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*** |
| 1-Aug-24 | Regulatory Impact Statement: Policy analysis of designations proposals for inclusion in Resource Management Amendment Bill no.2 | Ministry for the Environment |

**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.

# Policy analysis of designations proposals for inclusion in Resource Management Amendment Bill no.2

## Coversheet

| **Proposal**<br><br>Targeted amendments to improve certainty and simplify designation processes | **Description**<br><br>The proposals relate to designation provisions in the Resource Management Act 1991.<br><br>These are Phase 2 targeted amendments aimed to facilitate progress against objectives in the short and medium term, ahead of Phase 3, via an amendment Bill to streamline and simplify the RMA's operation (Bill 2). |
|---|---|
| **Relevant legislation**<br><br>Resource Management Act 1991 | Resource Management Act 1991 (RMA):<br><br>s166 definition of network utility operator and requiring authority<br><br>s167 Application to become a requiring authority<br><br>s168A Notice of Requirement and s171 Recommendation by territorial authority<br><br>s184 and 184A – Lapsing of designations<br><br>Forms 18 and 20 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 (Notice of Requirement application forms) |
| **Policy lead** | John McSweeney, Principal Analyst, RM 2 Bill Team (MfE lead)<br><br>Harriet Cruden, Principal Analyst, Urban and Infrastructure Policy (MfE back-up) |
| **Source of proposal** | Related to a coalition agreement in terms of the desire to amend the RMA to make it easier to consent new infrastructure, allow farmers to farm, get more houses built, and enable aquaculture and other primary industries. |
| **Linkages with other proposals** | Links to policy on Infrastructure for the Future, Delivering Better Social Housing, Going for Housing Growth, RM Reform and Electrify NZ. |
| **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 include: |

| | |
|---|---|
| | <u>Engagement</u><br><br>There has been limited time to engage with external parties on the proposal. The proposals were discussed with the Local Government Practitioners Group, the Local Government Reference Group, and Resource Management Law Association. These groups were generally supportive of some change but did raise many of the issues discussed in this document.<br><br><u>Data and evidence</u><br><br>The evidence referenced in this RIS is based on policy direction in the 'Randerson Report'[1], feedback received from Requiring Authorities[2], government agencies, and urban planners working in the infrastructure and designation professions.<br><br>There is a lack of quantitative evidence on the costs and benefits of the proposals. This is because local government is not required to provide designation information to the Ministry for the Environment as part of the National Monitoring System. Requiring authorities also do not appear to have easily accessible and robust evidence on designation processes, costs and timeframes.<br><br>Most of the evidence is based on useful but not quantifiable information provided by infrastructure providers and professionals working in the infrastructure consulting and local government sectors, and on research and inquiries leading to the enactment of the Natural and Built Environment Act 2023 (now repealed).<br><br>An indicative non-monetary estimation of costs and benefits has been undertaken but the actual impact of the proposals will be better understood following public input through the Select Committee process.<br><br><u>TIA/partners</u><br><br>Due to timeframes, no engagement with Post Settlement Governance Entities or iwi/Māori has been undertaken. No feedback is available regarding the potential impacts identified in this RIS or on additional impacts not identified. We will continue to try and engage as opportunities arise, and the feedback from this will inform the final paper to Ministers prior to the introduction of the Bill. |

[1] The Resource Management Review Panel report *New Directions for Resource Management in NZ (*2020) chaired by retired Court of Appeal Judge, Hon Tony Randerson (the *'Randerson Report'*)

[2] Ministers of the Crown, local authorities and network utilities organisations can be requiring authorities, meaning they can designate land in a district plan for a particular project or work.

| | |
|---|---|
| **Responsible Manager** | Rhedyn Law, Manager Bill 2 Team, MfE<br>Date:<br><br>Date: (signed off) |
| **Quality Assurance: Impact Analysis** | |

# Designations proposals for inclusion in Resource Management Amendment Bill no.2

## Proposals

1. This document analyses three proposals comprising amendments to designations provisions in the RMA. They are aimed at facilitating progress in the short and medium term, ahead of Phase 3, via an amendment Bill to streamline and simplify the RMA's operation (Bill 2).

## Context

2. The RMA allows Ministers of the Crown and local authorities to designate land in a district plan for a project or work as of right.
3. The Minister for the Environment can also approve a range of non-government "network utility operators" as requiring authorities who can designate land for the purposes of a particular project or work or a particular network utility operation. "Network utility operator" is defined in the RMA and includes key infrastructure that is typically linear or has a need to locate in a certain area such as electricity and oil distribution, radiocommunications, telecommunications, three waters infrastructure, and airports (s 166 and s167 RMA).
4. The Minister's approval for this status may relate to general functions or may be for a particular project. The requiring authority has to have financial responsibility for a particular project, work or operation on the designated land.
5. Collectively the Crown, local authorities and network utility operators are called "requiring authorities". A requiring authority has, with the approval of the Minister of Land Information for network utility operators, access to compulsory acquisition powers under the Public Works Act 1981 (PWA)[3]. Requiring authorities can also purchase land on the open market at any time.
6. A designation allows the requiring authority's work or project to go ahead on the designated land without needing a land-use consent from the territorial authority. Resource consents required by national environmental standards and regional plans are still required. Designations also prevent other uses of the land that conflict with the designation.
7. To obtain a designation, requiring authorities are required to lodge designation applications called Notices of Requirement with local authorities. Local authorities must notify the Notice of Requirement and conduct submissions and hearings processes, and then make recommendations on the Notice of Requirement. These recommendations can modify the proposed requirement or impose conditions.

[3] Land Information NZ is leading the review of the PWA with key policy decisions due by the end of 2024.

8. The requiring authority can accept, amend, or reject a local authority's recommendations when issuing its decision. Approved designations are identified in the relevant district plan

9. Once this process is complete and any appeals to the Environment Court are resolved, the requiring authority must submit a non-notified 'outline plan' to the local authority, unless this requirement is waived. It must contain detailed information of the construction and operation of the public work or project. This process must be completed before the designation 'lapses', currently within five years of the designation decision (as the default) or as stated in the designation.

## Objectives

10. The objectives of the RMA work programme are to enable delivery of high-quality infrastructure for the future, enable more social housing, and unlock development capacity for housing and business growth, while also:

    a. Safeguarding the environment and human health,

    b. Adapting to the effects of climate change and reducing the risks of natural hazards,

    c. Improving regulatory quality in the resource management system; and

    d. Upholding Treaty of Waitangi obligations, settlement and other arrangements.

11. In addition to the above, each proposal has its specific objectives, which are outlined as part of the analysis of each proposal.

## Assessment criteria

12. The assessment criteria used to evaluate all 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 & 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.

# Proposal 1: Extend default designation lapse periods

## Problem

13. When designations are approved by territorial authorities under the Resource Management Act 1991 (RMA), the default period for 'giving effect' to the designation is five years. The test for 'giving effect' under the RMA is some physical works have been undertaken on site. If the designation is not given effect to, and no extension to this timeframe is obtained, the designation lapses. A new Notice of Requirement must be lodged by the requiring authority.

14. The five-year time period was set when the RMA was enacted to incentivise requiring authorities to more closely tie funding decisions with designation approvals so to avoid land being left undeveloped for an extended period of time. Undeveloped land can lead to 'planning blight'[4] with associated adverse social, economic and environmental effects for landowners and communities.

15. However, there is a widely held view that five years is insufficient time to implement designations. This is because many designations are large and complex processes involving planning, design, consenting, land purchase and other funding requirements, and implementation processes. There is useful but not quantifiable information from infrastructure agencies (for example KiwiRail and NZ Transport Agency), consultancies and local government that timeframe extensions for lapsed designations add costs and uncertainty for requiring authorities and designation processes.

16. If there was a longer default lapse period of 10 years (as outlined in Option 2 below), requiring authorities would have more certainty that designations could be put in place in time, and land would be prevented from being used and developed in a manner that might compromise the designated use of the land.

17. If designations were to lapse, but the land was ultimately still needed for the infrastructure development, other development could occur on the land in the meantime which might prevent the future intended use of the land under a designation, or result in the requiring authority having to buy-out existing landowners before the requiring authority otherwise might want to. For example, if the land was developed for residential purposes this buy-out process would be very expensive for the requiring authority. This would have flow-on effects in terms of the cost of the infrastructure. In some cases, this buy-out process might be so expensive that the designation might not be implemented, and public good infrastructure would not be built.

18. Longer term designations allow requiring authorities to buy land at optimum points in the process, including in advance of the designation being implemented which would mean lower costs for the requiring authority.

19. The Randerson Report recommended extending the default lapse period from five to 10 years on the basis that infrastructure providers *"consistently found the five years default lapse period for designations inappropriate for planning and funding cycles"* (p297), and that *"While the five-year default timeframe is often extended, we consider there is unnecessary cost and increased uncertainty created by the short timeframe and in the process of repeatedly seeking extensions. These have little benefit to land owners or to planning outcomes"* (p297).

[4] 'Planning blight' is defined within the Oxford dictionary as: "The reduction of economic activity or property values in a particular area resulting from expected or possible future development or restriction of development." These effects generally relate to the uncertainty for both directly affected landowners/occupiers and those adjacent to the designation in terms of when property acquisition will occur, when works will commence and how they will be affected by the works.

20. This direction was given effect to in the now repealed Natural and Built Environment Act 2023. The same solution is now proposed to be incorporated into the RMA.

## Objectives

21. The objective is to enable more time to effectively undertake planning, design and approval processes, and to reinforce designations as important long-term planning instruments while balancing the potential effects of undeveloped land on landowners and the community.

22. In addition to the RMA work programme objectives, the proposal assists in delivering on Coalition Deals/policy on Electrify NZ, Infrastructure for the Future, Going for Housing Growth, RM Reform and Delivering Better Social Housing.

## Options

### *Option 1: Status quo – five-year default lapse period for designations*

23. Under the status quo, s184(1) and s184A (2) of the RMA provides a default five years for designations to be given effect to, otherwise it will lapse.

24. Requiring authorities can seek longer lapse periods on a case-by-case basis under s184(1)(c) and s184A(2)(c) when designations are first sought. However, it may not always be clear that the five-year period will be too short at this time and in any case, the request of a longer period can be declined.

25. S184(1)(b) and s184A(2)(b) of the RMA also allows a process to extend the lapse period if an application is made by the requiring authority.

26. The feedback received from infrastructure providers is that these timeframe extensions add costs and uncertainty for requiring authorities and designation processes as the request may be declined or new conditions added.

### *Option 2: Increase designation default lapse period from five to 10 years (preferred option)*

27. This involves extending the lapse date in s184(1)(b) and s184A(2)(b) for a designation from five years to 10 years.

28. This proposal provides requiring authorities with certainty that there will be sufficient time whilst detailed design, approval processes and/or land acquisition occurs, and that the designation will be given effect to and will not lapse.

29. This would enable a smoother transition from a designation being approved and implemented which would increase certainty for requiring authorities. In addition, fewer requests would be received by territorial authorities to extend lapse periods.

30. On the other hand, for landowners/occupiers and neighbouring property owners, the extended time frame would increase uncertainty about when designations would be implemented. In practice, designated land is left undeveloped, pending the designated use being implemented, which could now be up to 10 years. This is because once land is designated it cannot be used for any other use that is inconsistent with the designated use, unless the requiring authority gives their specific approval. For instance, land designated for a road could not be developed for housing by the landowners. This uncertainty of use and fate of the land would now play out over a longer time period with a higher possibility of adverse effects from planning blight.

### *Option 3: No lapse period*

31. This option involves having no lapse period for designations. This would mean that the designation could be implemented at any time in the future.

32. This gives requiring authorities maximum flexibility about when public works and other infrastructure would be funded and implemented. This would likely assist with spatial planning and longer-term strategic planning initiatives.

33. On the other hand, this would increase uncertainty for landowners and the community generally, with a much higher probability of a lack of investment in land and buildings on the designated land and the wider locality (planning blight). The incentives on a requiring authority to give effect to a designation in a timely manner would be removed.

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

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

| | Option 1 – [*Status Quo / Counterfactual*] | Option 2 – Increase designation default lapse period from 5 to 10 years | Option 3 – No Lapse Period |
|---|---|---|---|
| **Effectiveness** | 0 | ++<br>This option meets the objective outlined for this proposal by striking a balance between the interests of requiring authorities and separate community concerns about the quality of their environment. This option supports the objectives of the RMA work programme. | - -<br>This option would not meet the objective outlined for this proposal as there is no evidence that more than 10 years is either required as a blanket provision or would be considered reasonable when balanced against community concern about undeveloped land in communities. This option would have also a negative impact on the regulatory quality of the RM system as it would remove the established principle of setting timeframes for processes and therefore increase regulatory uncertainty. |
| **Efficiency** | 0 | +<br>Reduces costs of designations as requiring authorities can purchase land at optimum times in the process in the knowledge that the designation remains in place for longer. Likely to save on development costs and reduces risk of expensive buyouts closer to implementation phase. This should result in more projects built.<br><br>However, there could be potential costs to the community of land being undeveloped for longer and planning blight setting in, in anticipation of the designation being given effect to. | -<br>Lower costs for requiring authorities but significantly increased opportunity costs for landowners and community if the designation is not implemented in the short to medium term and the land cannot be developed in any other way. This will increase the likelihood of planning blight. |

| | | | |
|---|---|---|---|
| **Certainty** | 0 | +<br>Provides more certainty for requiring authorities over future use of land within the short to medium term.<br><br>The uncertainty for the community is that the land could be undeveloped for up to 10 years. | -<br>Provides increased certainty for requiring authorities but overall uncertainty would increase as designations may be put in place indefinitely that are not given effect to. This uncertainty would fall on landowners and the community. |
| **Durability & Flexibility** | 0 | ++<br>Allows time for requiring authorities to adapt to changing circumstances and strategically plan for acquisition of the land and development of the infrastructure.<br><br>Allows local authorities to align policy and planning with designations timeframes | -<br>If designations were permanent, flexibility in the system would be reduced. as it would remove the established principle of setting timeframes for processes and therefore increase regulatory uncertainty |
| **Implementation Risk** | 0 | ++<br>This is a reasonable time to plan, design, consent and deliver public works and infrastructure/housing.<br><br>It is straightforward to implement as it will not result in changes to existing designations or RMA plans | -<br>This is straightforward to implement as it will not result in changes to existing designations or RMA plans. Could lead to planning blight with negative impacts on housing and development generally in communities and potentially a higher likelihood of more community opposition to notices of requirement for designations. |
| **Overall assessment** | 0 | ++ | - |

*Overall Assessment*

34. The preferred option is to extend the designation lapse period from five years to 10 years (option 2). This would provide requiring authorities with more certainty than the status quo by enabling sufficient time to undertake detailed design, approvals, land acquisition, and implementation before the designation lapses. It would also protect that land from conflicting land uses that could prevent the land being developed for the designated use. It also balances landowner and community interests in timely development of land against option 3 (no lapse period).

35. The status quo appears too short for effective delivery of all public works, infrastructure and housing that designations have been applied for. Option 3 (no lapse period) provides maximum flexibility for requiring authorities for the land they have designated,

but may for an extended time period, if not permanently, prevent other non-designated uses of the land occurring. This will be much more likely to lead to 'planning blight' with associated adverse social, economic and environmental effects for landowners and communities.

36. Option 2 may still raise concerns from some landowners and the community about the impacts of longer-term designations. However, overall, the benefits of option 2 have the potential to increase positive investment and housing benefits and thus option 2 aligns more closely with the objectives than either the status quo or option 3.

## 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** | | | |
| Requiring Authorities | Designation in place over land for longer periods (at least 10 years)<br><br>There are unlikely to be additional costs. It is anticipated this option is unlikely to change what already happens given the time taken to designate and develop land appears to be more than 5 years. | Nil | Medium |
| Regulators (councils) | There are unlikely to be additional costs. | Nil | Medium |
| Regulators (wider central govt) | There are no additional costs | Nil | Medium |
| Landowners and other land users | There may be opportunity costs as resolution of buy-out/compensation agreements/appeals may start later and take more time to resolve with the requiring authority. | Low | Low |
| Treaty Partners | Impacts will vary dependent on the nature and type of designation – eg housing designations could assist Iwi/Māori. Other designations could have significant impacts on land ownership and Treaty claims/settlements depending on the nature of the designation (eg housing v port extensions). | Medium | Low |

| | | | |
|---|---|---|---|
| | There could be significant costs if compensation and mitigation measures are not addressed earlier rather than later in the 10-year term of a designation. | | |
| Community and environmental groups), wider central and/or local govt, consumers, iwi/Māori, etc.) | Increased uncertainty about when a designation will be implemented could lead to planning blight with little/no investment in the land, which disincentivises investment in other land in the locality. | Low | Low |
| **Non-monetised costs** | Designations will be implemented over longer periods which will reduce costs for requiring authorities. However, this may create costs for landowners/ communities as the land cannot be used for other non-designated uses. | Low | Low |
| **Additional benefits of the preferred option compared to taking no action** | | | |
| Regulated groups (RAs) | More project certainty may increase investment in infrastructure.<br>Reduced costs of having to apply for extensions to designations. | Medium | Low |
| Regulators (councils) | Cost savings likely due to reduced compliance and resourcing costs for local authorities from not having to process time extensions for designations | Medium | Low |
| Regulators (wider central govt) | There are no additional benefits | Nil | Low |
| Treaty Partners | There may be more certainty about the provision of public good infrastructure such as housing, flood protection, roading and public transport. | Medium | Low |
| Community and environmental groups | There may be more certainty about the provision of public good infrastructure such as | Nil | Low |

| | | | |
|---|---|---|---|
| | housing, flood protection, roading and public transport. | | |
| **Non-monetised benefits** | | Medium | Low |

## Treaty Impact Analysis

37. Māori land has unique ownership, legal and practical characteristics. Māori land sits within a separate land tenure system and is subject to the Te Ture Whenua Māori Act 1993 (TTWMA). It is a taonga tuku iho (an ancestral treasure handed down from generation to generation) of cultural importance and is often held collectively (with the average Māori land block totalling about 111 owners). Very little Māori customary land remains (approximately 1,200 hectares). Māori freehold land covers about 5.5% of all land in New Zealand (approximately 1.456 million hectares).

38. The preamble to the TTWMA highlights the relevant principles of Te Tiriti associated with this land. This includes protection of rangatiratanga; promoting retention of land; and facilitating its occupation, development and utilisation. Māori land has experienced barriers to its development and use, with regulatory systems not sufficiently providing for its unique characteristics.

39. Māori land has specific Treaty considerations that include the protection of rangatiratanga, promoting retention of land; and facilitating its occupation, development and utilisation Designations could have specific impacts on Maori land[5]

40. This policy and the 2 other policy proposals will impact Māori land as they collectively will increase the possibility of compulsory acquisition and increase restrictions on the use of this land through increased lapse periods for designations, or by capturing new areas in designations. This is particularly relevant in relation to extending designation powers to inland/coastal ports, enabling port authorities to access compulsory acquisition powers, and increasing the lapse periods.

## Consultation

Local Government

41. The Local Government Practitioners Group were consulted on the proposed change. Its feedback was positive, and it considered this was a logical amendment given that designations often took more than five years to implement.

Agency Consultation

42. The following agencies have been consulted and involved in developing policy:

- Te Waihanga (Infrastructure Commission), Ministry of Transport (who has worked alongside NZTA and KiwiRail to provide position papers and evidence) have been consulted on the development of this policy and designations and infrastructure in general.
- DIA and National Emergency Management Agency (NEMA) have been consulted on the designation processes, in particular with respect to the review of the Public Works Act 1981. No concerns have been raised about this proposed policy change.

[5] This is contained in the preamble to the Te Ture Whenua Act Māori Act 1993

## Implementation

43. This policy change will be relatively straightforward to implement as it will not result in changes to existing designations or RMA plans. As is normal good practice with legislative amendment, it is proposed that this provision only apply to Notices of Requirement approved after this provision comes into force.

44. This proposal is also not dependent on changes in the system and will not require any consequential changes in the system. It will however assist with spatial planning proposals and the delivery of aspirations for route protection designations, and other strategic outcomes for the system.

45. Supporting a longer time frame to enable delivery of anticipated infrastructure and work will still be relevant in the Stage 3 of the new system and will help support delivery of coalition agreements on RM Reform, Electrify NZ, Infrastructure for the future, Going for Housing Growth, and delivering better social housing.

## Monitoring

46. There is currently no formal monitoring of designation timeframes and lapse periods. This is a matter that could be included as part of the National Monitoring Strategy, which involves collecting information from local authorities on an annual basis on the implementation of the RMA.

# Proposal 2: Extend designation powers

## Problem

47. The Crown, local authorities and a range of network utility providers can designate land for a public work or project. Network utility operators are listed in the RMA[6] following an approval process by the Minister for the Environment.

48. Designations provide long-term land protection for large capital works and infrastructure projects that are essential services with a large public interest component. Currently, these types of services include telecommunications, electricity and airport operations. Designations allow development and operation of activities, regardless of any district plan rules and most resource consent requirements.

49. There is other infrastructure that does not have access to a designation process as a planning tool, when these can also be considered essential with a large public interest component and where a designation could be helpful in facilitating planning permissions.

50. In particular, Port Authorities and social housing providers (Kāinga Ora and registered Community Housing Providers) do not have designation powers. There is an opportunity to extend designation powers to these entities and expand the range of essential service providers that can apply to be a requiring authority.

Ports

51. Te Waihanga advises that ports are critical infrastructure for the wellbeing of all New Zealanders and an essential part of the economy. Whilst a number of district plans enable existing ports operations to continue to operate, they can act as a barrier to the intensification and/or expansion of coastal and inland ports.

52. This occurs when proposed port infrastructure or activities are not provided for by the district plan and the port authority must seek a plan change or resource consent to permit the development or activity. These statutory settings result in a level of uncertainty for the port authority regarding the future operation and development of ports, particularly where it involves changes of use, expansion or intensification of port activities. There are also compliance and investment costs associated with the application process where there is no certainty of outcome.

Social Housing

53. The Ministry of Housing and Urban Development advise that there is high demand for social housing across NZ. From June 2022 to May 2024, 6540 new social houses were built and 2,201 social houses were removed resulting in an additional 4,339 new social houses. As of June 2024, there were 23,528 people on the public housing register in May 2024, with only 1068 applicants housed in May 2024[7]

54. This shows that there is a significant and ongoing gap in the provision of social housing and the demand for social housing. By ethnicity, 49% are Māori% (18% of the population), 35% are European (68% of the population) and 17% of Pacific peoples (8% of the population). This shows that Māori in particular, and Pacific peoples are disproportionately represented on the public housing register as needing to be housed.

[6] See s167 and s168 of the Resource Management Act 1991

[7] The Housing Register has been developed and is monitored by the Ministry of Housing and Urban Development (www.hud.govt.nz)).

55. This shortfall in social house building is partly due to the difficult, uncertain and expensive consenting processes created by district/unitary plans. The Ministry of Housing and Urban Development state that it is difficult to get approval for social housing developments within the current system, and "*more often than not the consenting risks are deemed too great.*"

56. An example of this is the Flagstaff development in Hamilton which was reported in the media on July 2, 2024[8]:

> *"Plans for a controversial social housing development in Flagstaff have been put on ice as the country's biggest landlord reviews a series of planned housing projects in Hamilton.*
>
> *The 60-home Kāinga Ora housing complex on 1.9 hectares of vacant Crown-owned land in Endeavour Avenue, next to the Flagstaff shops, was originally set to be 70 two and three-storey homes but was scaled back after feedback from the community. More than 2700 residents signed a petition in 2020 by then Hamilton East MP National's David Bennett, demanding the development be halted."*

57. The provision of social housing by Kāinga Ora and CHPs are often declined or modified by local authorities due to concerns about the scale, density or the type of housing. This is because district/unitary plans have restrictive provisions in place to limit these forms of development. Different approaches to enabling these developments also create uncertain consenting processes.

## Objectives

58. The objectives are to enable other essential service providers to be eligible to apply for requiring authority status, in particular port authorities and social housing providers (Kāinga Ora and registered Community Housing Providers).

59. In addition to the RMA work programme objectives, the proposal seeks to assist in delivering on Coalition Deals/policy on Electrify NZ, Infrastructure for the Future, Going for Housing Growth, RM Reform and Delivering Better Social Housing.

## Options

### *Option 1: do not extend requiring authority status to port authorities and social housing providers (Kāinga Ora and registered Community Housing Providers)*

60. This would mean port authorities and Kāinga Ora and registered Community Housing Providers would continue to need to apply for resource consents for expansion and development of services.

61. As outlined above, these consents are often very complex and can be contentious. This introduces substantial cost into the planning process and the building of this infrastructure with its consequent economic and social benefits can be stalled or stopped.

62. Being able to designate land for these activities will reduce compliance and implementation costs and provide long term certainty that designation related activities can be undertaken without the need for land-use consents. Requiring authorities are also the final decision maker (unless decisions on a notice of requirement are appealed to the Environment Court). Together this ensures greater investment and

[8] Waikato Times, July 2, 2024: Kāinga Ora development in Flagstaff put on hold | Waikato Times. Retrieved 23 July 2024.

development certainty for requiring authorities. It also sends a signal to the community that this land is to be used for the designated use.

63. While the use of these powers is rare, network utility operators that are requiring authorities can also apply to the Minister of Land Information to use compulsory acquisition powers to acquire land from private landowners when required, under the Public Works Act 1981.

*Option 2: Extend requiring authority status to port authorities and social housing providers (Kāinga Ora and Community Housing Providers) (preferred option)*

64. This option would enable port authorities and social housing providers (Kāinga Ora and Community Housing Providers) to apply to be requiring authorities.

65. Giving designation powers to these entities means that they become the decision maker over the designated land. Designations also prevent other people and landowners from using the land in a way that might compromise the future designated use of the land. These powers assist in delivering works and projects that serve the public interest and increase investment and project certainty for these services and facilities.

66. This proposal would relate to 13 ports authorised under the Port Companies Act 1988[9], and enable land associated with coastal ports (ie land above mean high water springs), and inland ports, to be able to designate land. This option would also enable Kāinga Ora and registered Community Housing Providers to designate land for social housing purposes.

67. Registered Community and Housing Providers who would like to use these powers will first need approval from the Ministry for Housing and Urban Development under the Public and Community Housing Management Act 1992.

*Compulsory Acquisition powers*

68. It is proposed that the power for compulsory acquisition is available to port authorities as the type of infrastructure that the designation will be used for is similar to existing entities under s166 (airport authorities under the Airport Authorities Act 1966).

69. Port authorities operate in much the same way as these existing network utility operators in that there are specific operational requirements which limit where an activity can go. Designation powers will help ensure the optimal location of public and other infrastructure that serve wider public interests and compulsory acquisition powers could be used to acquire land required for port expansion.

70. Compulsory acquisition powers do not need to be made available for social housing provided by Kāinga Ora and Community Housing Providers. Kāinga Ora can already compulsorily acquire land for housing under the Urban Development Act 2020, and housing does not have the same locational requirements and limitations as infrastructure. In most cases, Community Housing Providers already own the land and additional land is not required.

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

| | **Option 1 – [*Status Quo / Counterfactual*]** | **Option 2 - Extend requiring authority status and access to compulsory acquisition powers (PWA) to ports.** |
|---|---|---|

[9] These ports include Northport (Northland), Ports of Auckland, Ports of Tauranga, Eastland Port (Gisborne), Port Taranaki (New Plymouth), Port of Napier, CentrePort (Wellington), Port Nelson, Port Marlborough, Lyttleton Port Company, PrimePort (Timaru). Port Otago (Dunedin), and South Port (Bluff).

| | | |
|---|---|---|
| | | **And extend requiring authority status for social housing to (Kāinga Ora and registered Community Housing Providers (CHPs) but not access to compulsory acquisition powers.** |
| **Effectiveness** | 0 | ++<br>Designations are powerful planning tools which will give project certainty for Port and social housing developments. They also help reduce compliance costs. |
| **Efficiency** | 0 | ++<br>Being able to designate land for these activities will reduce compliance and implementation costs, and provide more project certainty as requiring authorities are the final decision maker. It will also enable Port authorities to apply to the Minister of Land Information to use compulsory acquisition powers to acquire land when required. |
| **Certainty** | 0 | ++<br>Designation powers and processes are already clearly prescribed in the RMA and has been accepted planning practice for decades under the RMA. This regulatory change involves minor changes to the definition of network utility operators in s166 of the RMA. |
| **Durability & Flexibility** | 0 | ++<br>Ports designations will allow more flexibility to expand and operate in a way that responds to changes in economic conditions, technological changes, and changing community needs. Social housing fulfils an important public good. It is important to have flexibility to respond to the needs of low income and disadvantaged residents. |
| **Implementation Risk** | 0 | ++<br>This is low risk as does not require changes to council plans or existing designations. Requests for requiring authority status from these new entities will follow the same approval process currently in the RMA. |
| **Overall assessment** | 0 | ++ |

*Overall Assessment*

71. Option 2 is the preferred option.

72. Ports are critical infrastructure for the wellbeing of all New Zealanders. They are an essential part of the economy as they are an integral part of the transport and freight network and facilitate the export and import markets. Whilst most district plans enable existing ports operations to continue to operate, they can act as a barrier to the intensification and/or expansion of ports. It is therefore important that port authorities are able to designate existing coastal and inland ports and to enable intensification and expansion of these ports in the future as needed.

73. There is a significant and ongoing gap in the provision of social housing and the demand for social housing. Māori and Pacific peoples are disproportionately represented on the public housing register as needing to be housed. This shortfall in

social house building is partly due to the difficult, uncertain and expensive consenting processes created by district/unitary plans.

74. Enabling Kāinga Ora and registered Community Housing Providers to be able to designate land for these purposes will provide more project and investment certainty as requiring authorities are the final decision maker, whilst at the same time reducing compliance costs for requiring authorities. These agencies would not have access to compulsory acquisition powers.

75. Existing designation provisions ensure the appropriate checks and balances are in place to approve important housing and port developments whilst managing environmental effects, addressing private property rights and compensation, and allowing affected parties and members of the public to participate in these designation processes.

76. Option 2 better supports delivery of coalition agreements relating to RM Reform, Infrastructure for the Future, Going for Housing Growth and Delivering Better Social Housing.

## Cost/Benefit Analysis

| Affected groups | Comment | Impact | Evidence Certainty |
|---|---|---|---|
| **Additional costs of the preferred option compared to taking no action** | | | |
| Regulated groups (RAs) | RAs will need to apply to the Minister to become a RA. This is likely to be a low cost. | Low | Low |
| Regulators (Minister for the Environment) | Minister for the Environment (RA approvals), Minister for Housing (CHPs) and Minister for Land Information (PWA) may have more requiring authority approval processes to manage | Low . | Low |
| Regulators (wider central Govt) | No costs | Nil | Low |

| | | | |
|---|---|---|---|
| Treaty Partners | Port designations could impact rights, obligations and settlements particularly in the coastal environment above mean high water springs. This may involve additional work engaging with a designation process early. | Medium | Low |
| Community and environmental groups | There may be some litigation costs on local communities opposing expanded port operations if land is acquired for a port area. Some communities may legally challenge more social housing in their community | Medium | Low |
| **Non-monetised costs** | Low | Low | Low |
| **Additional benefits of the preferred option compared to taking no action** | | | |
| Regulated groups (RAs) | One-off costs of designation then allows development without the need for needing land-use resource consents that are consistent with the purpose of the Designation. | High | Medium |
| Regulators (Ministry for the Environment/Minister for the Environment) | None | Nil | Low |

| | | | |
|---|---|---|---|
| Treaty Partners | This is difficult to quantify as some development may be beneficial but in settlement areas or in coastal areas there could be negative impacts. Port expansion and development could provide additional employment opportunities<br><br>More and better housing by CHPs and Kāinga Ora public housing could provide benefits to Māori and help give effect to the Treaty.<br><br>Social housing designations may assist in enabling more Māori-led housing projects. | Medium<br>. | Low<br>. |
| Others (eg, wider central and/or local govt, consumers, iwi/Māori, etc.) | More certainty about the provision of public good infrastructure. | Medium | Low |
| **Non-monetised benefits** | Medium | Medium-high | Low |

## Treaty implications

77. The Treaty Implications section under Proposal 1 is also relevant to this section with respect to designations over Māori land under the Te Ture Whenua Māori Act 1993.

78. Port expansion and development in coastal areas may have Treaty implications, particularly where it relates to development adjacent to or within the coastal marine area, or over land that is or has been subject to a Treaty claim or settlement. Designations only apply to land and not the coastal marine area (CMA). The designation on land also doesn't guarantee resource consents for coastal activities and for other regional consents will be obtained.

79. There are established processes in place which require consultation to take place and for hearings and submissions and appeal processes for affected parties, including Māori. Each designation is likely to have different impacts for Māori depending on its location and the nature of the proposal.

80. Giving requiring authority status to identified CHPs and Kāinga Ora is likely to lead to more and better social housing. The public housing register shows that Māori on average have higher housing assistance and needs than the general public. Requiring authority status could lead to more community and public housing being provided which would likely benefit Māori and help give effect to the Treaty.

## Consultation

Local Government

81. The Local Government Practitioners Group were consulted on the proposed changes. They were largely supportive of the changes but there was feedback on why ports should be able to designate given that many district plans already provide an enabling environment for port activities. There was also discussion about the need for designation powers for social housing and use of compulsory acquisition powers.

82. The Local Government Reference Group was consulted on the proposals. Their main concern was that giving designation powers to Kāinga Ora and community housing providers might result in social housing occurring in areas not well served by infrastructure. This in turn could put pressure on Councils to provide the required infrastructure to service these developments.

83. We consider that if this situation were to arise, it will become evident during the process whereby a territorial authority recommends a designation and can be worked through then.

84. The Resource Management Law Association were consulted on the options but did not provide any particular feedback on these proposals.

Agency Consultation

85. The following agencies have been consulted and involved in developing policy.

86. Te Waihanga (Infrastructure Commission), Ministry of Transport (who has worked alongside NZTA and KiwiRail to provide position papers and evidence) have been consulted on the development of this policy and designations and infrastructure in general.

87. Land Information NZ (LINZ) has been consulted on the proposed changes and emphasised the need to carefully consider the interrelationship between designations processes under the RMA and compulsory acquisition powers under the Public Works Act 1981.

88. DIA and National Emergency Management Agency (NEMA) have been consulted on proposed changes to designation processes and the extent of extending designation powers.

89. The Ministry for Housing and Urban Development (HUD) have led the proposal to extend requiring authority powers for social housing developed and run by Kāinga Ora and Community Housing Providers. HUD have also been consulted on the development of this policy.

## Implementation

90. A relatively simple change to the definition of network utility operator (s167) would be needed to specifically list coastal and inland Ports, and the provision of social housing by Kāinga Ora and registered Community Housing Providers as requiring authorities upon application to the Minister for the Environment.

91. These changes are unlikely to have a significant impact on the RM system. Ports services and social housing undertaken by Kāinga Ora and registered Community Housing Providers will be able to designate land through an established RMA ministerial approval process. Approval to apply to become eligible for requiring authority status would first be required under the Public and Community Housing Management Act 1992 which is managed by the Ministry of Housing and Urban Development. Any new designations will be included in District Plans in the same manner to other requiring authorities. Existing District Plan provisions relating to Ports

and social housing could remain unchanged or replaced over time as a result of a designation decision.

92. The compulsory acquisition powers for designations would be limited to network utility operators, and not extended to the provision of social housing by Kāinga Ora and registered Community Housing Providers. Whilst requiring authorities can apply to use compulsory acquisition powers under the Public Works Act this is at the discretion of the Minister of Land Information and may not be granted in all circumstances.

93. The Minister of Land Information also has an important role in approving requiring authorities access to compulsory acquisition powers. Cabinet has agreed to a review of the Public Works Act 1981. The relevant terms of reference are:

- considering access to PWA powers, specifically consideration of entity access and enabling greater collaboration between agencies, local authorities, and network utility operations when working on joint infrastructure projects
- finding administrative efficiencies, such as adapting notice requirements and/or streamlining notification provisions and amending survey requirements, including when a full survey of land to be acquired needs to be completed
- considering where there is duplication of efforts that can be removed such as clarifying the objection process, including the relationship with the designation process under the Resource Management Act 1991.

94. Cabinet will be making policy decisions on this review by the end of 2024, with enactment of the Bill in 2025.

95. Overall, the review of the Public Works Act 1981 (PWA) is expected to assist with aligning processes under by the RMA and PWA.

96. The existing checks and balances in the RMA system will remain. This includes requiring authority approval by the Minister for the Environment, Notice of Requirement and outline plan approval processes, and avenues for appeals by Councils and/or third parties to requiring authority decisions.

## Monitoring

97. Ministerial approval is required to become a requiring authority under s167 of the RMA. This can be for a specified project or a work or network utility operation. Conditions and limitations can be imposed by the Minister at this stage including monitoring and other appropriate requirements if considered necessary. The Minister can impose conditions which ensure a requiring authority gives “proper regard to the interests of those affected and to the interests of the environment” (s167(4)(b)).

98. The Community Housing Regulatory Authority is responsible for registering and regulating Community Housing Providers. Registered Community Housing Providers are monitored annually against a prescribed set of standards relating to their governance, management, financial viability, tenancy management, and property and asset management performance. Providers who do not meet the prescribed performance standards may have their registration suspended or revoked. The Ministry for Housing and Urban Development provides oversight and monitoring of Kāinga Ora through the Kāinga Ora – Homes and Communities Act.

# Proposal 3: Designation assessment processes

## Problem

99. When the Resource Management Act 1991 was enacted, designations and designation processes were high-level strategic planning instruments. District/unitary plans often contained information on the scope and location of proposed infrastructure but full details on the designation were only provided at the Outline Plan stage once detailed planning and design had been undertaken.

100. There has been a change in practice over the years to require more detail and certainty about proposed designations at the notice of requirement stage, in order to manage environmental effects and the impacts on landowners and other land users of the designation process.

101. This level of information and assessment processes for a Notice of Requirement means that designation processes are considered by requiring authorities to be costly, time consuming, and create project risks for example around decision-making by regulators.

102. In particular, current assessment processes for a Notice of Requirement include:

    a. information to support an assessment of whether adequate consideration has been given by the requiring authority of of alternative sites, routes or methods of undertaking the work (s168A(3)(b) and (s171(1)(b)),

    b. Information to support an assessment of whether the *"works and designations are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought"'* (s168A(3)(c) and s171(1)(c)). There is no 'reasonably necessary' requirement for resource consents.

103. In addition, sections 168A(3) and 171(1) set out that a territorial authority must consider the effects on the environment. Forms 18 and 20 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 set out in addition that the ways in which any adverse effects will be mitigated must also be included. There is no direction on how detailed an AEE must be. This lack of direction has led to Assessment of Effects on the Environment (AEEs) becoming very detailed and complex and therefore expensive.

## Objectives

104. The objective is to improve the balance between detail of information provided to inform the designations recommendation process, and the need to more efficiently provide infrastructure, and to protect land for the designation in a more strategic manner. This includes by:

    a. Simplifying Notice of Requirement assessment and information requirements so that projects can be approved in a more effective and efficient manner.

    b. Clarifying the information requirements for landowners and communities to understand the environmental impacts of proposed designations.

105. In addition to the RMA work programme objectives, the proposal seeks to assist in delivering on Coalition Deals/policy on Electrify NZ, Infrastructure for the Future, Going for Housing Growth, RM Reform and Delivering Better Social Housing

## Options

### *Status quo – Option 1: retain current information requirements*

106. Under the current approach in the RMA, a substantial amount of potentially very detailed information is required when the Notice of Requirement is lodged. This enables the territorial authority, landowners and the community to understand what is being proposed. This applies regardless of whether the requiring authority already owns the land or otherwise has an interest in it.

### *Option 2: Reduce detail of information and assessment of alternatives and clarify detail required in AEEs (preferred option)*

Assessment of Alternatives

107. Where a requiring authority owns land or has a sufficient interest in the land, then the obligation to consider alternatives and undertake a reasonably necessary assessment (s168A and s171) would be treated in the same manner as applications and decision-making on resource consents. This would mean the requirement would go from information for an assessment on alternative sites, routes or methods to *"..... a description of any possible alternative locations or methods for undertaking the activity:"* (cl 4(1)(a) of Fourth Schedule of the Act).

108. The requiring authority would be required to provide the information on alternatives in a manner similar to a resource consent, but there would no longer be an obligation on councils and the Court to have particular regard to the adequacy of the consideration of alternatives and the necessity for the project or work ('reasonably necessary test').

109. Landowners and the public would still have sufficient information to participate in the assessment process.

Assessments of Environmental Effects (AEEs)

110. A technical clarification is proposed to set out the required level of detail for AEEs.

111. A new clause is proposed to be inserted into s168A to clarify that AEEs associated with a Notice of Requirement need only to be proportionate to the purpose, scale and nature of the project or work and to the potential effects on the environment. These changes would be carried through to Forms 18 and 20 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

112. This will better manage expectations of requiring authorities, territorial authorities and the community that the intention is for proportionality of information, rather than exhaustive information.

Guidance

113. To mitigate risks of both of these changes being subjective assessments and subject to variation, a Practice Note outlining how requiring authorities and local authorities should interpret these changes should be developed to improve Notice of Requirement processes and decision-making, and to ensure designations are more effective longer term, strategic planning instruments.

### *Further option: Remove alternatives assessments and reasonably necessary tests from designation processes*

114. This option involves removing the requirement for assessment of alternatives and reasonably necessary tests on all Notices of Requirement whether land is owned by the requiring authority or not. This original proposal by Te Waihanga and Ministry of Transport was based on a concern about duplication of assessment processes across the RMA and Public Works Act 1981 (PWA).

115. LINZ have advised that this is a matter being considered as part of the review of the PWA. Cabinet have directed officials to *"consider[ing] where there is duplication of efforts that can be removed such as clarifying the objection process, including the relationship with the designation process under the Resource Management Act 1991."* Policy decisions are expected by the end of the year. It is proposed that Bill 2 decisions should not pre-empt this review through making significant policy changes to alternatives and reasonably necessary tests.

116. In addition, MfE considers that it is important to retain 'alternative assessments' and 'reasonably necessary tests' in the RMA (based on Option 2 above) in respect of privately owned land. This is because there are significant private property right issues involved for landowners where natural justice principles would require a formal and transparent assessment of alternatives/reasonably necessary tests.

117. Retaining these requirements allows designation processes to be informed through landowner and community consultation and a submission and hearings process. Without this, the alternatives test assessment only takes place at the Environment Court on appeal. This is likely to create an unfair burden on affected parties in professional advice and litigation costs. It also presents some risks for requiring authorities if the Environment Court rules that alternatives and 'reasonably necessary' tests have not been appropriately considered and the designation process would need to be repeated.

118. These changes would not be minor and would have wider RM system implications which means that it is more appropriately considered as part of the Phase 3 RM Reform. For these reasons this option was not considered further.

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

| | **Option 1 – [*Status Quo / Counterfactual*]** | **Option 2 – Reduce detail of information and assessment of alternatives** |
|---|---|---|
| **Effectiveness** | 0 | ++<br>Land already owned by requiring authorities for a project should not have to do alternatives/reasonably necessary tests. Will increase project certainty and reduce compliance costs.<br>Enables designations to be more effective long term planning instruments which can reduce land and development costs over time. |
| **Efficiency** | 0 | +<br>Increases efficiency by reducing need for additional assessments when land is already owned or within the interest of requiring authorities and reduces assessment and planning costs of preparing Notice of Requirement. A reduction too far in the level of information and assessment being required could raise concerns for landowners and councils and lead them to undertaking or commissioning of further evidence to oppose NoRs. |
| **Certainty** | 0 | ++<br>Provides more certainty that designations will be approved over land owned or within the interest of the requiring authority. |

| | | |
|---|---|---|
| **Durability & Flexibility** | 0 | ++<br>Gives requiring authorities more flexibility in the way projects can be designed and implemented knowing that decisions are unlikely to be overturned because other alternatives were deemed to be better options. This will help deliver more and better infrastructure/housing more effectively. |
| **Implementation Risk** | 0 | ++<br>This is low risk as does not require changes to council plans or existing designations. This new approach would be applied to new Notices of Requirement lodged after the enactment date. |
| **Overall assessment** | 0 | ++ |

*Overall Assessment*

119. Option 2 is the preferred option.

120. Requiring authorities would be required to provide the information on alternatives in the same manner as resource consent applications, but there would be no obligation on councils and the Court to have particular regard to the adequacy of the consideration of alternatives.

121. This strikes a balance between a reasonable level of information over land already owned by a requiring authority, with an assessment of effects on landowners, Iwi/Māori, the community, and the environment.

122. This will reduce project risk, compliance costs, and timeframes for preparing and assessing Notices of Requirement. All other processes relating to public consultation process, decision-making and appeal rights would remain unchanged.

123. The option supports delivery of coalition agreements relating to RM Reform, Infrastructure for the Future, Going for Housing Growth and Delivering Better Social Housing.

## Cost/Benefit Analysis

| Affected groups | Comment | Impact | Evidence Certainty |
|---|---|---|---|
| **Additional costs of the preferred option compared to taking no action** | | | |
| Regulated groups (RAs) | No evidence has been provided on the costs of undertaking alternatives/reasonably necessary tests. In general, a reduction in costs would be expected. | Low | Low |
| Regulators (Ministers) | Minister for the Environment (RA approvals) and Minister for Land Information (PWA) | Nil | Low |
| Treaty Partners | May wish to undertake own assessments and participate in designation | Medium | Low |

| | | | |
|---|---|---|---|
| | processes without full assessment of alternatives and necessity tests, including participation in hearings and Court proceedings, and use of expert evidence. | | |
| Others (eg, wider central and/or local govt, consumers, iwi/Māori, etc.) | No known evidence available on the costs. However, there is unlikely to be additional costs to central government<br>No cost to local authorities as District and Unitary Plans do not need to change.<br>Some communities may wish to collate further information or participate more in objection and appeal processes.<br><br>There could be increased negative environmental impacts if requiring authority owns land that is environmentally sensitive, but decision makers are not able to require an alternative site, route or method for the designation | Low | Low |
| **Non-monetised costs** | | Low/Medium | Low |
| **Additional benefits of the preferred option compared to taking no action** | | | |
| Regulated groups (RAs) | Reduces compliance costs and increase project certainty. | Medium | Low |
| Regulators (councils) | An assessment process will be removed from the designations process. | Low | Low |
| Treaty Partners | This is difficult to quantify as some development may be beneficial but in settlement areas or in coastal areas there could be negative impacts. | Medium | Low |
| Others (eg, wider central and/or local govt, consumers, iwi/Māori, etc.) | Helps address infrastructure housing needs in local communities and expansion/intensification of port operations in constrained environments. | Medium | Low |

| | | | |
|---|---|---|---|
| **Non-monetised benefits** | | Medium/High | Low |

## Treaty implications

124. The Treaty Implications section under Proposal 1 is also relevant to this section with respect to designations over Māori land under the Te Ture Whenua Māori Act 1993.

125. Streamlining Notice of Requirement processes in the manner proposed will provide greater certainty for requiring authorities that designations related to land they own or have an interest in will be approved. These changes, together with Proposals 1 and 2 in this RIS, mean that there is likely to be more and better infrastructure and social housing provided throughout the country.

126. This is particularly relevant for Māori as the public housing register shows that Māori on average have higher housing assistance and needs than the general public. Requiring authority status and streamlined designation processes could lead to more community and public housing being provided which would likely benefit Māori and help give effect to the Treaty.

127. The proposal to reduce requirements for alternative assessments and 'reasonably necessary' tests over land owned by a requiring authority could negatively impact land that contains sites of significance to Māori (as identified in a District Plan) or is land that is subject to a Māori claim or settlement processes.

128. There are established processes in place which require consultation to take place and for hearings and submissions and appeal processes for affected parties, including Māori. Each designation is likely to have different impacts for Māori depending on its location and the nature of the proposal.

## Consultation

Agency Consultation

129. Te Waihanga (Infrastructure Commission), Ministry of Transport (who has worked alongside NZTA and KiwiRail to provide position papers and evidence) have been consulted on the development of this policy and designations and infrastructure in general. These agencies proposed the removal of a full assessment of alternatives sites, routes, and methods, and that a project is reasonably necessary on the grounds of adding costs and uncertainty to designation processes. There is support now for the proposed changes as outlined above.

130. Land Information NZ (LINZ) has been consulted on the proposed changes and emphasised the need to carefully consider the interrelationship between designations processes under the RMA and compulsory acquisition powers under the Public Works Act 1981.

# Implementation

131. These changes are unlikely to have a significant impact on the wider resource management system. It is proposed that the new Notices of Requirement assessment processes only apply to new Notices of Requirement once the Bill is enacted.

132. Existing District/Unitary Plan provisions will remain unchanged as a result of this proposal.

133. The Minister of Land Information also has an important role in approving requiring authorities access to compulsory acquisition powers. Cabinet has agreed to a review of the Public Works Act 1981. The relevant terms of reference are:

- considering access to PWA powers, specifically consideration of entity access and enabling greater collaboration between agencies, local authorities, and network utility operations when working on joint infrastructure projects
- finding administrative efficiencies, such as adapting notice requirements and/or streamlining notification provisions and amending survey requirements, including when a full survey of land to be acquired needs to be completed
- considering where there is duplication of efforts that can be removed such as clarifying the objection process, including the relationship with the designation process under the Resource Management Act 1991.

134. Cabinet will be making policy decisions on this review by the end of 2024, with enactment of the Bill in 2025.

135. Overall, the review of the Public Works Act 1981 (PWA) is expected to assist with aligning processes under by the RMA and PWA, and in particular considering assessment of alternatives and reasonably necessary tests in the PWA, and addressing potential duplication in the PWA and RMA at that time.

## Monitoring

136. Ministerial approval is required to become a requiring authority under s167 of the RMA. This can be for a specified project or a work or network utility operation. Conditions and limitations can be imposed by the Minister at this stage including monitoring and other requirements if considered necessary. The Minister can impose conditions which ensure a requiring authority gives *"proper regard to the interests of those affected and to the interests of the environment*" (s167(4)(b)).

137. The Minister of Land Information also has an important role in approving requiring authorities access to compulsory acquisition powers (as outlined under Implementation section above).

138. Overall, there are checks and balances in the system from requiring authority approval, requiring authority and local authority approval and recommendation processes (Notices of Requirement, and outline plan approval processes), and appeals by landowners, councils and/or third parties to requiring authority decisions.