system and principles of subsidiarity. • Provides for other system users. • Provides for varied activity lengths in circumstances where this is required to manage environmental effects and to align with other activities.
Certainty	0	+ • High level of certainty for the operators, and councils do not need to further assess whether a shorter duration is needed unless operators request for a shorter duration.	0 • Similar to Option 2A. • Provides some certainty for affected tangata whenua, but less for operators and regulators.	**+** • More certainty for operators than status quo. • All participants in the regulatory system retain similar roles, responsibilities and legal obligations to the status quo.
Durability & Flexibility		**--** • The legislative approach reduces ability for the system to respond to changing circumstances or new information (i.e climate change/ water use). • There is a lack of flexibility for other parties to influence, including central government.	**-** • The legislative approach reduces ability for the system to respond to changing circumstances or new information (i.e climate change/water use). • Provides additional flexibility for central government to develop secondary legislation (national direction) that can provide for regional or local circumstances. • This also provides some flexibility for affected tangata whenua to influence duration.	**-** • The legislative approach reduces ability for the system to respond to changing circumstances or new information (i.e climate change/water use). • Provides additional flexibility for central government to develop secondary legislation (national direction) that can provide for regional or local circumstances.
Implementation Risk	0	- • Requirements clear for councils and operators. • The risk would be low to medium, if councils choose to undertake new plan changes to implement this change. • Likely to have a risk for other activities that don't have the extended timeframes from an allocation standpoint.	+ • Generally aligned with the established approach under s 123A(2) of the RMA, and the empowering provisions of national direction under the RMA. • Reduces implementation risk if there's inconsistency in approach through the development of national direction. • The risk would be low to medium, if councils choose to undertake new plan changes to implement this change.	++ • This closely aligns with the established approach under s.123A of the RMA. • The approach is similar to how consents are currently considered under the RMA before substantive decisions are made (see s 104 of the RMA). • The risk for plan changes may be lower as many plans already have some form of framework to guide decisions on consent duration.
Overall assessment	0	**-**	**+**	**++**
Preferred option				++

Overall Assessment: Wood processing consent durations

85. Option 2C is the preferred option because:

    a. It provides a good level of certainty over the status quo for wood processing facilities by setting out that consent durations will have a minimum of 20 years, with a clear pathway for the maximum of 35 years. Option 2C also provides for other Government RM reform objectives (safeguarding the environment and human health, and upholding treaty settlements and other similar arrangements).

    b. This option is also likely to provide sufficient durability and flexibility that recognises local circumstances, other system users, and the overall balance and purpose of the RMA. It includes a mechanism to uphold the Treaty of Waitangi, Treaty Settlements and other arrangements and incentivises applicants to work with tangata whenua to ensure adverse effects on cultural values/historical values are adequately managed.

    c. It supports Government policy objective of streamlining consents for wood processing facilities, and the Government objective of enabling primary sector growth and development.

    d. This option still generally fits within the general approach to consent durations in the RMA. It reflects current practice through an established approach (s 123A) to address consenting issues for a specific sector, reducing challenges for implementation.

Cost/Benefit Analysis

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *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 face less enabling durations if council planning documents or national direction prescribes it.	Low – national direction is only likely to prescribe less enabling durations where genuine need exists.	Low
Councils	Councils would likely be required to provide rationale of how a longer or shorter duration has been assessed. A national direction may change the direction for durations, to which council plans and assessments would need to adjust to. Councils may need to amend their plans through plan changes.	Low - councils should be able to make these assessments based on their planning instruments, national direction and practice (i.e. consents that have been previously issued or are being assessed). Anecdotal evidence tells us Councils are already assessing durations based on similar factors.	Medium
Treaty Partners and iwi, hapū/Māori	Treaty partners may find their rights and interests in freshwater are impeded by longer durations.	Medium– there will be requirements for councils to ensure this is consistent with any relevant agreements with treaty partners/ tangata whenua / iwi/hapū/Māori.	Medium – consultation with post settlement governance entities required to understand full extent.
'Affected persons' and general community	Affected persons or community may find resources such as water allocation is 'locked away' for longer periods than the status quo.	If 'affected persons' submit they will still have a right to object to any duration decision/appeal.	Medium
Central government	MfE/MPI will need to produce non-statutory guidance and support councils.	Low – this will form part of the business in system stewardship and management.	Medium – further consultation with the sector required to understand full extent.
Total monetised costs	There could be some cost for councils to update their system.	No direct cost	Medium
Non-monetised costs		Low	Medium
Additional benefits of the preferred option compared to taking no action			
Consent applicants	Certainty of durations, and a clear framework for shorter or longer if implemented in national direction, council planning documents or subject to specified adverse effects will help to reduce costs (both time and monetary costs) for applicants.	Medium	Medium
Councils	Reduced council resources required to re-consent assets with a less than 35-year consent duration.	Low – Durations could still have a wide range, and the RMA will set a range of 20 -35 years.	Medium
Treaty Partners and iwi, hapū/Māori	Treaty partners applying for consents will experience similar benefits to consent applicants listed above. Treaty partners with rights or interests affected by a project will know these are to be considered through the application process.	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' and general community may have more clarity around when assets will need to be reconsented and environmental impacts of such assets could be relitigated. This also applies to when resources allocated by consent for such assets will again be available for allocation.	Low	Low
Central government	Currently, there is some understanding about the key reasons for shorter durations. However, to understand this further, MfE/MPI 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 – additional information could be collected, particularly on reasons for shorter durations. 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		Low	Low

Treaty implications

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

87. 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.

88. 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.

89. A higher proportion of Māori land is comparatively more suited to exotic carbon forests due to it being on land considered marginal, steep and/or erosion prone.

90. Whenua Māori has different characteristics to general title land which make it well suited for 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.

91. 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.

92. 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.

93. 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.

94. Extending consent duration 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.

Consultation

95. Targeted consultation was undertaken with local government groups,[4] planners, lawyers and key stakeholders on the options in this RIS from July to August 2024. Some of these groups also provided written feedback which was considered.

96. Key themes and comments from this consultation has been mentioned where relevant in problem definition and options above.

97. In March 2024, the Minister Responsible for RMA Reform initiated engagement with local government, targeted Māori groups (including PSGEs) and sector stakeholders through letters. The letters included an offer of engagement for feedback to inform the RM Bill 2 amendments with a short turn around.

98. In mid-July, MfE sent letters to PSGEs, PSGE groups yet to settle their historical Treaty claims, Mana Whakahono ā Rohe groups and Ngā Hapū o Ngāti Porou. These letters provided information about the proposed scope areas for RM Bill 2 and the national direction programme and invited the groups to identify priority areas that they would like to meet with officials to discuss. We have not yet had discussions with these groups on the specific consenting proposals in this document.

99. The timeframes to engage on the options in this RIS has been limited. In particular, the benefits and costs for Māori on these options need to be thoroughly investigated through engagement and consultation with iwi, PSGEs and other Māori stakeholders.

100. There could be benefits for Māori in an RMA system that better enables wood processing facilities. Equally there could be costs cultural values, sites of significance and other section 6 RMA matters to Māori that need to be thoroughly investigated through engagement.

Implementation

101. The proposals will be given effect through the legislation that amends the RMA (RM Bill 2). Guidance material will be provided to support the implementation of the changes.

102. MfE will work with councils during the policy implementation and provide support on the guidance where practicable. Each council has a relationship manager from the Ministry who can assist with implementation support either directly, or by putting them in contact with the appropriate person.

103. There is also an opportunity for councils and the Ministry to come together to discuss practice at Local Government Implementation Group meetings.

104. The Ministry for Primary Industries and MfE will work with Parliamentary Counsel Office, consenting authorities, industry, PSGEs, iwi authorities, tangata whenua, and ENGOs to develop a working definition of wood processing facility resource consents.

105. Councils may need to allocate additional resources to assess the environmental impacts of consent applications under the RMA, with a minimum consent duration of 20

[4] This included conversations with a special interest group made up of consents managers, team leaders and principals from regional and unitary councils and a small group of council practitioners (with city/district council planning background).

years. Consents with a minimum consent duration of 20 years will incentivise higher-quality applications upfront (increasing the costs to applicants to prepare these applications), leading to a smoother process for both councils and applicants.

Monitoring

106. Councils will be responsible for the ongoing operation of the changes as part of their function under the RMA.

107. Following implementation, MfE will monitor progress as part of regular engagement with councils and reporting workstreams.

108. MfE will continue to collect information from councils on their implementation of the RMA each year through the NMS, including durations set for resource consents. This will allow for analysis of whether the proposals have improved the length of durations granted.

Regulatory Impact Statement: Managing discharges under s70 of the Resource Management Act

Coversheet

Purpose of Document	
Decision sought:	Changes to the Resource Management Act 1991 to address regulatory uncertainty in the application of s70 (managing discharges as a permitted activity).
Advising agencies:	Ministry for the Environment, Ministry for Primary Industries
Proposing Ministers:	Minister Responsible for RMA Reform, Minister of Agriculture, Minister of Forestry and Associate Minister of Agriculture
Date finalised:	17 September 2024

Problem Definition

Context

The Resource Management Act 1991 (RMA) prescribes how regional councils must manage discharges to land or water. Before a regional council can permit[1] (s70) or issue a consent[2] (s107) for a discharge, it must be satisfied that the discharge is unlikely to result in certain effects in the receiving waters. This includes any significant adverse effects on aquatic life.

Recent court decisions[3] have impacted how councils manage certain discharges under ss 70 and 107. Under the s107 decision, councils cannot consent discharges which are likely to have significant adverse effects on aquatic life, even where consent conditions would result in a reduction in those adverse effects over time. This particularly impacts discharge activities in degraded catchments facing cumulative impacts.

Cabinet agreed changes to s107, to enable consents for these discharges in degraded catchments, provided that consent conditions would contribute to an overall reduction in those adverse effects over time. These discharges would otherwise have been required to stop. See the Draft Supplementary Analysis Report *Amending s107 of the Resource Management Act to improve certainty while protecting freshwater and aquatic life* for more information about the impact of the s107 decision, and the previously agreed changes – **Appendix A** and the relevant Cabinet Minute ECO-24-MIN-0145 – **Appendix C**).

[1] As a permitted activity rule in a regional plan. Permitted activity rules can allow discharges without the need to obtain a resource consent, subject to any conditions. A resource consent must be applied for when there is no permitted activity pathway.

[2] Resource consents for discharges are referred to in the RMA as discharge permits. To avoid confusion with permitted activity rules, they are referred to here as discharge consents.

[3] *Federated Farmers Southland Incorporated v Southland Regional Council* [2024] NZHC 726 [9 April 2024] (the s70 decision); and *Environmental Law Initiative v Canterbury Regional Council* [2024] NZHC 612 [20 March 2024] (the s107 decision).

Problem definition

Given the court decisions, and the correlation between s70 and s107, there is uncertainty on how to s107 decision will be interpreted and applied to s70 and future regional plans.

We have heard from councils that, without clear direction, they:

i. are likely to interpret s70 as preventing them from making permitted activity rules for discharges that may give rise to significant adverse effects, even if such a rule provided for a requirement for improvement over time

ii. are concerned this will lead to too many consents to process within statutory timeframes and, in turn, mean they cannot cost recover (ie, councils cannot cost recover for consent processing where consents are not decided within statutory timeframes).

A proactive approach to s70 would reduce the regulatory uncertainty created by these recent court decisions and provide councils clear direction on the development of permitted activity rules in their regional plans.

The trade-off in considering changes to s70 to address regulatory uncertainty is between costs associated with consenting, and reduced oversight (from managing discharges as permitted activities rather than through consents).

Executive Summary

Legislative context

Sections 15, 70, and 107 are the core Resource Management Act 1991 (RMA) provisions for protecting freshwater and aquatic life. Section 15 is the primary provision. It prohibits all discharges via land or water from being allowed to contaminate water – except where expressly allowed by:

- a national environmental standard or other regulation
- a rule in a regional plan or proposed regional plan
- a resource consent.

Sections 70 and 107 are secondary provisions that restrict when this permission may be given. Before making discharges a permitted activity in a regional plan rule (s70) or granting a discharge consent (s107), a council must be satisfied that listed effects are unlikely.

The Government's objective is to enable progressive improvement of water quality over time. This recognises the need for continuity of existing economic activities and infrastructure (eg, waste and storm water) in the short to medium term, including in degraded catchments, while changes are made to achieve water quality targets over time for both surface waters and groundwater systems (which are much slower to respond).

Recent court decisions have impacted how councils manage discharges

Recent court decisions[4] have impacted how councils manage certain discharges under ss 70 and 107. Under the s107 decision, councils cannot consent discharges which are likely to have significant adverse effects on aquatic life, even where consent conditions would

[4] *Federated Farmers Southland Incorporated v Southland Regional Council* [2024] NZHC 726 [9 April 2024] (the s70 decision); and *Environmental Law Initiative v Canterbury Regional Council* [2024] NZHC 612 [20 March 2024] (the s107 decision).

result in a reduction in those adverse effects over time. This particularly impacts discharge activities in degraded catchments facing cumulative impacts.

Cabinet agreed to amend s107 to provide a consenting pathway for staged mitigation

Cabinet agreed to amend s107, to provide clarity on managing discharges through consents [ECO-24-MIN-0145 refers – **Appendix C**]. This change is being progressed through the Resource Management (Freshwater and Other Matters) Amendment Bill (RM Bill 1), and is expected to be enacted by the end of 2024. Changes will enable a discharge consent to be granted where the discharge may contribute to significant adverse effects on aquatic life, *if* the council is satisfied that:

a. receiving waters are already subject to significant adverse effects on aquatic life; and

b. consent conditions would contribute to an overall reduction in those adverse effects over the duration of the consent.

More detail on the impact of the s107 decision on consenting, urgency, and the agreed changes, is included in the Draft Supplementary Analysis Report *Amending s107 of the Resource Management Act to improve certainty while protecting freshwater and aquatic life*, included as **Appendix A**.

As Cabinet has decided to make this change, it is part of the counterfactual for this Regulatory Impact Statement (RIS).

Policy problem – how the situation is expected to develop (following the court decisions, and amendments to s107)

With the change to s107, there will now be a consenting pathway for these discharges. Although councils can still permit some discharges, the court decisions have created regulatory uncertainty about the interpretation of s70.

Because the significant adverse effects 'gateway test' is the same in s70 and s107, the court's findings in relation to s107 are likely to be persuasive and inform future interpretations of s70 in regional plan making. That is, the finding that a *discharge consent* cannot be granted (under s107) in certain situations could be inferred to similarly constrain making *permitted activity rules* (under s70) in such situations.

We have heard from councils that, without clear direction, they:

a. are likely to interpret s70 as preventing them from making permitted activity rules for discharges that may give rise to significant adverse effects, even if such a rule provided for a requirement for improvement over time

b. are concerned this will lead to too many consents to process within statutory timeframes

c. are concerned they will be unable to cost recover (ie, councils cannot cover recover for consent processing in situations where consents are not decided within statutory timeframes).

A proactive approach to s70 would reduce the regulatory uncertainty created by these recent court decisions and provide councils clear direction on the development of permitted activity rules in their regional plans.

The trade-off in considering changes to s70 to address regulatory uncertainty is between costs associated with consenting, and costs in terms of reduced oversight (from managing discharges as permitted activities rather than through consents).

Consultation

There has been no direct consultation on the proposals in this RIS.

Proposals to address the policy problem were received through correspondence to the Ministry for the Environment / Minister for the Environment, submissions on RM Bill 1, and discussions with a subset of councils and Te Uru Kahika, the national body for regional councils.

Changes to s70 were proposed by regional councils and the primary sector. Environmental organisations opposed changes being made without wider consultation and public submissions.

Discussions with councils highlighted that, on their interpretation of the case law, they would be restricted from providing permitted activity pathways for certain discharge activities (ie, that may give rise to significant adverse effects on aquatic life, even if effects would be reduced over time). This would exponentially increase the number of resource consents needed, creating large costs for both councils and applicants.

All councils agree it is a practical / cost problem rather than an environmental problem, and note requiring resource consents does not mean better environmental outcomes than would be achieved through permitted activities.

Options considered

The options assessed in this RIS are limited due to the time available and the direct link to s107 changes agreed by Cabinet. Therefore, they may not represent the full range of feasible options.

The three options considered are:

- **Counterfactual:** s70 remains unchanged. Recent court decisions supplant the pre-existing status quo. Depending on the interpretation of the court decisions, councils may choose not to permit some existing discharge activities under s70. This would mean a resource consent pathway under s107 is the only option (ie, if these discharges are not allowed under permitted activity rules)
- **Option 1:** Mitigation through conditions (amend s70 consistent with the change to s107). This option would amend s70 to enable a permitted activity rule in a regional plan for discharges (both point source and diffuse) in degraded catchments subject to rules requiring a contribution to reductions in adverse effects over time
- **Option 2:** Exempt diffuse discharges under s70. This option would exclude diffuse discharges from the listed effects test for discharges under s70, meaning that s70 only applies to point source discharges.

Recommendation/best option

Ultimately, it is a trade-off between the costs associated with consenting, and cost to the environment (through reduced oversight) as a result of managing discharges as permitted activities.

Of the options assessed, Option 1 is rated the highest against the criteria. In the immediate term, it provides an effective and enduring solution to the issues with the counterfactual. It addresses the regulatory uncertainty by providing clear direction to councils. This enables regional plans to continue to use permitted activity rules to manage discharges, while still ensuring that environmental effects are managed through rules and improved over time.

Providing clear direction for councils to continue to use permitted activity rules to manage discharge activities maintains the options available to councils from what was the status quo prior to the recent court decisions.

However, based on past evidence, there is an implementation risk with Option 1. If mitigation targets are not met, but discharge activities are allowed to continue as a permitted activity, an overall reduction in adverse effects may not be achieved. There are also limitations on compliance monitoring and enforcement for permitted activities.

The approach to making regional plan rules under s70 will remain up to councils. The rules will be subject to submissions and hearings processes during regional plan notification as well as any appeals.

Treaty Impact Analysis

A Treaty impact analysis is outlined in **Appendix B**.

Considering the lack of engagement with iwi, hapū and Māori and the information and analysis in **Appendix B**, it is difficult to assess:

- whether or not the principles of partnership and active protection have been met
- any potential impacts on the Crown's previous commitments on Māori freshwater rights and interests, and
- whether or not some Treaty settlement commitments have been met.

Consultation during the RM Bill 2 process will provide an opportunity for iwi, hapū or Māori groups to provide feedback. Feedback received will inform the Select Committee's consideration of RM Bill 2 and final decisions on any change.

Limitations and Constraints on Analysis

This RIS will support a decision on whether to introduce changes via RM Bill 2 to s70 of the RMA to address the regulatory uncertainty in how s 70 is interpreted. This will then be subject to consultation before final decisions are made (ie, following Select Committee).

The regulatory uncertainty is likely to impede the effective operation of the RMA planning and consenting processes (as demonstrated by the Environment Canterbury (ECan) case study below) but comprehensive, national-level impact analysis has not been completed due to the constraints outlined below.

A proactive approach is necessary to maintain RM system operability.

Time constraints

- The RMA Reform timeline[5] and the recency of the court decisions on s70 and s107 have reduced the time available to prepare a RIS.
- The time constraints have also limited the scope of options considered, level of analysis, collation and review of evidence, and engagement with iwi/Māori, stakeholders and the public.

[5] Cabinet has agreed to a three-phased approach to reform the resource management system in New Zealand. The proposals in this RIS are part of phase two which include making targeted legislative changes to the Resource Management Act 1991 (RMA) in 2024. Phase three will introduce RMA replacement legislation by mid-2025 [ECO-24-MIN-0160 refers].

Assessment of counterfactual

- The ‘counterfactual’ option presented here is a new scenario. The recent High Court decisions regarding the application of s70 and s107 will require councils to modify the way they deliver their responsibilities under these sections in future. This new scenario has not yet had time to play out, so is presented here as a counterfactual for which the potential impacts are inferred rather than evidence based.
- Cabinet has agreed to make changes to s107. They are being progressed as part of RM Bill 1 and are expected to pass into law by the end of 2024. The counterfactual has been assessed as though the agreed changes to s107 have been made.

Data and evidence

- There has been insufficient time and resource to obtain more council data on how many plans, consents, businesses, and catchments might be affected going forward. Without this data, we have neither been able to provide an economic or cost/benefit analysis nor quantify potential costs to councils, regulated parties, and communities.

Limitations on consultation, testing, and stakeholder engagement

- Timeframes have limited our ability to engage with external parties, and opportunities for feedback from stakeholders, Treaty partners, councils, Environmental Non-Governmental Organisations (ENGOs), or the public. This, combined with the substantial number of changes that may be progressed as part of RM Bill 2, means engagement with PSGEs on how best to uphold Treaty settlement arrangements has not occurred.
- Some of the options presented here were informed by feedback from affected stakeholders and interested parties in letters to Ministers and the Ministry for the Environment, and (as extraneous matters) in submissions on RM Bill 1.

Responsible Manager(s) (completed by relevant manager)
Nik Andic *Manager* *Freshwater* *Ministry for the Environment*  *17 September 2024*

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Ministry for Primary Industries
Panel Assessment & Comment:	The Ministry for Primary Industries Regulatory Impact Analysis (RIA) Panel has reviewed the ‘Managing discharges under s70 of the Resource Management Act’ regulatory impact statement (RIS) and considers that it fully meets the RIA quality assurance criteria. It clearly sets out the uncertainty created by recent court decisions, and the risks if this uncertainty is not proactively

	managed while acknowledging it is difficult to calculate the potential impact if councils' concerns were realised. While specific consultation has not been undertaken, the Ministry for the Environment has engaged with councils on the concerns created by the potential implications of recent court cases.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Context

Resource Management Reform (RMA Reform)

1. A three-phased approach to improving the resource management system has been agreed by Cabinet. Phase two is underway and among other priorities, seeks to make targeted legislative changes to the Resource Management Act 1991 (RMA) to achieve reform objectives.[6] The proposals in this Regulatory Impact Statement (RIS) fit within phase two, while also seeking to align with phase three.

2. Phase three will replace the RMA with new resource management legislation and is expected to be introduced by mid-2025. The changes will result in a more enabling resource management system with more certainty, fewer consents that are approved faster, and that is less litigious ECO-24-MIN-0160 refers].

Freshwater quality and management

3. Freshwater quality has worsened in many parts of New Zealand[7] since the RMA came into effect in 1991, despite provisions intended to avoid, mitigate, or remedy adverse effects.

4. Most urban waterways have poor water quality, degraded habitat, and impaired ecological health[8] and 95% of rivers flowing through pastoral land are contaminated to some degree[9]. This is due to elevated levels of nutrients, bacteria, sediment, heavy metals and other contaminants.

5. The contaminants largely come from discharges from agricultural land, road surfaces, logging sites, and construction and maintenance sites. Most take the form of diffuse (or

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[6] The objectives used to guide the work to replace the RMA are:

1. Making it easier to get things done by:
   - 1.1. unlocking development capacity for housing and business growth;
   - 1.2 enabling delivery of high-quality infrastructure for the future, including doubling renewable energy;
   - 1.3 enabling primary sector growth and development (including aquaculture, forestry, pastoral, horticulture, and mining);
2. While also:
   - 2.1 safeguarding the environment and human health;
   - 2.2 adapting to the effects of climate change and reducing the risks from natural hazards;
   - 2.3 improving regulatory quality in the resource management system;
   - 2.4 upholding Treaty of Waitangi settlements and other related arrangements;

[7] Ministry for the Environment. 2023. *Our Freshwater 2023*.

[8] https://ojs.victoria.ac.nz/pq/article/view/5683#:~:text=Urban%20waterways%20represent%20less%20than%201%25%20of%20the,nutrients%20and%20heavy%20metals%20originating%20from%20anthropogenic%20activities.

[9] Ministry for the Environment. 2023. *Our Freshwater 2023*. Issue 2: Water is polluted in urban, farming, and forestry areas | Ministry for the Environment. https://environment.govt.nz/publications/our-freshwater-2020/issue-2-water-is-polluted-in-urban-farming-and-forestry-areas/

non-point source)[10] discharges, with point-source discharges (pipes) making up the balance.

6. Point-source discharges from industrial and infrastructural pipes and drains (eg, factories, wool scours, dairy sheds, meat-works, sewage plants, stormwater drains) used to be major contributors, but have been better managed in recent decades.

Legislative context and councils' approach to managing discharges prior to recent court decisions

7. Sections 15, 70, and 107 are the core RMA provisions for protecting freshwater and aquatic life. Section 15 is the primary provision. It prohibits all discharges via land or water from being allowed to contaminate water - except where expressly allowed by:
    a. a national environmental standard or other regulation
    b. a rule in a regional plan or proposed regional plan
    c. a resource consent.
8. Sections 70 and 107 are secondary provisions that restrict when this permission may be given. A council must be satisfied that listed effects are unlikely before making discharges a permitted activity in a regional plan rule (s70) or granting a discharge consent (s107).
9. Regional councils are responsible for making regional plan rules for discharges. Permitted activity rules authorise discharges without the need to obtain a resource consent, subject to any conditions. A resource consent must be applied for when there is no permitted activity pathway.
10. Councils use s70 and s107 to manage all types of discharges (ie, diffuse discharges and point-source discharges).
11. Some councils have made diffuse discharges a permitted activity, subject to compliance with land use rules, land use consents, or other management tools (eg, farm environment plans). Other councils require them to be authorised by a discharge consent with conditions requiring that the effects of the discharge be mitigated over a set time-period. Some councils use a mix of permitted activity rules for some discharges and consents for others.
12. Examples of the use of permitted activity rules to manage diffuse discharges include:
    a. Canterbury Land and Water Regional Plan[11] – Permitted activity rule for incidental discharges, subject to compliance with land use rules. Those land use rules have conditions to manage nitrogen discharges, including requiring progressive leaching reductions over time
    b. Proposed Waikato Plan Change 1[12] – Permitted activity rule for diffuse discharges from lower intensity farming, subject to conditions including implementation of a farm environment plan

[10] 'Diffuse discharges' (a.k.a. 'non-point source discharges') are those that cannot be traced back to a discrete 'point source', such as a sewage outlet or stormwater pipe.

[11] Rule 5.63

[12] Rule 3.11.4.3 - Decisions Version

c. Auckland Unitary Plan[13] – Permitted activity rule for discharges associated with nitrogen fertiliser. Conditions include applying fertiliser in accordance with best industry practice.

13. The current state for managing discharges across regions is complicated and still evolving.

Recent court decisions on s70 and s107 have impacted how councils manage discharges

14. Two recent court decisions[14] impact on the interpretation of s70 and s107 and how councils manage certain discharges.

15. Under the s107 decision[15], councils cannot consent discharges which are likely to have significant adverse effects on aquatic life, even where consent conditions would result in a reduction in those adverse effects over time. This particularly impacts discharge activities in degraded catchments facing cumulative impacts.

16. The s70 decision[16] applies to regional plan rules and will only have full effect when councils make plan changes. However, as regional plan development occurs over several years, the decision will have some immediate impact on plan development.

17. Discharges likely to have listed effects cannot be permitted activities and will need a discharge consent to continue.

18. When taken together, the decisions mean that some existing discharges may not be permitted (s70) and are unlikely to obtain a new consent (s107), in effect making these discharges prohibited under the RMA.

Cabinet agreed to amend s107 to provide a consenting pathway for staged mitigation

19. Cabinet has since agreed to progress changes to s107, to address impacts of the s107 decision on consenting [ECO-24-MIN-0145 refers]. Changes will enable a discharge consent to be granted where the discharge may contribute to significant adverse effects on aquatic life, *if* the council is satisfied that:

    a. receiving waters are already subject to significant adverse effects on aquatic life; and

    b. consent conditions would contribute to an overall reduction in those adverse effects over the duration of the consent.

20. For more detail on the impact of the s107 decision on consenting, the urgency for change, and details of the changes considered, see the Draft Supplementary Analysis Report *Amending s107 of the Resource Management Act to improve certainty while protecting freshwater and aquatic life*, included as **Appendix A**.

21. As Cabinet has decided to make this change, it is part of the counterfactual for this RIS.

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[13] Rule E35.4.1 A5

[14] *Federated Farmers Southland Incorporated v Southland Regional Council* [2024] NZHC 726 [9 April 2024]: (the s70 decision); and *Environmental Law Initiative v Canterbury Regional Council* [2024] NZHC 612 [20 March 2024]: (the s107 decision).

[15] *Environmental Law Initiative v Canterbury Regional Council* [2024] NZHC 612 [20 March 2024].

[16] *Federated Farmers Southland Incorporated v Southland Regional Council* [2024] NZHC 726 [9 April 2024].

How the situation is expected to develop (following the court decisions, and amendments to s107)

22. With the change to s107, there will now be a consenting pathway for these discharges. However, this change does not address the regulatory uncertainty about how s70 will be interpretated and councils ongoing ability to permit discharges.

23. Because the significant adverse effects 'gateway test' is the same in s70 and s107, the court's findings in relation to s107 may be persuasive and inform future interpretations of s70 in regional plan making. That is, the finding that a *discharge consent (under s 107)* cannot be granted in certain situations (ie, where significant adverse effects on aquatic life are occurring and the discharge would continue these effects), can be inferred to similarly constrain making *permitted activity rules* (under s 70).

24. While noting there is ongoing litigation in relation to s70 that may advance the interpretation of s70,[17] we understand from councils that the inference described above will be highly influential for councils in future planning processes. Councils may remove discharges from permitted activity regimes, and instead require consents. See the 'Consultation' section below for more detail.

Consultation

25. Officials have not consulted directly on the proposals in this RIS. Proposals to address the issue were received through direct correspondence to the Ministry for the Environment /Minister for the Environment; submissions on the Resource Management (Freshwater and Other Matters) Amendment Bill (RM Bill 1); and correspondence and discussions with regional councils. This feedback has been considered when developing the options in this RIS.

26. Regional councils have singularly (ECan) and collectively (Te Uru Kahika) proposed options that would enable staged mitigation for permitted activity status for discharges under s70, subject to plan rules.

27. Primary sector interests, variously representing irrigators, pastoral farmers, and vegetable growers, have generally sought changes to s70 that would enable permitted activity status for diffuse discharges, with no environmental safeguards or mitigation requirements.

28. All environmental organisations oppose any changes to s70 that would enable permitted activity status for discharges with significant adverse effects. They also oppose changes being made without wider consultation and public submissions (eg, through an Amendment Paper to RM Bill 1 rather than through the next Resource Management Amendment Bill (RM Bill 2).

Consultation with councils on their interpretation of s70 following court decisions

29. The recent court decisions and potential changes to s70 were discussed with representatives from Canterbury, Southland, Otago and Bay of Plenty Regional Councils on 29 August. Those in attendance also represent the views of Te Uru Kahika.

30. It was set out clearly during this consultation that regional government is very concerned about how s70 could be applied in light of the recent court decisions.

[17] See further detail here: https://www.eli.org.nz/ecan-pollution-rule, and the initial proceedings here: ELI v Environment Canterbury [2024] NZHC 1669

Specifically, these councils highlighted that, their interpretation meant they would not be able to provide a permitted activity pathway for certain discharges – ie, discharges that may give rise to significant adverse effects, even if such a pathway could show improvement over time (via farm plans for example).

31. These councils suggested that without legislative amendment, they would be required to move almost all discharge activities out of existing permitted activity regimes and into requiring a resource consent. They suggested this would be the majority of farming activities and lead to an exponential increase in the number of resource consents required.

32. These councils noted the number of consents required would be at such a level that they would not be able to process them. They also noted that because these activities had been previously considered permitted activities, they would be under pressure to lower or waive consent processing fees but if they did so it would 'bankrupt' the council.

33. Overall, these councils agree there is a problem with recent court interpretations of s107 being applied to s70 (which councils are assuming will be the case). Removing the ability to use permitted activity rules for discharge activities will lead to a huge increase in the number of farming activities requiring a resource consent. All councils agree it is a practical / cost problem rather than an environmental problem, and note requiring resource consents does not mean better environmental outcomes than would be achieved through permitted activities.

34. These councils also discussed potential 'solutions' to this problem. Generally, they agreed the solution was an amendment to s70 to allow permitted activity rules even in cases where they may be significant adverse effects on aquatic life, *provided* these effects are reduced over time.

35. These councils did note this solution is trickier to implement than similar changes to s107. They did not support the legislation being directive (for example providing a work around that referred to the use of farm plans). Instead, they supported the legislation being 'general' in allowing councils to formulate their own rules that would meet a new 'reduced effects over time' test.

What is the policy problem or opportunity?

Concern permitted activity rules unable to allow for improvement over time, driving substantial consenting burden

36. Given the court decisions, and the correlation between s70 and s107, there is uncertainty in how the s107 decision will be interpreted and applied to s70 and future regional plans. That could mean councils would be restricted from setting permitted activity rules for discharges in degraded catchments that may give rise to significant adverse effects on aquatic life, even if such a pathway could show improvement over time (via a farm plan for example).

37. Although this would not have an impact until such time as councils make the necessary regional plan changes, there are concerns that discharges currently permitted under s70 rules will not be able to continue in future as a permitted activity.

38. We have heard from councils that this is how they are likely to interpret the case law, and that they will avoid developing permitted activity rules for these discharges.

39. The change to s107 (which enables consents for discharges in degraded catchments subject to reduction in adverse effects over time), would mean these discharges could be managed by consents. However, there is concern about the number of discharges that would need to go through a consent application process.

40. This has created regulatory uncertainty. In the absence of clear direction, councils are concerned that:

    a. the volume of consents subsequently needed for discharges under (amended) s107 will be too large for councils to work through within statutory timeframes, and

    b. councils will not be able to cost recover (ie, councils cannot cost recover for consent processing where consents are not decided within statutory timeframes).

Understanding the regulatory uncertainty

41. We do not have clear data on the numbers of consents that could be needed, with this interpretation and application of s70. We have requested this information from councils. While we cannot quantify the full extent of the impact, it is clear that if this interpretation is applied, there would be an increase in consenting and compliance costs.

42. ECan estimated that, in Canterbury alone (where many discharges are a permitted activity when associated with a permitted or consented land use), thousands of new discharge consents could be required, depending on the council's assessment of their likely effects. Compliance costs would increase for those discharges that had previously not needed a consent. ECan anticipates that the increase in consent applications could also add significant extra load to their systems, potentially compounding consent-processing backlogs (and potential penalty costs).

43. Data from ECan focused on discharge activities from agriculture and horticulture, and onsite wastewater discharges. They estimate that there are around 30,000 activities that fall within these two categories alone that are currently enabled by their permitted activity rules. Without changes to s70, these activities may be required to get a resource consent. This is more than double the number of all resource consents (~ 12,000) currently in effect in Canterbury. The average cost of a consent is $5,000 increasing to $25,000 for notified consents (noting that these are averages and can vary depending on complexity etc.).

44. Data provided by the Bay of Plenty regional council estimates that an additional 3,300 consents might result if discharges can no longer be permitted activities under s70 (there are currently 2,100 discharge consents). Assuming that most new consents are sought in the same year, this would be five-fold increase in the number of consents usually processed annually. A larger number, approximately 100, additional consents staff would be needed. The cost of a simple application for a consent is around $2,500 but this increases depending on the complexity of the consent.

45. While there is limited evidence of the extent and likelihood of this outcome, there clearly is regulatory uncertainty, and any mitigation would need to be put in place proactively to be effective in maintaining RM system operability.

46. Note that because previously agreed changes to s107 will enable consents for these discharges (that is, discharges in degraded catchments which may have significant adverse effects on aquatic life), the counterfactual would not result in these discharges being required to stop[18].

[18] See the Draft Supplementary Analysis Report *Amending s107 of the Resource Management Act to improve certainty while protecting freshwater and aquatic life* for more information about previously agreed changes – **Appendix A**, and the relevant Cabinet Minute ECO-24-MIN-0145 – **Appendix C**.

47. The trade-off in considering changes to s70 to address regulatory uncertainty is between costs associated with consenting, and reduced oversight and potentially more environmental damage because of managing discharges as permitted activities rather than through consents.

Recognising improvements to freshwater quality take time

48. It is well understood that many factors impact freshwater quality, and that previous and existing activities at a catchment scale have an impact on receiving environments. Managing cumulative effects is part of the challenge.

49. The following excerpt from a recent Tasman District Council report discusses the implications of this for groundwater management and for food production:

> *"Council's Senior Resource Scientist Water considers flow-through of some of the Waimea aquifers is likely to result in a prolonged time for recovery of nitrate levels of at least 80+ years. This is over five times the typical water permit duration period used in Tasman. Under the current case law, interpretation of s107 and its application, would render Council unable to grant any consent in this area for water and land use that may produce nitrate discharges, regardless of the improvements in practice to be achieved over the duration of consent. This is clearly contrary to national goals for food security and continued and expanded vegetable production."*

50. The National Policy Statement for Freshwater Management 2020 (NPS-FM) recognises this: while policies require that degraded water bodies improve, and that the health of other water bodies is maintained, it provides for:

    a. desired outcomes for freshwater quality to be worked towards over time; and

    b. councils and communities to determine the appropriate timeframes and methods for achieving desired outcomes and restricting resource use.

Timing of consideration of the policy problem

51. Decisions have already been made on the phasing/timing of RMA Reform. Work is underway on RM Bill 2. Including this proposal within that Bill is the last chance to make a legislative change to the RMA before phase 3 of RMA reform.

52. Progressing proposed changes through RM Bill 2 would provide an opportunity for consultation and further information to be gathered and considered, in terms of options, and nature and scale of the issue, before final decisions.

53. Consideration of changes through RMA phase 3 is explored further below in the options section.

What objectives are sought in relation to the policy problem?

54. The objective is to enable discharges to be managed in a way that does not increase consent burden and enables freshwater improvement to occur over time, even in degraded catchments.

55. This recognises that receiving waters can already be subject to significant adverse effects on aquatic life; that authorising discharges through permitted activity rules can be consistent with improvement; and allows for that improvement to occur over an appropriate timeframe.

56. This also aligns with Cabinet's agreed principles guiding the development of RMA replacement legislation under phase 3 of RMA Reform [ECO-24-MIN-0160 refers]. In particular, the intention to reduce the need for resource consents, as described here:

a. provide for greater use of national standards to reduce the need for resource consents and simplify council plans, such that standard-complying activity cannot be subjected to a consent requirement; and

b. shift the system focus from ex ante consenting to strengthen ex post compliance monitoring and enforcement.

57. The proposed vehicle for this is an amendment to s70 that aligns with the sustainable management purpose of the RMA[19] and the Government's objectives for RMA Reform.[20]

[19] Section 5 of the RMA.

[20] The RMA reform objectives [refer ECO-24-MIN-0022] are: making it easier to get things done by:

(a) unlocking development capacity for housing and business growth

(b) enabling delivery of high-quality infrastructure for the future, including doubling renewable energy

(c) enabling primary sector growth and development (including aquaculture, forestry, pastoral, horticulture, and mining –

while also:

(d) safeguarding the environment and human health

(e) adapting to the effects of climate change and reducing the risks from natural hazards

(f) improving regulatory quality in the resource management system

(g) upholding Treaty of Waitangi settlements and other related arrangements.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

58. The following criteria are from the Draft Supplementary Analysis Report on s107 – **Appendix A**, and consistent with impact analysis on other matters considered in RM Bill 2.

- **Effectiveness –** Extent to which the proposal achieves its core RMA purpose while accommodating other high-level objectives, including the RMA Reform objectives, and upholding Treaty Settlements.
- **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 that 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.
- **Implementation Risk –** Extent to which the proposal presents implementation risks that are low or within acceptable parameters (eg, 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.

What scope will options be considered within?

59. Due to the time available and the direct link to s107 changes agreed by Cabinet, the options assessed in this RIS may not represent the full range of feasible options.

60. There has been limited opportunity for formal consultation and submissions on options due to the timeframes associated with the introduction of RM Bill 2 (the agreed instrument for any legislative changes).

61. It is intended that further information will be sought up to, and during, the Select Committee process to inform final decisions on the preferred option.

62. As noted above, this RIS is only analysing options to amend s70. There is previous impact analysis on changes to s107 (see **Appendix A**).

What options are being considered?

63. The options considered are:

    a. **Counterfactual:** s70 remains unchanged

    b. **Option 1:** Mitigation through conditions (amend s70 consistent with the change to s107)

    c. **Option 2:** Exempt diffuse discharges under s70.

Counterfactual – *s70 remains unchanged*

64. This option would maintain the counterfactual. This would mean that, depending on the interpretation of the court decisions, some existing discharges could not be permitted under s70. Dischargers would need a consent (ie, if their activity was not allowed under permitted activity rules).

65. Maintaining the counterfactual would not address immediate concerns about the consenting burden and may result in sole reliance by councils on the consent pathway under s107 to permit these discharges.

66. Previously agreed changes to s107 means that dischargers can obtain a new consent (under s107) even if significant adverse effects on aquatic life are likely as long as:

    a. receiving waters are already subject to significant adverse effects on aquatic life, and

    b. consent conditions would contribute to an overall reduction in those adverse effects over the duration of the consent.

67. Although these discharges could be consented under s107, there remain concerns that the consenting burden would be too great if they could not be permitted under s70.

68. A staged approach to RMA reform is being taken. One of the principles to guide the development of proposals to replace the RMA is to provide for greater use of national standards to reduce the need for resource consents and simplify council plans [ECO-24-MIN-0160 refers].

69. The RMA replacement legislation being developed in phase 3 would address consenting concerns; however, the detail and timing of these changes are not yet known.

70. Changes to permitted activity rules as a result of the court decisions will only occur as new plans are developed by councils. Existing rules continue to apply in the interim. Many councils had started a review of their plans in anticipation of notifying NPS-FM compliant plans by December 2024 – this deadline has now been changed to December 2027.

Option One – Mitigation through conditions (amend s70 consistent with change to s107)

71. This option is to amend s70 to enable a permitted activity rule in a regional plan for discharges (both point source and diffuse) where significant adverse effects on aquatic life are likely, *if* the council is satisfied that:

    a. receiving waters are already subject to significant adverse effects on aquatic life, and

    b. rules would contribute to an overall reduction in those adverse effects over time.

72. This leaves some uncertainty, as councils would determine what such a rule would look like.

73. This option does mean discharges could occur with reduced oversight (relative to consenting). That is, unless a rule specifically provides otherwise, it is not possible to know who is carrying out a permitted activity. Compliance monitoring and enforcement, and management of cumulative effects become more difficult as a result.

74. This option would not oblige a council to permit discharges, and they may still choose to require consents – for example, to impose more specific conditions and/or manage the cumulative effects of discharges in a catchment.

75. There are some safeguards as councils are still required under s70(2) to be satisfied that the inclusion of that rule is the most efficient and effective means of preventing or minimising those adverse effects on the environment. Plan rules would also be scrutinised through submissions and hearings during plan notification, as well as any appeals.

76. The benefit of this option would be increased regulatory certainty about the number of consents likely to be required under s107. This would alleviate council concerns about the potential volume of consents needed under s107 without a permitted activity pathway, and associated concerns about processing high volumes of consents within statutory timeframes (councils are unable to cost recover for consents that are not processed within the required timeframe).

77. There are unlikely to be additional environmental impacts compared to the counterfactual, as the activities would be able to be consented under the amended s107 provision regardless. Although protection would vary, as with consents under s107, depending on the timeframe for a reduction in adverse effects (s107 requires reduction of adverse effects over the duration of consent).

Option Two – *Exempt diffuse discharges under s70*

78. This option (as proposed by pastoral farming interests) is to exclude diffuse discharges from the listed effects test for discharges under s70. This would mean that s70 only applies to point source discharges.

79. Councils would not be prevented from including a rule in a plan that permits diffuse discharges. In developing permitted activity rules, councils would still be subject to relevant plan development processes, and national direction. Councils could only minimally mitigate adverse environmental effects in the permitted activity rules while still permitting the activity to go ahead.

80. This option would address the consenting burden, by bypassing the need for consents authorised by s107 in relation to diffuse discharges. However, it is unclear how improvement over time and consideration of cumulative effects would be achieved, as diffuse discharge activities would be enabled without mitigation.

81. Given the scale of diffuse discharges and their dominant contribution to freshwater degradation, this option carries the greatest risk of not achieving the Government's environmental objectives. It would magnify the risk of adverse freshwater outcomes and would mean that s70 has little to no effect as a safeguard, particularly in the context of agricultural discharges.

82. This option would weaken councils' ability to ensure that diffuse discharges are sustainably managed and that water bodies are sufficiently safeguarded from contaminants generated by human activity.

83. A variation of this option would be to exclude diffuse discharges associated with commercial vegetable growing (as proposed by Horticulture NZ in relation to s107) from the application of s70. We have not considered this option here.

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

	Counterfactual – *s70 remains unchanged*	Option One – *Mitigation with conditions*	Option Two – *Exempt diffuse discharges*
Effectiveness Extent to which the proposal achieves its core RMA purpose while accommodating other high-level objectives, including the RMA Reform objectives, and upholding Treaty Settlements[21]	0 The counterfactual maintains current rules for discharges on the environment. Costs will increase for councils and any farms and businesses if discharges which have listed effects can no longer be permitted under s70. While it would achieve the core RMA freshwater objective, the counterfactual risks doing so at a social and economic cost that aligns neither with the Government's objectives for RMA reform nor with the approach to freshwater improvement set out in the NPS-FM (which provides for improvement over time).	+ This option would allow for improvement to happen over time, while enabling farms and businesses to discharge without undue cost and disruption. Allowing permitted activity rules with mitigations in already degraded catchments may perpetuate discharge effects and cumulative effects, if the mitigations are not effective. This option reduces the risk of significant social and economic costs that would occur if every discharge required a consent. This option appears to be more effective than the counterfactual at balancing environmental and economic risk to achieve both the RMA's freshwater objective and the Government's RMA reform objectives, in accordance with the NPS-FM's enabling approach to freshwater improvement.	0 This option would address the concern about the large volume of consents required, for diffuse discharges. However, by providing a permitted activity pathway for diffuse discharges with listed effects, this option could lead to worse environmental outcomes than the counterfactual. Given the scale of diffuse discharges and their dominant contribution to freshwater degradation, this option carries the greatest risk of not achieving the government's environmental objectives. While councils could include mitigations in plan rules, there is no requirement in this option for mitigations to be imposed. Because of the enhanced environmental risk and potential social and economic impacts, this costs that would occur if every discharge required a consent.

[21] The extent to which the proposals uphold Treaty settlements is addressed in **Appendix B**.

			This option is no more effective than the counterfactual at balancing all the relevant RMA and Government objectives.
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.	0 Regulated parties incur the costs of mitigating listed effects and/or the costs of either having to cease the discharging activity or obtain a consent. All these costs are likely to increase in comparison to the pre-existing situation. The cost to councils will also increase if they are required to assess and issue consents where they previously relied on permitted activity rules.	+ This option would be efficient, as it would essentially be a return to previous practice, as understood and applied by councils and consent holders prior to the court decisions. Current costs for regulated parties would continue, as it is essentially a continuation of the situation that preceded the status quo. It is therefore lower cost than the counterfactual. Councils and courts too would incur less cost, as there would likely be less litigation around permitted activities and less consenting under s107. Overall, this option has less regulatory burden than the counterfactual.	+ This option would be less costly than the counterfactual for diffuse discharges. It does not solve the problem for point source discharges, including for infrastructure waste and stormwater discharges. Overall, this option has less regulatory burden than the counterfactual.
Certainty Extent to which the proposal ensures that 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	0 The court decision on s107 reduced regulatory certainty in how to apply s70. There is also further litigation underway regarding the application of s70. One area of significant uncertainty is the extent to which council assessments of likely listed effects will be litigated and	+ This option would provide a high level of regulatory certainty, as a return to past practice prior to the recent court decisions reduces uncertainty around potential litigation. This is because the council's assessment of likely effects would have less costly implications, requiring only that discharges are managed through conditions to	0 This option would not provide a complete or enduring solution. It would provide high regulatory certainty, but significant uncertainty around potential litigation. This is because the council's assessment of likely effects would have costly implications for discharges not covered by

regulatory system understand their roles, responsibilities and legal obligations.	whether rules to permit discharges will continue per the status quo.	achieve improvements over time, rather than being eliminated immediately, or all progressing to a consenting process under s107.	the exclusions in this option (ie, point source discharges). This could include industrial activities and infrastructure projects.
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.	0 The economic impacts of this option would likely limit its durability, resulting in legislative changes to limit effects once their magnitude is apparent. The counterfactual provides little room for flexibility in the decisions that councils can make around plan rules.	+ This option rates higher than the counterfactual option on both durability and flexibility criteria. It enables mitigation solutions to be included in rules, giving councils and dischargers considerable flexibility in achieving both environmental and economic objectives. The option's durability has been demonstrated over the past decade, where it has become a familiar and accepted approach to managing discharges.	0 This option would not provide a complete or enduring solution. It would enable more flexible mitigation solutions for diffuse discharges covered by plan rules, but not other discharges. Though the rules still need to be legally viable and are subject to plan submissions, hearings and appeals.
Implementation risk Extent to which the proposal presents implementation risks that are low or within acceptable parameters (eg 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	0 There is a risk that many discharges that are not permitted will continue unlawfully, instead of ceasing or obtaining a consent. This would impose an additional burden on council monitoring and enforcement. There is also more burden on the consenting process under s107 to enable these discharges. There may be risks associated with large volumes of applications and reduced ability to process	0 This option has the potential for less implementation risk than the counterfactual. There is risk that the mitigations may not achieve the outcomes required by rules. This risk is not inevitable, however, and is contingent on councils' rule making, monitoring and enforcement practice, and the rate of change required. This option does mean discharges could occur with reduced oversight when	- This option has the implementation risks presented by both the counterfactual and Option 1. For diffuse discharges, there is a risk of mitigations not being effective.

reasonable timeframes.	(and cost recover) within statutory timeframes.	compared to consenting. That is, unless a rule specifically provides otherwise, it's not possible to know who or how many individuals are carrying out a permitted activity. Compliance monitoring and enforcement, and management of cumulative effects becomes more difficult as a result. However, this option would not oblige a council to permit discharges, and they may still choose to require consents – for example, in order to impose more specific conditions and/or manage the cumulative effects of discharges in a catchment.	
Overall assessment	0 The counterfactual does not address the regulatory uncertainty arising from the court decisions and depending on how s70 is interpreted will increase costs for councils and applicants if there is no permitted activity pathway for discharges.	+ This option addresses the immediate issues with the counterfactual by providing a way for discharges to be allowed while still managing environmental effects through rule requirements. This option ranks well on all criteria compared to the counterfactual. Although it carries significant implementation risk, so does the counterfactual. Options to mitigate the risk are not addressed here but could be part of future work or left up to councils with the safeguards of the planning process (eg, submissions, hearings and appeals).	- This option falls between the counterfactual and Option 1 on most criteria. This option is targeted at just one aspect of the underlying issue, diffuse discharges. Given the scale of diffuse discharges, it would magnify the risk of adverse freshwater outcomes and would mean that s70 has little to no effect as a safeguard, particularly in the context of agricultural discharges. This option would weaken councils' ability to ensure that diffuse discharges are managed and that water bodies are safeguarded to the extent possible from contaminants generated by human activity.

Example 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

Treaty Impact Analysis

84. A Treaty Impact Analysis is outlined in **Appendix B**. The analysis assesses the Treaty impacts of Option 1 and covers the following matters:

    a. Relevant Treaty principles

    b. Engagement to date on proposed change

    c. Potential impact of proposed change on freshwater quality

    d. Māori freshwater rights and interests

    e. Treaty settlements overview

    f. Overall assessment of Treaty impacts of Option 1.

85. Considering the lack of engagement with iwi, hapū and Māori, and the information and analysis detailed in **Appendix B**, it is difficult to assess:

    a. whether or not the principles of partnership and active protection have been met

    b. any potential impacts on the Crown's previous commitments on Māori freshwater rights and interests, and

    c. whether or not some Treaty settlement commitments have been met.

86. Consultation during the RM Bill 2 process will provide an opportunity for iwi, hapū or Māori groups to provide feedback. Feedback received will inform the Select Committee's consideration of RM Bill 2 and final decisions on any change.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

87. Of the options assessed, Option 1 rates highest against the criteria.

88. In the immediate term, it provides an effective and enduring solution to the issues with the counterfactual, by enabling plans to include permitted activity rules for discharges, while still ensuring that environmental effects are managed through conditions and improved over time.

89. It would achieve the full range of objectives more effectively, at less cost, than the other options. It would be the most durable and flexible option that addresses the issue now (rather than in stage 3 of the RMA reform).

90. However, based on past evidence, there is an implementation risk with Option 1. If mitigation targets are not met, but discharge activities are allowed to continue as a permitted activity, an overall reduction in adverse effects may not be achieved. There are also limitations on compliance monitoring and enforcement for permitted activities.

91. Both the counterfactual and Option 1 are supported by the analysis, and it is ultimately a trade-off between the additional cost of consenting and the robustness and added oversight for environmental benefits through managing consents.

92. As outlined in the policy problem section, we have limited information about the problem, but it is clear there is a risk. We do not recommend waiting for the risk to eventuate before making changes to address it, by which time it would be too late to mitigate.

93. Introducing a proposal through RM Bill 2 for consultation would enable further information to be gathered, and consultation on the proposal, before making final decisions.

What are the marginal costs and benefits of the option?

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Regulated groups All dischargers including: -farmers -horticulturalists -forestry companies - infrastructure providers (eg, stormwater, wastewater) -industrial and processing activities	Reduced uncertainty and no additional costs for regulated groups. A permitted activity pathway via s70 could reduce costs associated with consenting under s107 (needed in all cases without permitted activity rules under s70)	Low	High. It is reasonable to conclude that having a permitted activity pathway for discharges will incur less cost than utilising the consent pathway under s107
Regulators Regional and unitary councils	Reduced uncertainty and no additional costs for regulators; enforcement is charged on a cost recovery basis	Low	High
Others - NZ public - rural communities - Treaty partners - ENGOs - recreational groups	Amending s70 to permit discharges which may adversely affect freshwater for a time will impose a range of externality costs on the wider community (eg, the costs of ecological restoration, species recovery, tourism impacts, health impacts, reduced amenity and cultural opportunities)	Unknown. The scale of the externality cost will depend on how effective the mitigation regime is in practice; this will likely vary between plan approaches	High. While the externality costs to the environment cannot be calculated with any precision, it is reasonable to conclude that they will not be greater under the s70 amendment than under the counterfactual scenario, as there is a consenting pathway for discharges under s107 if it is not permitted

Total monetised costs	N/A	N/A	N/A
Non-monetised costs	Environmental externality costs from discharge effects	High	High. The lack of hard data means that the scale of costs and benefits cannot be quantified. However, their existence can be inferred with a high degree of certainty
Additional benefits of the preferred option compared to taking no action			
Regulated groups	System continuity. Certainty, stability, familiarity. Avoids an increase in cost and time to obtain resource consents for previously permitted activities	High	High Consent processes are onerous and costly
Regulators	System continuity. Certainty, stability, familiarity Avoids an increase in consenting burden on councils	High	High Councils have indicated that any increase in consents would severely impact their financial viability and ability to process the increased volume
Others (eg, wider govt, consumers, etc.)	N/A	N/A	N/A
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	Avoided costs and burden associated with consenting. Amending s70 will allow discharges to be a permitted activity, subject to conditions, and address concerns about the increased consenting cost and burden	High	High

94. The costs and benefits of amending s70, and of the counterfactual, cannot be monetised due to lack of data. However, they can be conceptualised relatively clearly and their relative merits assessed (see comparison of options above).

95. Overall, amending s70 will retain the ability for councils to allow discharges to be a permitted activity, subject to conditions, and address concerns about the increased consenting burden. Costs to regulated parties will be avoided if they are not required to obtain a consent for activities that were previously permitted.

Section 3: Delivering an option

How will the new arrangements be implemented?

96. The proposed option will make changes to primary legislation (the RMA) that will enable councils to set permitted activity rules for certain discharges while still ensuring that environmental effects are managed through conditions and improved over time.

97. Councils will remain responsible for setting rules in their regional plans. The process for councils to develop a regional plan is set under Schedule 1 of the RMA. It requires consultation and evidence to support the inclusion of policies, objectives and rules for their region. Councils also have responsibility for compliance monitoring and enforcement.

98. The changes to the RMA will come into effect immediately after receiving Royal Assent (by mid-2025). This will provide certainty to councils that they can set permitted activity rules for these discharges. Changes to permitted activity rules will only occur as new plans are developed. Existing rules continue to apply in the interim. Many councils have already started a review of their plans in anticipation of notifying by December 2024 – this deadline is now December 2027.

99. This proposed change provides clarity to councils and, in many cases, will support permitted activity rules and associated conditions. For example:

    a. Permitted activity rules that authorise discharges subject to compliance with land use rules (eg, in Canterbury) or subject to conditions to not worsen water quality (eg, in Hawke's Bay)

    b. Permitted activity rules for lower intensity farming, with conditions to implement farm environment plans/freshwater farm plans to reduce impacts on water quality (eg, proposed rules in Waikato PC1, draft rules in Otago).

How will the new arrangements be monitored, evaluated, and reviewed?

100. Systems are in place for councils to monitor, evaluate, and review policies, objectives and rules in plans. Regional plans are typically reviewed every 10 years.

101. State of the environment reporting provides insights into environmental trends, but these insights cannot be directly linked to specific rules or legislation. Critical gaps in knowledge that need to be filled include detailed understanding of pressures on freshwater and their causes, and how they interact and intensify over time.[22]

102. Controls on land use and the requirement for best practice mitigation are the primary tools used by councils to manage the impact of discharges to land that may enter water. This can lead to improvements over time (as evidenced by research, monitoring and modelling).[23]

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[22] Our freshwater 2023 | Ministry for the Environment

[23] For example, Monaghan et al, 2021, Quantifying contaminant losses to water from pastoral land uses in New Zealand II. The effects of some farm mitigation actions over the past two decades.

Glossary of technical terms

Rule	Rules are made by councils and have the legal effect of a regulation
Permitted activity	Means that a particular activity regulated by the RMA can be undertaken without a resource consent.
Resource consent	Authorises activities under the RMA, where they are not a permitted activity
Diffuse discharge	Refers to the discharge of contaminants that do not come from a point or single source (eg, sediment loss from farming land)
Point-source discharge	Refers to the discharge of contaminants from a single source (eg, a pipe)
Staged mitigation	An approach to progressively reduce discharges of contaminants (eg, nitrogen) over time
Cumulative effects	The concept that individual activities may have small or insignificant adverse effects, but that in combination with each other, and over time, become significant.
Farm environment plans	Tools used by councils to identify and manage adverse environmental effects of farming activities.

Glossary of abbreviations

ALIL	Ashburton Lyndhust Irrigation Limited
RM Bill 1	Resource Management (Freshwater and Other Matters) Amendment Bill
RM Bill 2	A second proposed resource management Bill being developed by the Government
ECan	Environment Canterbury
RIS	Regulatory Impact Statement
RMA	Resource Management Act 1991
PSGE	Post Settlement Governance Entities
ENGO	Environmental Non-Government Organisation
ELI	Environmental Law Initiative
NPS-FM	National Policy Statement for Freshwater Management

Appendix A: Draft Supplementary Analysis Report – Amending s107 of the Resource Management Act to improve certainty while protecting freshwater and aquatic life

Appendix A - Draft Supplementary Analysis Report - Amending s107 of the Resource Management Act to improve certainty while protecting freshwater and aquatic life.pdf

Appendix B: Treaty Impact Analysis

Introduction

1. This analysis assesses the Treaty impacts of Option 1 outlined in the main Regulatory Impact Statement (RIS) and covers the following matters:

    a. Relevant Treaty principles
    b. Engagement to date on proposed change
    c. Potential impact of proposed change on freshwater quality
    d. Māori freshwater rights and interests
    e. Treaty settlements overview
    f. Overall assessment of Treaty impacts of Option 1.

2. The proposed change in Option 1 would enable a discharge to be a permitted activity under s70, even where significant adverse effects on aquatic life are likely, if the council is satisfied that:

    a. receiving waters are already subject to significant adverse effects on aquatic life, and

    b. rules would contribute to an overall reduction in those adverse effects over time.

3. Section 70 of the Resource Management Act 1991 (RMA) would be amended to achieve this. Full background to this proposal is outlined in the main RIS.

Relevant Treaty principles

4. There are two key Treaty principles of particular relevance in this context:

    a. The principle of partnership: this principle, with the duty for the Crown and Māori to act towards each other 'with the utmost good faith', was articulated by the Court of Appeal in the *Lands* case in 1987[24]

    b. The principle of active protection: this duty of the Crown was stated by the Court of Appeal to be "not merely passive but extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable".[25] The quality of the Crown's engagement in order to "satisfy its obligation to actively protect the interests of Māori" is relevant to this principle.[26]

5. Regarding the Crown's obligation to protect taonga under the Treaty principles, the Privy Council confirmed "the Crown in carrying out its obligations is not required…to go beyond taking such action as is reasonable in the prevailing circumstances. While the obligation of the Crown is constant, the protective steps which it is reasonable for the Crown to take change depending on the situation which exists at any particular time".[27] If a taonga was in a vulnerable state – particularly if that state was due to past breaches – then the Crown may have to take 'especially vigorous action'.[28]

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[24] *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641, and affirmed by the Privy Council (PC) *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513.

[25] Ibid.

[26] See *Ngai Tahu Maori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553.

[27] *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513.

[28] Ibid.

6. The Waitangi Tribunal assessed the application of Treaty principles to freshwater management in detail in its freshwater and geothermal inquiry and associated reports in 2012 and 2019.[29] The Waitangi Tribunal found that, in respect of freshwater, the principle of partnership may require a collaborative agreement between the Crown and Māori in the making of law and policy.[30]

Engagement to date on proposed change

7. No engagement has occurred to date with iwi, hapū or Māori groups (including Post Settlement Governance Entities (PSGEs)) on the proposed change in Option 1. Letters were sent to PSGEs describing the potential scope of the next Resource Management Amendment Bill (RM Bill 2). These letters referred to the Government's intent to consider how discharges are managed under the RMA, among a substantial number of other changes that could be progressed as part of that Bill.

8. This means it is not possible to fully assess the Treaty impacts, including the specific impacts on Treaty settlements and other relevant arrangements.

9. There is likely to be interest in the change from iwi, hapū or Māori groups. This interest could arise from, for example, concerns about impacts on freshwater quality, economic interests and more.

10. Consultation during the RM Bill 2 process will provide an opportunity for iwi, hapū or Māori groups to provide feedback. Feedback received will inform the Select Committee's consideration of RM Bill 2 and final decisions on any change.

Potential impact of the proposed change on freshwater quality

11. The counterfactual[31] (following court decisions) has no immediate environmental impacts for freshwater and aquatic life, as changes to s107 would enable discharge activities to be consented. The benefits of Option 1 relate to efficiency of permitting rather than consenting, to enable permitted activity rules for discharges where adverse effects on aquatic life would be reduced over time. This is consistent with improving freshwater quality over time as provided for under the National Policy Statement for Freshwater Management 2020 (NPS-FM).

12. The following further mitigations would also continue to apply:

    a. the NPS-FM would be a relevant consideration in developing rules, including directing freshwater to be managed in a way that gives effect to Te Mana o te Wai (Policy 1), that freshwater quality is maintained or improved (Policy 5), and that existing over-allocation is phased out, and future over-allocation avoided (Policy 11)[32]

    b. consent authorities must consider actual and potential effects on the environment when making rules, under section 68 before including rules in a regional plan

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[29] Waitangi Tribunal, The Stage 1 Report on the National Freshwater and Geothermal Resources Claims (Wai 2358, 2012), and Waitangi Tribunal The Stage 2 Report on the National Freshwater and Geothermal Resources Claims (Wai 2358, 2019).

[30] Waitangi Tribunal, *Whaia te Mana Motuhake* (Wai 2417, 2014) at p42.

[31] The counterfactual prohibits the setting of permitted activity rules that have significant adverse effects on aquatic life.

[32] Noting that the Resource Management (Freshwater and Other Matters) Amendment Bill would exclude the hierarchy of obligations in the NPS-FM from resource consenting, except where it is contained in a regional policy statement, plan, or other document such as an iwi planning document.

relating to discharges, councils must have regard to the nature of the discharge and the receiving environment and other alternatives, including a rule requiring the observance of minimum standards of quality of the environment (under section 70(2))

c. consent authorities develop plans based on their specific local challenges and objectives, meaning future decisions about rules in the context of the proposed change cannot be anticipated

d. the development of rules will be subject to submissions and hearings processes during plan notification as well as any appeals

e. this option would not oblige councils to permit discharges, and they may still choose to require consents (for example, to impose more specific conditions and/or manage the cumulative effects of discharges in a catchment).

Māori freshwater rights and interests

13. The Crown acknowledged Māori have rights and interests in freshwater and geothermal resources in the High Court in 2012 and committed to progressing this acknowledgement. This was subsequently recorded by the Supreme Court in 2013.[33]

14. While there are a range of ways that Māori aspirations with respect to freshwater are articulated, they have been summarised as having the following four dimensions: (1) improving water quality and the health of ecosystems and waterways, (2) governance/management/decision making, (3) recognition of iwi/hapū relationships with particular freshwater bodies, and (4) economic development.[34]

15. As regarding the first dimension listed above, it is difficult to assess whether Option 1 would satisfy Māori aspirations for improving water quality due to the lack of engagement.

16. In relation to the economic dimension to rights and interests, iwi, hapū or Māori groups could use permitted activity rules under s70 and may derive economic benefit from the proposed change. It has not been possible to assess this yet due to time and engagement constraints.

Treaty settlements overview

17. Treaty settlements and other arrangements provide for PSGEs and other Māori representative groups to have varying degrees of influence on decisions made under the RMA. Most Treaty settlements create an expectation of engagement as they include an apology and promise by the Crown to enter in a new relationship based on Treaty principles.

18. Some Treaty settlements contain specific engagement obligations in the development of freshwater legislation and policy, for example:

[33] See *New Zealand Māori Council v Attorney General* [2013] NZSC 6, [2013] 3 NZLR 31 at [145].

[34] *Shared Interests in Freshwater: A New Approach to the Crown/Māori Relationship for Freshwater*, Ministry for the Environment and Māori Crown Relations Unit, 2018.

a. There are a number of Treaty settlements that require engagement on matters concerning water (often for specific water bodies) and aquatic life in the policy/legislation making process[35]

b. The Waikato River settlement includes a Crown commitment to "a new era of co-management in respect of the Waikato River", with "the highest level of good faith engagement". Its implementation includes the development of policy and legislation that may potentially impact on the health and wellbeing of the Waikato River.[36]

19. There are also a few settlements that have specific obligations, outside of engagement, that relate to water/aquatic life and matters relevant in consent decision-making. For example, settlements that require persons exercising functions and powers under the RMA to have particular regard to the habitat of tuna.[37]

20. While the proposed change will give councils the ability to continue to make permitted activity rules for certain discharges, it does not mean that councils *must* do so. Councils must still consider agreements and other matters that they have with PSGEs and other Māori representative groups as required in Treaty settlements and similar arrangements, such as:

a. Joint Management Agreements

b. Joint Entity documents

c. The Waikato and Waipā River, Te Awa Tupua and other similar arrangements (eg, the earlier outlined requirement to have particular regard to the habitat of tuna).

21. It is difficult to fully assess whether the general and specific commitments provided for in Treaty settlements and other relevant arrangements have been met as there has been no engagement, including with PSGEs and other Māori representative groups, on the proposed change. However, given that councils must still consider redress and other relevant arrangements during plan development, as they do now, analysis suggests that redress which involved PSGEs and other Māori representative groups in the plan development process, or matters relevant to decisions-making, remain unaffected.

Overall assessment of Treaty impacts of Option 1

22. Considering the lack of engagement with iwi, hapū and Māori and the information and analysis in the preceding sections, it is difficult to assess:

a. whether or not the principles of partnership and active protection have been met

b. any potential impacts on the Crown's previous commitments on Māori freshwater rights and interests, and

c. whether or not some Treaty settlement commitments have been met.

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[35] Examples from Treaty settlement legislation include but are not limited to: Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (s12, s17), Nga Wai o Maniapoto (Waipa River) Act 2012 (s8, s22), Maniapoto Claims Settlement Act 2022 (subpart 9, s125), Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (s18), Ngāti Rangi Claims Settlement Act 2019 (Whangaehu river) (s109), Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (s11, s15, s37).

[36] Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, schedule 1 cl 4.

[37] Ngāti Manawa Claims Settlement Act 2012 S125, Ngāti Whare Claims Settlement Act 2012 s129.

Appendix C – Cabinet Minute ECO-24-MIN-0145

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