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***
31-Jul-24	Regulatory Impact Statement: Policy analysis of natural hazards and emergency proposals for inclusion in Resource Management Amendment Bill No.2	Ministry for the Environment

Information redacted **YES**

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Summary of reasons for redaction

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

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

Policy analysis of natural hazards and emergency proposals for inclusion in Resource Management Amendment Bill No.2

Coversheet

Proposal	**Description**
Natural hazards and emergency provisions	These proposals relate to emergency provisions as described in CAB-24-MIN-0246 & ECO-24-MIN-0113; 20. agreed to improve natural hazard and emergency provisions by: 20.1 allowing authorities carrying out emergency works on private land to leave a written notice on site and inform the ratepayer, rather than directly contact the occupier, when the occupier cannot be found; 20.2 introducing a new regulation-making power into the RMA to help respond to, and recover from, emergency events; 20.3 extending timeframes for retrospective consent for emergency works 20.4 introducing an additional ability for councils to decline land-use consent applications, or impose conditions on land-use consents, where there is significant risk from natural hazards 20.5 providing for rules relating to risks from natural hazards to have immediate legal effect from notification of a plan or plan change.
Relevant legislation	RMA s330, s330A, s330AAA (or s330(3)), introduce a regulation-making power into the RMA (similar to s796 of the Natural and Built Environment Act 2023). RMA Sections 86B(3), 149N(8) and section 106
Policy lead	Emergency provisions: Fiona Sprott Natural hazards: Mark Johnson, Samuel Nevin
Source of proposal	Adaptation is one of the National Party's Blueprint for a Better Environment policy commitments. Various actions identified in the National Party's 100-day action plan, or wider manifesto documents, including specific actions relating to emergency response and recovery from severe weather events. Under the list of actions to deliver better housing and infrastructure, the Government will meet with councils and communities to establish regional requirements for recovery from Cyclone Gabrielle and other major flooding events. A further action is to make any additional Order in Council (OIC) required to remove red tape and thus speed up cyclone and flood recovery efforts. The intention to repeal

	Labour's RMA 2.0 legislation and introduce a fast-track consenting regime to streamline rules for landowners near flood-prone rivers to undertake preventative maintenance and recover from extreme weather events to deliver a faster and fairer disaster recovery and an adaptation framework.
Linkages with other proposals	National direction on natural hazards Exact linkages are unknown in advance of policy work on the national direction being progressed, but it is anticipated that the proposals will be complimented by direction on risk assessment (for the purposes of determining what constitutes a significant risk).
Limitations and constraints on analysis	Reduced timeframes have limited our ability to assess the feasibility of a broader range of options, including (in some instances) non-regulatory options. Our consultation and analysis have been done in a compressed timeframe. We will continue to engage up until the Bill's introduction. Several limitations caused by these tight timeframes include: • limited data and evidence available to assess the policy proposals • limited engagement with iwi/Māori on some proposals and no engagement with iwi/Māori on other proposals • only targeted engagement with councils • only targeted engagement with stakeholders. Where necessary, relevant government agencies have worked collaboratively with MfE on the RM Bill 2 proposals. However, the constrained timelines have resulted in reduced cross-agency consultation timeframes.
Responsible Manager	Jo Gascoigne, Resource management, General Manager Liz Moncrieff, General Manager, Urban and Infrastructure Policy, Ministry for the Environment.
Quality Assurance: Impact Analysis	"The panel considers the impact analysis undertaken for the three emergency provisions and two natural hazards proposals partially meets the Quality Assurance criteria. The limitations and constraints have been clearly outlined; however, the compressed time frame has limited the range of regulatory and non-regulatory options assessed and the level of supporting evidence and analysis. A qualitative description has been provided of the costs and benefits of the preferred options, which have not been quantified due to data and time limitations. The impact analysis shows that where there is significant risk from natural hazards, the potential costs to some individuals and iwi/Māori from councils declining land use consent applications (or imposing conditions) needs to be weighed against the wider public benefits (refer proposal

	five). There has been some targeted consultation with councils, some stakeholders and agencies on these proposals. Although data has been provided indicating that a large amount of Māori land is in low lying coastal areas and flood plains and could be disproportionately affected by emergency events, there has been limited engagement with iwi/Māori on some proposals and no engagement with them on other proposals. Some further consultation is planned up until the introduction of the Bill to the Select Committee. The panel considers that more consultation and continuing to monitor these proposals through the national monitoring system and as part of the wider review of the RMA, could help to mitigate the implementation risks. It is also necessary to coordinate with the review of the Public Works Act.”

Natural hazards and emergency proposals for inclusion in Resource Management Amendment Bill No.2

Proposals

1. This document analyses five proposals aimed to facilitate progress in the short and medium term (ahead of Phase 3) via an amendment Bill to streamline and simplify the RMA's operation (RM Bill 2).
2. The five policy changes proposed, three for emergency provisions and two for natural hazards, are aimed at improving local council process, timeliness, and efficiency for natural hazard management and emergency recovery.

Objectives

3. The proposals align with the RMA work programme objectives to:
    a. enable delivery of high-quality infrastructure for the future
    b. unlock development capacity for housing and business growth
    c. adapt to the effects of climate change and reduce the risks from natural hazards.
4. In addition to the RMA work programme objectives, each proposal has its own specific objectives, which are outlined as part of the analysis of each proposal.

Assessment criteria

5. The assessment criteria used to evaluate all proposal 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 (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.

Proposal 1: Occupier notification for entering land for emergency works

Problem

6. Local authorities have many responsibilities during emergency events and often they have limited resources. When carrying out emergency works on private land the RMA requires the local authority to find the occupier and explain what works are being carried out (s330(3)). However, occupiers sometimes move to safer locations during emergencies and cannot be located quickly or easily.
7. This obligation to find the occupier can delay important work[1] and uses resources that could be better spent on actual recovery works.

Objectives

8. In addition to the RMA work programme objectives, the proposal seeks to reduce an administrative burden on local authorities during an emergency, allowing them to prioritise resources to carry out emergency and recovery duties.

Context

9. The RMA allows local authorities to undertake emergency works during emergency situations (see s329A-331).[2] This includes preventative measures or remedial measures. Examples of preventative measures include:
    - breaching a stop-bank to release flood waters and avoid overtopping in more vulnerable areas downstream
    - removing a scheduled tree that is about to topple and cause a major power outage
    - bulldozing a fire break through native bush to prevent the spread of a fire.

    Examples of remedial measures include:
    - clearing and disposing of slip debris from a roadway after an earthquake
    - repairing a railway embankment in the coastal marine area following storm surge.
10. Section 330(2) of the RMA therefore allows a local authority to override property rights that would ordinarily restrict its entry and actions. As a safeguard, when authorities want to undertake emergency works on private land, they must identify themselves to the occupier and inform them of what emergency works they are going to do and why.
11. During the North Island Weather Events (NIWE) in 2023, many occupiers moved to safer locations and were difficult to find. In March 2023 the Severe Weather Emergency Legislation Act (SWELA) was enacted.
12. SWELA amended the RMA so that instead of having to locate the occupier to explain what is occurring, the authority can leave a sign on the property, explaining the entry, works and who to contact. Additionally, the authority must write to the ratepayer to explain the same information.[3]
13. As this change was only related to the NIWE it will be repealed in October 2024.

[2] In addition, the Civil Defence Emergency Management Act provides discretion for certain persons to carry out whatever actions are necessary in a declared emergency.

[3] RMA section 330AAA

Proposal – Option 1

14. Replace the need to find an occupier, with the ability to leave a notice on site.

15. This option would retain the existing duty to inform occupiers under s330(3). However, it would amend s330AAA (see paragraph 12) to allow an alternative pathway if occupiers cannot be found, so that a written notice can be left on site and sent to the ratepayer.

16. Currently, this pathway applies to local authorities in areas affected by NIWE. The proposed amendment would enable that pathway for use by all local authorities, for any emergency.

17. This option reduces administrative burden on local authorities, allowing them to use their resources to undertake recovery works that may benefit not only those occupiers but also wider communities.

18. This option is considered an appropriate balance in an emergency because, while it does diminish the rights of occupiers to be informed as soon as practicable, it retains a degree of transparency and accountability.

Other options

Option 0

19. Status quo: do nothing and allow s330AAA to expire on 1 October 2024.

20. This option would mean that in all future emergency events, the ability to enter a site is still reliant on s330(3), requiring contact with occupiers.

21. The disadvantage of this option is that it may lead to emergency works being delayed and resources being diverted from other recovery efforts, as time and effort is spent locating occupiers.

22. This option is not recommended because, compared with the proposed option, it does not achieve the objective of reducing administrative burden on local authorities or allowing them to best prioritise their resources in emergencies.

Option 2

23. Allow the written notice alternative pathway, but only in large-scale emergency events.

24. This option allows authorities to leave a written notice when carrying out emergency works on private land, instead of contacting the occupier, where the occupier cannot be found, but only during large-scale emergencies. For small-scale events the status quo would apply.

25. This option reduces occupier's rights to information about what is happening on the land as soon as practicable. This is mitigated by the display of a sign, to be located on the site providing information and explaining the authority's requirement to inform the ratepayer.

26. No definition of “large-scale” events is currently in place in the RMA. Reliance may be needed on declared emergencies under the Civil Defence Emergency Management Act 2002 (CDEMA).

27. This option is more efficient, during large-scale events, than the status quo as authorities do not have to spend time locating occupiers who are not present on site, in turn, allowing time / effort to be spent on wider recovery efforts. The efficiencies are likely to be greater for large-scale events (with many wider response and recovery tasks). However, this option does impose a new duty on authorities to determine the scale of event. This could cause confusion when applying the law and reduces the

efficiency and certainty of the change and may lead to implementation risk (litigation against councils).

28. While this option does meet the objective of allowing local authorities to make the best use of their resources during large-scale emergencies, it would not achieve the same for small-scale emergencies, and therefore is not as comprehensive as the proposed option. In addition, as the definition of large-scale event is not clear, the local authority would have to determine the size of an event before using the alternative pathway, creating another administrative duty.

Option 3

29. Allow the written notice alternative pathway, but only in small-scale emergency events.

30. This option allows authorities to leave a written notice when carrying our emergency works on private land, instead of contacting the occupier, where the occupier cannot be found, but only during small-scale emergencies. For large-scale events the status quo would apply.

31. This option reduces occupier's rights to information about what is happening on the land as soon as practicable. This is mitigated by the display of a sign, to be located on the site providing information and explaining the authority's requirement to inform the ratepayer.

32. This option may be more efficient, during small-scale events, than the status quo as authorities do not have to spend time locating occupiers who are not present on site, in turn, allowing time / effort to be spent on wider recovery efforts.

33. No definition of “small-scale” events is currently in place in the RMA, which combined with the new provisions would impose a new duty on authorities to determine the scale of event. This could cause confusion when applying the law and reduces the efficiency and certainty of the change and may lead to implementation risk (litigation against councils). Creating the need to make this administrative decision on the scale of event, may outweigh the benefits of reducing administrative resources finding occupiers.

34. While this option may meet the objective of allowing local authorities to make the best use of their resources during small-scale emergencies, the need for speedy recovery in large-scale events, that tend to draw more heavily on limited resources, is not addressed by this option.

Option 4

35. Allow the written notice alternative pathway, but only for natural hazard emergency events. Natural hazards are defined in s2 of the RMA.

36. This option allows authorities to leave a written notice when carrying out emergency works on private land, instead of contacting the occupier, where the occupier cannot be found, but only during natural hazard emergencies. This option specifically refers to emergency events which would meet the definition of natural hazards so would not apply to other emergency events such as man-made emergencies (traffic crashes, airplane or boating disasters, engineering failures of buildings etc).

37. This option reduces occupier's rights to access information about what is happening on the land as soon as practicable. This is mitigated by the display of a sign, to be located on the site, providing information and explaining the authority's requirement to inform that ratepayer.

38. While this option does meet the objective of allowing local authorities to make the best use of their resources during natural hazard emergencies, it would not achieve the goal for other emergencies which may have just as significant impacts on councils' resources, and therefore is not as comprehensive as the proposed option.

Option 5

39. Allow the written notice alternative pathway for all emergency events, but not on whenua Māori.

40. This option allows authorities to leave a written notice when carrying out emergency works on private land, instead of contacting the occupier, where the occupier cannot be found, but only on land that is not whenua Māori. The authority would need to know whether the land was in Māori ownership when carrying out emergency works. This is an increased administrative burden on authorities during an emergency event. There is also an increased risk of implementation litigation if the authority incorrectly identifies whenua Māori. Therefore, this option is less certain and efficient than the status quo and the proposed option.

41. This option may protect some Māori (and non-Māori) occupier rights when entering whenua Māori.

42. This option reduces occupier's rights to information about what is happening on the land as soon as practicable. This is mitigated by the display of a sign, to be located on the site, providing information and explaining the authority's requirement to inform that ratepayer.

43. This option may lead to inequal outcomes for whenua Māori if emergency works cannot take place on their land in a timely manner but can occur on neighbouring land.

44. While this option may protect the rights of occupiers of whenua Māori, it does not necessarily address Māori rights as the occupiers of whenua Māori are not always Māori.

45. This option does not achieve the objective to ensure local authorities can use their resources in the best way to respond to emergencies and therefore it does not score as high as the proposed option.

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 0 – [*Status Quo*]	**Option 1 - [*ability to use signs for all emergency events*] *(Preferred)***	**Option 2 - [*Ability to use signs only in large-scale emergency events*]**	**Option 3 - [*Ability to use signs only in small-scale emergency events*]**	**Option 4 - [*Ability to use signs only in natural hazard emergency events*]**	**Option 5 - [*Ability to use signs except for Whenua Māori*]**

Effectiveness	0	++ Meets objective to remove admin burden and free resources	+ Removes one admin burden but adds another	+ Removes one admin burden but adds another	+ Meets objective to remove admin burden and free resources but only in natural hazard events	+ Removes one admin burden but adds another
Efficiency	0	++ Least cost to local authorities	+ Costs burden associated with determining scale of event including litigation	+ Costs burden associated with determining scale of event including litigation	+ Cost saving but only for natural hazard events, not all emergencies	+ Costs burden associated with determining whether land is whenua Māori
Certainty	0	++ Certainty because all events are covered. Councils will know how to act and occupiers will know what to expect	- Councils will have to make decisions about scale of event before they can use the alternative pathway, this may lead to litigation, or not using the alternative pathway due to risk and uncertainty	- Councils will have to make decisions about scale of event before they can use the alternative pathway, this may lead to litigation, or not using the alternative pathway due to risk and uncertainty	+ Councils have more certainty in natural hazard events. Occupiers will know that it is only natural hazard events when they can expect a sign	- Councils will have to make decisions about landownership before they can use the alternative pathway. This may lead to litigation, or not using the alternative pathway due to risk and uncertainty
Durability and Flexibility	0	++ Provides for flexibility from status quo to deal with circumstances where an occupier cannot be found, likely durable due to increased efficiency for council response	+ Provides for some flexibility from status quo to deal with circumstances where an occupier cannot be found	+ Provides for some flexibility from status quo to deal with circumstances where an occupier cannot be found	+ Provides for some flexibility from status quo to deal with circumstances where an occupier cannot be found	+ Provides for some flexibility from status quo to deal with circumstances where an occupier cannot be found
Implementation Risk	0	- Risk where there is uncertainty that occupier could have been found	- - Risk where there is uncertainty of scale of event and location of occupier	- - Risk where there is uncertainty of scale of event and location of occupier	- Risk where there is uncertainty that occupier could have been found	- - Risk where there in uncertainty of ownership of land and location of occupier
Overall assessment	0	++	-	-	+	-

Overall Assessment

46. On balance, Option 1 is preferred. This option is better than the status quo because it frees up resources for authorities to do actual recovery work. Option 1 would apply the provisions to all emergencies large or small and does not rely on any other definitions (such as natural hazards). Options 2 and 3 require that an additional decision (administrative burden) is placed on authorities to determine scale of event, and Option 5 requires that authorities know which land is whenua Māori. These options may therefore impose more costs on authorities than benefits which may not outweigh the status quo. Option 4 does not require any additional administration but also does not cover all emergencies and therefore has less benefits than the proposed option.

47. While the proposed option does reduce rights of occupiers, it also allows local authorities to carry out works that may benefit not only those occupiers but also wider communities. This option reduces administrative burdens on authorities freeing up their resources to be allocated to actual recovery and response works during an emergency.

Cost/Benefit Analysis

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (eg. landowner)	Ongoing (but generally one-off intermittent): On rare occasions, it is possible that regulated groups could incur additional costs if measures undertaken in an emergency response would have been done differently had the consent authority contacted the landowner as required under the status quo s330. For example, a landowner could have provided access through a locked gate had they been contacted first. Such costs are anticipated to be rare and minor.	Low	Medium
	Landowners may take legal action if they consider works are not related to an emergency and/or have been negligent in some manner. This could be more likely to occur if contact has not been made beforehand, and thus is a potential additional cost. Such cost is difficult to quantify as it would depend on the nature of the event, response, works and decisions of regulated groups, regulators, and the courts	Low	Low
Regulators (eg. councils, central governmen t)	Ongoing (but generally one-off intermittent): Regulators such as councils and crown network utilities/infrastructure may be subject to litigation if landowners consider that works are not related to an emergency and/or have been negligent in some manner. This could be more likely to occur if contact has not been made beforehand, and thus is a potential additional cost. Such cost is difficult to quantify as it would depend on the nature of the event, response, works and decisions of regulated groups, regulators, and the courts.	Low	Low

Treaty Partners	Ongoing (but generally one-off intermittent): The amendment could impact on the mana of Māori over their whenua, and their kaitiakitanga and tikanga. Where Treaty Partners are landowners, they may be subject to the same additional costs as regulated groups as described above.	Medium Low	Low Low
Wider public	Ongoing (but generally one-off intermittent): Any additional costs borne by regulators would likely be covered by ratepayers (additional costs described above).	Low	Low
Non-monetised costs	Additional costs are ongoing but are anticipated to be rare, one-off, and intermittent. Such additional costs are difficult to quantify as they would depend on the nature of an event, response, works and decisions of regulated groups, regulators, and the courts.	Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups eg. landowners	Ongoing (but generally one-off intermittent): Regulated groups may receive additional benefits if, for example, emergency works that reduce financial loss are undertaken sooner than they otherwise would have under the status quo (because regulators could respond quicker rather than diverting resource or delaying response to contact landowners). Such benefits are difficult to quantify as they would depend on the nature of an event, response, works and decisions of regulated groups and regulators.	Low-medium	Low
Regulators eg. councils, central government	Ongoing (but generally one-off intermittent): In May 2023 the Hawkes Bay Regional Council estimated that Cyclone Gabrielle had costs the councils of the region almost $1.5B in infrastructure costs alone.[4] Reducing the administrative burden on councils of locating occupiers has not been specifically costed but any reduction in administrative costs to councils during, and in, the aftermath of emergencies will be of benefit in two ways: firstly to reduce resource use in undertaking the task, and secondly to enable that resource to be redeployed to undertake more urgent recovery tasks. Given the change will also free-up local government resources, there may be less intervention required from central government.	Low-medium	Medium
Treaty Partners	Ongoing (but generally one-off intermittent): Where Treaty Partners are landowners, the additional benefits for regulated groups outlined above apply. This may be particularly so for Treaty Partners, given Māori land can be disproportionately impacted by emergency	Medium to High	Low

[4] Hawkes Bay Regional Water Assessment (2023) Hawkes-Bay-Regional-Water-Assessment-report-28-June-2023.pdf (hbrc.govt.nz)

	events. For example, around 80% of the 800 marae across the country are based in low-lying coastal areas and flood plains which is a significantly higher proportion than the 675,000 people or 14 percent of the total population that live in areas prone to flooding.[5] Therefore, the benefits to Māori of local authorities undertaking emergency works (such as breaching a stop-bank to release flood waters and avoid overtopping in more vulnerable areas downstream) under s330 may be disproportionately higher.		
Wider public	Ongoing (but generally one-off intermittent): Any additional benefits for regulators described above would likely be savings for ratepayers. The public will also benefit from emergency works being undertaken without delay and from resources most appropriately used during emergency events and in recovery times	Medium	Low
Non-monetised benefits	Additional benefits are ongoing but are anticipated to be rare, one-off, and intermittent. Such additional benefits are difficult to quantify as they would depend on the nature of an event, response, works and decisions of regulated groups and regulators.	Medium	Low

Treaty implications

48. Amending the requirements for notifying occupiers of land when emergency works are required may disproportionately affect Māori as a great deal of hazard-prone land is rural land that is owned or occupied by Māori. Also, it is common for several Māori occupiers to have rights associated with the same land which may cause additional difficulties if only one occupier is notified.

49. Where this land has been evacuated during an emergency or has restricted access due to road closures or flooding, Māori occupiers might not see a sign/written notice for days or weeks and therefore may not be aware of works being carried out on the land.

50. There is a risk that where emergency works take place on marae, wāhi tapu, or urupā in the absence of ahi kā / mana whenua they may be carried out in a way that breaches or disrupts kaitiakitanga, tikanga and the mana Māori have over their whenua.

51. However, there is a high threshold required to trigger provisions allowing the ability to carry out emergency works and the alternative, that without this change, works might not be carried out, may result in disadvantage to Māori occupiers or owners.

52. Iwi/Māori have not been consulted on these options so it is unknown which one they would prefer, or whether they would suggest a better solution.

53. Where there are existing agreements through Treaty Settlements, Joint Management Agreements, or Mana Whakahono ā Rohe for joint decision-making, these agreements will continue for the purposes of plan-making. Any agreements that allow joint

[5] Before the deluge: Building flood resilience in Aotearoa (2024) Te Uru Kahika [Upload_20221207-210351.pdf (gw.govt.nz)]

decision-making on resources consents and/or specific consultation or engagement pathways for resource consents will continue to be in force.

Consultation

54. Consultation has previously been carried out regarding the development of SWELA in 2023. Two submitters mentioned s330AAA. Hawkes Bay Regional Council requested confirmation in the Act that agencies can access land to undertake emergency works even in instances where the owner/occupier can be contacted but refuses to give permission. MfE's response at the time of SWELA was that the proposed provisions make no change to an occupiers' right to challenge the works undertaken under s330(2). The proposal in SWELA did not affect those rights and neither does this proposal. Waikato Regional Council's submission to SWELA sought to align ss331A-F with the scope of s330AAA and s330AA such that rural landowners were only able to carry out emergency works associated with the NIWE. This is clarified in RMA s329A and does not affect this proposal. Consultation undertaken under SWELA resulted in very few parties with an interest in this provision and no opposition to its inclusion.

55. For the purposes of RM Bill 2, consultation was undertaken with the New Zealand Planning Institute, Local Government Practitioners Group, the National Emergency Management Agency (NEMA), and the Resource Management Law Association. Feedback received was supportive of the proposal.

56. During consultation, the Ministry of Justice provided useful advice about property rights in Christchurch where it had been difficult to contact property owners in red zones where properties had been vacated. The Ministry supported this proposal to amend occupier notification to make it easier for councils to take action when needed.

Implementation

57. The proposal will be given effect through the legislation that amends the RMA (RM Bill 2).

58. Guidance material may be provided to support the implementation of the changes.

59. The proposals will be implemented nationally. Wherever there is an emergency event, occupiers will be subject to the amended provisions.

Monitoring

60. The effectiveness of this proposal will be monitored through the review of the RMA. No specific monitoring of the use of the alternative pathway is anticipated.

Proposal 2: Extend timeframes for retrospective consent for emergency works to allow flexibility for operators to comply under section 330A

Problem

61. In the aftermath of large-scale emergency events, resources are often stretched as part of response and recovery work. Compliance with regulatory timeframes and processes can require resources to be diverted from addressing more urgent needs. For consenting authorities, this is often a dual responsibility as both applicant and decision-maker.

62. Currently under the RMA, applicants who carry out emergency works that would otherwise require resource consent must apply for retrospective resource consent[6] within 20 working days.[7] However, consent authorities do have the power to extend timeframes under s37A (albeit in an ad hoc and unpredictable manner that can require additional resource).[8]

63. Once lodged, councils must process those applications within normal RMA timeframes. These are often complex consents, that may require public notification, submissions and hearings. This administrative burden (processing the consent, organising hearings etc.) must be carried out while councils are in the middle of dealing with an emergency event (as the councils recovery duties can last months) which requires limited resources to be stretched.

64. Delaying the administrative burden for applicants[9] and consent authorities (councils) may result in a better distribution of resources during the recovery period, to recovery works as opposed to administrative works.

65. Some emergency works may have adverse effects on the environment. It is important that such effects are remedied or mitigated as soon as possible. There is a balance to be achieved between giving applicants and councils time to deal with the emergency and ensuring that councils carry out their duties to protect the environment.

Objectives

66. In addition to the RMA work programme objectives, the proposal seeks to reduce the administrative burden on applicants for lodging retrospective emergency works applications, and the consenting burden for councils when assessing those applications. This will enable resources to be best used for recovery works while, at the same time, balancing the potential adverse effects on the environment arising from a delay in consenting.

Context

67. Certain work (identified in s330), that would normally require a resource consent, does not need one during an emergency. Under s330A(1), where emergency works have been undertaken, the person carrying out the works must advise the local authority within seven days. Under s330A(2), where the adverse effects of the activity continue, the person must apply for retrospective resource consent for the activity within 20 working days.

68. During NIWE the timeframes for lodging retrospective emergency works applications was extended under SWELA. Section 330AA was added to the RMA so that, in regions affected by NIWE, applicants had 100 working days to provide a notice to the council of the works and 160 working days to lodge their consent. In a review of the OIC under SWELA, many councils said that this was a power that was very helpful. These powers are to be repealed in October 2024.

[6] Where there are on-going adverse environmental effects.
[7] Following advice to the appropriate consent authority, within 7 days, that the activity has been undertaken under s330A
[8] Notably, there is the requirement for the consent authority to notify every person who, in its opinion, is directly affected by the extension of a time limit.
[9] In addition to councils, other applicants using s330 may be network utilities and lifeline operators, both of whom can also be responding to the emergency event with limited resources, eg. Waka Kotahi may be carrying out business as usual throughout the country while also clearing debris and rebuilding roads and bridges in affected areas.

Proposal – Combined Option 3 and Option 4

69. This proposal is split into two parts. Option 3 deals with business-as-usual (BAU) RMA practices during an emergency, and Option 4 covers a situation where an emergency has occurred that warrants a regulation-making power (such as a large weather event, earthquake, or man-made disaster). The difference between BAU emergencies and large-scale or unusual emergencies is an important distinction with respect to retrospective consenting in order to balance the potential for ongoing adverse environmental effects with the need for applicants to carry out recovery efforts. These options form a package which collectively meets the objectives.

70. The proposal entails retaining the status quo requirement to notify the council (seven days) that works have been undertaken. This is an administrative task and not unduly burdensome on applicants. Consenting authorities simply receive these notices.

71. The proposal also entails (Option 3) permanently extending the time to apply for retrospective resource consents for emergency works with ongoing adverse effects from 20 working days to 30 working days.[10] This is to give applicants more time to prepare the paperwork needed for the applications, while prioritising other actions to do with recovery. This would extend the period of uncertainty[11] for applicants and submitters by two weeks (10 working days) compared to the status quo. This is considered a proportionate delay in certainty and is appropriate when balanced against the administrative burden for applicants during an emergency.

72. In emergencies which are of a greater scale and / or severity and require a longer timeframe (than proposed under Option 3) for lodging emergency works consent, a regulation-making power is more appropriate (rather than extending BAU timeframes by a longer period). Option 4 proposes that this regulation making power (see proposal below) should include the ability to create an OICOIC which changes the RMA in specific circumstances to increase the timeframes where an event warrants it. The safeguards built into the regulation-making power will ensure that the balance between adverse effects and limited applicant resources is considered for the specific emergency situation that has arisen. The amended timeframes from SWELA (s330AA) (160 working days) is an example of this, and is time limited (repealed after the event). An appropriate assessment can be made as to the length of extension required on a case-by-case basis when writing an OIC.

73. A delay in lodgement of retrospective consent may have positive effects if the application is notified, as submitters who are under pressure with their own time and resources during an emergency event may be able to participate more fully with a delay in timing.

74. A combination of Options 3 and 4 is recommended as this strikes a balance between providing a slightly longer period to lodge retrospective resource consents for emergencies than the status quo, while not embedding a significantly longer period of time as the default option (when this may not be warranted depending on the scale of the emergency). Larger-scale or unusual events when a significantly longer period may be justified, can be provided for via regulations.

75. This combination of measures (extension of BAU timeframes and regulation power) will provide proportionate relief to councils (and applicants) during an emergency. This will reduce the consenting burden in the aftermath of an event, allowing resources to

[10] This is the same timeframes as in the equivalent provisions under the (now repealed) Natural and Built Environment Act 2023.

[11] The uncertainty arises from not knowing how the council will eventually choose to remedy or mitigate the adverse effects. Community members and iwi may have views as to the best solution and whether solutions put forward by the applicant and others will work.

be focussed on immediate response needs, while ensuring consents are applied for, and adverse effects appropriately managed, within an appropriate timeframe.

Other options

Option 0

76. Status quo: do nothing, meaning existing timeframes apply.

77. This option does not achieve the objective of reducing administrative burdens.

78. This option does not respond to council feedback which has shown that existing RMA timeframes are too short when dealing with large-scale emergencies such as NIWE.

Option 1 (160 WDs)

79. Amend the timeframes for requiring retrospective consenting of emergency works under the RMA to allow parties longer to comply (160 working days).

80. This option amends and replicates the NIWE-specific sections of the RMA (330AA, 330C) that are to be repealed on 1 October 2024. This option allows longer for applicants to put in retrospective consents, thereby reducing the administrative and consenting burden at the time of the event, as experience has shown that, for large events, the 20 working days for lodging an application is insufficient.

81. Not all emergency events are at the scale of the NIWE and may not need the extra time to deal with the retrospective consenting.

82. A delay in retrospective consenting may have additional adverse environmental effects during the period of the delay, eg. contaminant discharge to land during the stockpiling of storm debris may continue for longer with reduced remediation when conditions of consent may not be set out for several months (160 working days to apply, 20 working days to process or longer if notified) instead of the status quo of typically one to two months (20 working days to apply and 20 working days to process or longer if notified). This may result in applicants, submitters, and communities being uncertain about the environmental outcomes, and adverse environmental impacts for a prolonged period of time. It may also mean that councils are constrained in fulfilling their duties and functions under the RMA.[12]

83. A delay in lodgement may have positive effects if the application is notified, as submitters who are under pressure with their own time and resources during an emergency event may be able to participate more fully with a delay in timing.

84. This option does not meet the objective because although it achieves a delay in administrative burden it fails to balance this with ensuring consents are in place in a timely manner to avoid, remedy or mitigate potential adverse effects on the environment.

Option 2 (60 WDs)

85. Amend the timeframes for requiring retrospective consenting of emergency works under the RMA to allow parties longer to comply (60 working days).

86. This option amends the RMA to replicate the CDEMA provisions in s330B. This option allows longer for applicants to put in retrospective consents from status quo (20 working days) to 60 working days, thereby reducing the administrative and consenting burden at the time of, and immediately following, the event.

[12] Section 30 and 31 of the RMA sets out the functions of councils including the management of the natural and physical resources.

87. A delay in lodgement may have positive effects if the application is notified, as submitters who are under pressure with their own time and resources during an emergency event may be able to participate more fully with a delay in timing.

88. The disadvantages are that the delay may result in adverse effects occurring unmitigated or unremedied for longer than the status quo, when this is not otherwise justified by the scale of the event (and consequent need to deploy resources on immediate response efforts). This may result in applicants, submitters, and communities being uncertain about the environmental outcomes. It may also mean that councils are constrained in fulfilling their duties to protect the environment.

89. This option does not meet the objective because although it achieves a delay in administrative burden it fails to balance this with ensuring consents are in place in a timely manner to avoid, remedy or mitigate the potential adverse effects on the environment.

Option 5 (multiple timeframes)

90. Amend the timeframes for requiring retrospective consenting of emergency works under the RMA to provide for two separate sets of timeframes depending on whether an emergency had been declared under CDEMA or not.

91. The advantage of this option is that it would be tailored to the size of the emergency as it allows a dual system where smaller emergencies are given an appropriately smaller amount of leeway to defer consenting while declared larger emergencies have a longer amount of time.

92. The disadvantage of this option is that it would add complexity to the system and has the potential to create confusion, uncertainty, lack of efficiency, and implementation risk.

93. The longer timeframes for lodgement provided by this option have the negatives of ongoing unmitigated or unremedied adverse environmental effects. However, a delay in lodgement may have positive effects if the application is notified, as submitters who are under pressure with their own time and resources during an emergency event may be able to participate more fully with a delay in timing.

94. It is also worth noting that the extent of impacts that emergency works are required for, and any subsequent environmental impacts, are not necessarily dependent on the scale of the event.

95. This option does not meet the objective because although it achieves a proportionate delay in administrative burden it fails to balance this with the potential adverse effects on the environment from a delay in consenting for larger scale events.

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

	Option 0 [Status Quo]	**Option 1 [160WDs]**	**Option 2 [60WDs]**	**Option 3 [30WDs] (Preferred Option 3 + 4)**	**Option 4 [emergency regulation making power] (Preferred Option 3 + 4)**	**Option 5 [multiple timeframes]**
Effectiveness	0	- Does not achieve the balance	- Does not achieve the balance	++ This combined option best balances the delay with certainty because		+ May achieve a balance

		between delay and certainty	between delay and certainty	it is more time than the status quo but the least delay of the options while still providing for an elongated timeframe in circumstances where that is warranted	between delay and certainty
Efficiency	0	- The costs to applicants, submitters and communities are high due to long period of uncertainty, but the delay benefits to applicants is high	- The costs to applicants, submitters and communities are high due to long period of uncertainty, but the delay benefits to applicants is high	++ The costs to applicants, submitters and communities are balanced again the benefits to applicants; both are medium (compared with the other options and status quo)	+ The costs to applicants, submitters and communities are mixed due to multiple options, but the delay benefits to applicants is also mixed. There is an increased costs to system users due to system complexity
Certainty	0	- While applicants will have certainty about their legal obligations, councils may find it hard to carry out their functions under s30 and 31 of the RMA	- While applicants will have certainty about their legal obligations, councils may find it hard to carry out their functions under s30 and 31 of the RMA	+ This combined option provides the most proportionate certainty between costs and benefits to participants of the RM system	- As this is a dual system it inherently creates more complexity for RM system users
Durability and Flexibility	0	+ Provides for some flexibility from status quo to deal with emergency events	+ Provides for some flexibility from status quo to deal with emergency events	++ Provides a higher level of flexibility from status quo to deal with emergency events	++ Provides a higher level of flexibility from status quo to deal with emergency events
Implementation risk	0	- High level of risk of litigation during the longer delay in consenting	- High level of risk of litigation during the longer delay in consenting	0 Medium level of risk of litigation during the delay in consenting	0 High level of risk of litigation during the longer delay in consenting and less risk when using the

					shorter period of delay
Overall assessment	0	-	-	++	+

Overall Assessment

96. The combination of Options 3 and 4 strikes a balance between providing a slightly longer period to lodge retrospective resource consents for BAU RMA s330 emergencies than the status quo, while not embedding a significantly longer period of time as the default option (when this may not be warranted depending on the scale of the emergency). Larger-scale events when a significantly longer period (eg. 160WDs as under the NIWE response) may be justified can be provided for via regulations.

97. This combination of measures will provide proportionate relief to councils (and applicants) during an emergency to reduce the administrative and consenting burden in the aftermath of an event, allowing resources to be focussed on immediate response needs.

98. Adding a further delay to the need to apply for a resource consent following an emergency also delays public participation. This may have positive and negative effects. A negative effect is the risk of adverse effects during that delay and potentially becoming unmitigable because of the delay (eg. discharge to a wetland causing nutrification killing flora and fauna). However, the positive effect may be that communities who want to participate in the RMA consenting process but may not have capacity in the immediate timeframe after an event, may have more capacity after the delay and therefore are able to participate.

99. This delay generally disproportionately affects Māori and other disadvantaged communities who live in hazard areas and who may have less resources to participate in RMA decision-making due to other pressures (including dispossession) during and following an emergency.

Cost/Benefit Analysis

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups eg. consent applicants	Ongoing (but generally one-off intermittent): Unlikely to be any additional costs in most cases. On rare occasions, regulated groups may have increased clean-up/recovery costs if an activity resulting in adverse environmental effects continues unconsented and unmitigated for longer than would have otherwise occurred under the status quo.	Low	Low
Regulators eg. councils	Ongoing (but generally one-off intermittent): Unlikely to be any additional costs in most cases. On rare occasions, regulators may have increased clean-up/recovery costs if an activity resulting in adverse environmental effects continues unconsented and unmitigated for longer than would have otherwise occurred under the status quo. There may also be increased litigation costs if a	Low	Low

	person considers a regulator is not fulfilling their duties and functions under the RMA.		
Treaty Partners	Ongoing (but generally one-off intermittent): Extending timeframes results in no more costs for Māori as submitters or experts than would be expected under BAU consenting. Increased costs as an applicant is as outlined above. The costs to taonga of unmitigated adverse effects during the delay between works being carried out and consents being applied for is difficult to quantify, as it is site-specific and would depend on the scale of the works and the events. This could be an additional 'cost' or impact on Treaty Partner's tikanga, kaitiakitanga and mana over their taonga. For example, ongoing and unmitigated discharge to culturally important wai.	Medium	Low
Wider public	Ongoing (but generally one-off intermittent): The wider public will have some potential additional cost from the delay in consenting as there are potentially adverse effects that may not be able to be retrospectively mitigated or remedied. The public and/or regulators (ratepayer funded) may be subject to clean-up/recovery/litigation costs.	Low	Low
Central government	Ongoing (but generally one-off intermittent): Central government may at times undertake functions/roles similar to those of both a regulated party (eg. consent applicant) and as a regulator (eg. clean-up/recovery). Additional costs are as outlined for these two groups above.	Low	Low
Non-monetised costs	Additional costs are ongoing but are anticipated to be rare, one-off and intermittent. Such additional costs are difficult to quantify as they would depend on the nature of an event, response, works and decisions of regulated groups, regulators and the courts.	Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups eg. consent applicants	Ongoing (but generally one-off intermittent): Regulated groups will be provided more time to focus on both recovery/clean-up and preparing consent applications. This will allow better use of limited resource to focus on the most critical actions at different times, thus potentially reducing cost (eg. shorter clean-up time, more thorough consent lodged).	Medium	Medium
Regulators eg. councils	Ongoing (but generally one-off intermittent): Regulators will have more time to carry out emergency or recovery related works which are time sensitive rather than spending their limited resources applying for and/or processing	Medium	Medium

	retrospective consents (quicker, more effective clean up with potentially less costs). For example, during the Auckland Anniversary floods of 2023, council planning staff were redeployed to service centres to assist in emergency response.		
Treaty Partners	Ongoing (but generally one-off intermittent): Treaty Partners as regulated groups (eg. consent applicants) are subject to the additional benefits described above. In addition, the delay may enable Treaty Partners to more fulsomely and effectively participate in the consenting process, thus promoting better outcomes for Māori.	Medium	Low
Wider public	The delay may enable the wider public to more fulsomely and effectively participate in the consenting process, thus promoting better outcomes. In addition, they will benefit from additional resources being available to carry out emergency works (quicker, more effective clean up with potentially less costs).	Low	Low
Central government	Ongoing (but generally one-off intermittent): Central government may at times undertake functions/roles similar to those of both a regulated party (eg, consent applicant) and as a regulator (eg, clean-up/recovery). Additional benefits are as outlined for these two groups above	Low	Low
Non-monetised benefits	Additional benefits are ongoing but are anticipated to be rare, one-off and intermittent. Such additional benefits are difficult to quantify as they would depend on the nature of an event, response, works and decisions of regulated groups and regulators.	Medium	Low-medium

Treaty implications

100. The RMA currently provides for emergency works to be undertaken. There is the potential for adverse effects on freshwater and other natural taonga to occur during the emergency works which may remain unmitigated for a period before which conditions of consent can provide solutions. However, this risk is considered appropriate in emergency circumstances where there may be a risk to the environment, safety or a serious risk to property due to the emergency event.

101. This proposal extends the time adverse effects may be unmitigated but does not affect Māori rights to participate in the resource management consenting process. BAU consultation and submission processes would occur once the consents have been lodged.

102. Iwi/Māori have not been consulted on these options so it is unknown which one they would prefer or whether they would suggest a better solution.

103. This proposal increases the time taken by applicants for lodging retrospective consent applications but otherwise does not change the consenting pathway under operative plans.

104. Where there are existing agreements through Treaty Settlements, Joint Management Agreements or Mana Whakahono ā Rohe for joint decision-making, these agreements will continue for the purposes of plan-making. Any agreements that allow joint decision-making on resources consents and/or specific consultation or engagement pathways for resource consents will continue to be in force.

Consultation

105. Consultation has been carried out regarding the existing OIC administered by MfE:

- CRU is engaged with NIWE councils, communities and iwi
- consultation was carried out in the development of SWELA
- consultation with key stakeholders has been carried out for RM 2 Bill
- specific iwi consultation has not been carried out.

OIC Review

106. Councils have commented that the administrative and regulatory burden during recovery periods is large and having further time to lodge emergency works notices and consent applications would be helpful.

107. It is noted that a similar proposal was developed under the now-repealed NBA, to extend the timeframe for lodging retrospective consent to 30 working days. There were eight relevant submissions. Seven were in support and one proposed extending the timeframe to 60 working days. No Māori entities submitted on this proposal.

Consultation under SWELA

108. Five submitters made comments on s330AA. All council submitters were in support. Some submitters noted that they saw in the Canterbury natural hazard events, that long retrospective consenting timeframes were problematic and allow early decisions to drive/ affect recovery into the longer term. They said that when need for speed disappears, councils should just move into the recovery phase. Therefore, there was no need to delay consent requirements for so long as it does not focus on immediacy. In the response phase, immediate needs are apparent and easy to agree; but recovery policy is more complex and delaying consent requirements implies that actions under s330 do not have long term consequences. The submitter felt that decisions taken during response phase have impacts into the longer-term future and it is not appropriate to treat consenting as a tick box exercise that can be done later.

Consultation on RM 2 Bill

109. For the purposes of RM 2 Bill, consultation was undertaken with the New Zealand Planning Institute, the Ministry of Justice, NEMA, Local Government Practitioners Group, and the Resource Management Law Association. Feedback received was supportive of the proposal.

Implementation

110. The proposal will be given effect through the legislation that amends the RMA (RM Bill 2).

111. Guidance material may be provided to support the implementation of the changes.

112. The proposals will be implemented nationally, when there is an emergency event, the new working days will apply.

Monitoring

113. The effectiveness of this proposal will be monitored through the review of the RMA. The National Monitoring System will be able to track consents using the new provisions and this can be reported in the annual reporting.

Proposal 3: Embedding emergency regulation-making powers into the RMA

Problem

114. The RMA contains a set of standard provisions to enable emergency works or to take preventative or remedial measures when immediate action is required. These provisions are largely appropriate for responding to smaller events and emergencies. However, they are not sufficient for larger emergency events (such as the Christchurch or Kaikōura Earthquakes and NIWE). They also do not cover the recovery period that occurs after an emergency, which can last for several years.

115. When emergency events have occurred in the past, the limitations of the status quo have resulted in the need to pass bespoke legislation (eg. Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA)) and subsequent OIC to be developed to assist in response and recovery for each event.

116. The creation of bespoke legislation takes time, has costs, and is uncertain. That time and the associated resources could be spent more efficiently, during the response to an emergency, on recovery tools and works.

117. The need for bespoke legislation could be overcome by embedding regulation-making powers directly into the RMA.

Objectives

118. In addition to the RMA work programme objectives, the proposal seeks to reduce the costs and delays when an emergency event occurs by reducing the need for bespoke legislation to be created that enables recovery work.

Context

119. There have been various situations in New Zealand's recent history where bespoke legislation has had to be created in response to an emergency event in order to expedite recovery work. In response to the NIWE two pieces of legislation were enacted, SWELA and SWERLA.

120. During the recovery for the Canterbury and Kaikoura Earthquake events, legislation was created to deal with each event. The Canterbury Earthquake Response and Recovery Act 2010 and the Hurunui/Kaikōura Earthquakes Recovery Act 2016 both had a purpose which focused on response, recovery and rebuilding. OIC powers were conferred which were much wider than SWERLA. In Kaikoura this allowed for exemptions from, modification of, or extension of 'any provisions of an enactment.' The Canterbury Earthquake Response and Recovery Act 2010 allowed the amendment of multiple Acts to make OICs for 'any provision reasonably necessary or expedient' for the purpose of that Act. Both these Acts created very wide-reaching powers. During the creation of SWERLA it was decided not to allow such broad powers.

Proposal – Option 1

121. Introduce, in the RMA, a regulation-making power that empowers the development of OICs for the purpose of responding to, and recovering from, a natural hazard event or other emergency, (including improving the resilience of assets) by, for example, doing the following:

    a. permit, authorise or prohibit specific activities, noting that this will not give long-term existing use rights to these activities

    b. modify or alter the plan development processes

    c. apply a temporary stay to types or categories of applications (processing and granting of consents)

    d. extend or shorten consent processing timeframes
    e. the ability to extend timeframes to lodge retrospective resource consent for emergency works

    f. the removal of appeal rights through court processes (except judicial review)

122. To speed up the ability of councils, the Crown, infrastructure providers and landowners to effectively respond to and recover from natural hazard and other emergency events, it is proposed to embed the ability to create new emergency response regulations into the RMA.

123. Having this ability, rather than relying on enabling legislation to be developed first, would reduce the time taken for OICs to be effective by at least 2 months.

124. Embedding the power to make regulations directly into the RMA, rather than potentially having to write new primary legislation each time a declared emergency occurs, will save time and money during the response and recovery phases of an event. Due to bespoke legislation no longer being necessary, this option reduces MfE, other agency, and Crown Law resources required at the time of a declared emergency event so that those resources can be utilised for other response and recovery work.

125. The powers would be tempered by requirements that the Minister must consider effects on the environment, consult with relevant stakeholders, and the OICs must go through a comprehensive review process to ensure they are in accord with the purpose of the regulations and the RMA and not broader than necessary.

126. The scope of new regulations will be to address any emergency, including, but not exclusively, natural hazard emergencies. The regulations must only be used after a state of national or local emergency, or a local or national transition period,[13] has been declared under the CDEMA.

127. The RMA and tailor-made regulation enabling legislation in response to events such as NIWE or the Canterbury and Kaikōura earthquakes have different purposes. This may affect the effectiveness of the proposed regulation-making powers. The powers may be unnecessarily constrained and not work as broadly as they have for bespoke legislation. This remains untested in case law and may result in conservative application of the use of regulations to avoid litigation.

128. The alternative of writing bespoke legislation each time an event occurs may result in more certainty for regulation outcomes (although the process of drafting such

[13] The CDEM Act provides for CDEM Groups to give notice of a transition period following an emergency, whether a state of local emergency has been declared or not. The purpose of the transition period is to aid recovery by providing powers to manage, co-ordinate, or direct recovery activities. A transition period is like a declared emergency but at a different timeframe.

legislation leaves the door open to challenges) but the benefits of that certainty come with the costs of delay in response times.

129. On balance, it is considered more effective to embed the powers into the RMA and take advantage of the benefits of time, resource, and cost saving during an emergency.

130. This option adds an ability for OIC to override the RMA and potentially cause adverse environmental effects in times of emergency/ natural hazard events. However, this could be mitigated including a requirement for an assessment of environmental effects similar to the SWERLA s8(1)(e) test.

131. Limited consultation when making OIC could disproportionately affect Māori and other already disadvantaged communities due to their location in hazard-prone areas.

132. This option may not be as effective as when making OIC under a SWERLA-type Act as the purpose of the RMA is sustainable management of the environment rather than focussed on the response to, and recovery from, the impacts of the severe weather event.

133. The embedding of regulation-making powers links with the proposal above to use such powers to further extend timeframes for retrospective consenting under RMA s330A(2).

Other options

Option 0

134. Status quo: do nothing and rely on existing emergency works provisions and the assumption that, if an event is large enough, bespoke legislation will be developed to empower the use of OIC.

135. This option would cause delays in enabling response and recovery works that go beyond what is provided for in the existing RMA emergency works provisions and there is no guarantee bespoke legislation would be developed to speed recovery.

136. This option would not respond to council feedback that existing processes are too slow. This option would not meet the objective to reduce costs and delays in response to emergency events.

Option 2

137. Introduce a regulation-making power into the RMA that empowers the development of OIC for the purpose of responding to, and recovering from, a natural hazard event or other emergency, (including improving the resilience of assets) by, for example, doing the following:

    a. permit, authorise, or prohibit specific activities, noting that this will not give long-term existing use rights to these activities

    b. modify or alter the plan development processes

    c. apply a temporary stay to types or categories of applications (processing and granting of consents)

    d. extend or shorten consent processing timeframes.

138. This option includes four examples that are the same as the ones proposed for Option 1 but does not include two other examples: to extend retrospective consent lodgement timeframes and remove appeal rights.

139. This option provides the ability to be more prepared in time for the next natural hazard or other emergency event than the status quo. It would save time immediately

following the declaration of a state of national or local emergency in creating OIC to help response and recovery. This time is critical in ensuring appropriate responses can be coordinated within the affected area.

140. Due to bespoke legislation no longer being necessary, this option reduces MfE, other agency and Crown Law resources at the time of a declared emergency event so that those resources can be utilised for other response and recovery work. This option addresses feedback from councils.

141. This option adds an ability for OIC to override the RMA and potentially cause adverse environmental effects in times of emergency/ natural hazard events. However, this could be mitigated by including an assessment of environmental effects similar to the SWERLA s8(1)(e) test.

142. Limited consultation when making OIC could disproportionately affect Māori and other already disadvantaged communities due to their location in hazard-prone areas.

143. This option may not be as effective as when making OIC under a SWERLA-type Act as the purpose of the RMA is sustainable management of the environment rather than focussed on the response to, and recovery from, the impacts of the severe weather event.

144. This option is not as explicitly broad as Option 1, in particular in dealing with lessons learnt from the NIWE (specifically with reference to the inclusion of (e) and (f) in Option 1). This constraint may, at times, inhibit timely and cost-effective recovery action.

Option 3

145. Introduce a broad regulation-making power into the RMA such as the Henry VIII style,[14] similar to regulation-making powers established in relation to the Canterbury and Kaikōura Earthquakes.

146. This option gives unlimited scope and powers and provides a greater degree of assurance that it will offer a mechanism to address all resource management related issues arising from emergencies.

147. This option was previously effective in recovery from other emergency events (eg. Canterbury). However, the Canterbury Earthquake Recovery Act 2011 mechanism attracted some criticism at the time of introduction regarding the wide-reaching powers.

148. The disadvantage of this option is that broad powers are largely inconsistent with the Legislation Design and Advisory Committee principles and, as such, hard to justify. This option may also be inefficient as any emergency event large enough to require powers this wide is more likely to get its own response and recovery legislation anyway.

149. This option is considered too board compared with the proposed option. OIC created under such a power could potentially be open to judicial review during the emergency and recovery response times due to overreach. This would have significant costs due to uncertainty and duplication of effort at a time when the Crown, councils, and communities want certainty and cost savings.

[14] Parliament may delegate the power to amend, suspend, override or even repeal primary legislation via delegated legislation. Such a regulation-making provision is commonly called a "Henry VIII" clause. It has been said that this designation derives from Henry VIII's association with autocratic government, specifically because in 1539 Parliament gave him extensive power to amend statutes by proclamation. However, its aptness has been doubted, since Henry VIII ruled (1509 to 1547) well before the concept of parliamentary sovereignty was established. - Chapter 28 Delegated Legislation - New Zealand Parliament (www.parliament.nz)

150. This option does achieve the objective to reduce delays and costs but may be an over-reach.

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

	Option 0 - *[Status quo]*	Option 2 - [*Introduce a regulation-making power into existing RMA (a-d)*]	Option 1 - [*Introduce a regulation-making power into existing RMA with additional (e and f) powers explicit*] **(Preferred)**	Option 3 - [*Introduce a broad regulation-making power into the RMA that is Henry VIII style, similar to regulation-making powers established for Canterbury and Kaikoura Earthquakes*]
Effectiveness	0	+ Net benefits to the status quo	++ Net benefits to the status quo	+ Net benefits to the status quo
Efficiency	0	+ Achieves the objective but risk of not specifying all power	++ Achieve the objective	- Does not achieve the objective due to risk of litigation due to overreach
Certainty	0	+ Legislative requirements are clear	++ Legislative requirements are clear	+ Legislative requirements not clear as they are too broad
Durability and Flexibility	0	+ Flexible to meet many changes required	++ Extremely flexible to meet most changes required	++ Extremely flexible to meet most changes required
Implementation risk	0	- Risk that not being explicit with the powers will result in litigation or criticism from review bodies, and also may be unnecessarily constrained thus not meeting needs	- Risk that not being explicit with the powers will result in litigation or criticism from review bodies	- - Risk of challenge due to overreach
Overall assessment	0	+	++	-

Overall Assessment

151. Option 1 strikes the balance between better enabling timely response and recovery efforts following an emergency (as compared to the status quo) and not over-reaching in terms of the scope of regulation-making power. This option is proposed to include a mitigation measure for adverse environmental effects similar to the SWERLA s8(1)(e) test.

Cost/Benefit Analysis

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups eg. landowners	Potentially time limited and potentially ongoing: Regulated groups may be subject to additional costs in a variety of ways, depending on the nature of the regulation. This could be regulations that inhibit development, force action such as clean-up and recovery or result in environmental damage and cost (if, for example, activities with adverse environmental effects continue unmanaged for a longer period of time due to certain regulations).	Low to high	Low
Regulators eg. councils	Potentially time limited and potentially ongoing: Regulators may be subject to additional costs in a variety of ways, depending on the nature of the regulation. This could be regulations that inhibit development (with consequent loss of rates from lower land value and/or restriction on activities), force action such as clean-up and recovery or result in environmental damage and cost (if, for example, activities with adverse environmental effects continue unmanaged for a longer period of time due to certain regulations).	Low to high	Low
Treaty Partners	Potentially time limited and potentially ongoing: Treaty Partners may be subject to additional costs associated with participation in the consultation on OICs. Depending on the nature of the regulations, they could inhibit development of Māori land, force action such as clean-up and recovery and/or result in damage to taonga.	Low to high	Low
Wider public	Potentially time limited and potentially ongoing: The wider public may be subject to additional costs in a variety of ways, including ratepayers of councils, landowners, and the general public. Regulations could inhibit development of public benefit, force action by public funded entities such as clean-up and recovery or result in environmental damage and cost to public land.	Low to high	Low
Central government	Potentially time limited and potentially ongoing: Central government may be subject to the additional costs above as a landowner. There may additional costs to central government agencies and Crown law in developing new OIC, and in some cases	Low to high	Low

	implementing and monitoring their effectiveness. The University of Otago estimated (2012) the medium cost of writing a new piece of legislation to be NZ$ 3,337,000.[15]		
Non-monetised costs	Potentially time limited and potentially ongoing: Given the variable nature of emergency events, the recovery and what potential regulations may be developed, it is not possible to quantify the additional cost.	low to high	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups eg. landowners	Potentially time limited and potentially ongoing: Regulated groups would potentially benefit from beneficial regulations being in place quicker. This could reduce clean-up and recovery costs, allow a better focus on recovery, and may avoid fees. For example, after the NIWE, an OIC was developed to remove the waste levy for flood and cyclone waste.	Low to high	Low
Regulators eg, councils	Potentially time limited and potentially ongoing: Regulators would benefit from beneficial regulations being in place quicker, thus providing certainty and reducing costs. This could reduce clean-up and recovery costs, allow a better focus on recovery, and may avoid fees. For example, after the NIWE, an OIC was developed to remove the waste levy for flood and cyclone waste. The length of time this took to develop meant it had to be applied retrospectively, with associated administration costs of reimbursing fees paid. These costs would be saved by earlier enactment of an OIC facilitated by not having to write bespoke legislation to allow regulations to be made.	Low to high	Low
Treaty Partners	Potentially time limited and potentially ongoing: Where Treaty Partners are landowners, they may have additional benefits described above. In additional, they may potentially benefit from beneficial regulations being in place quicker, particularly if they help with low-cost, effective and efficient recovery activities, and/or help protect taonga. Particularly noting that Māori are disproportionately more at risk of weather related or climate change natural hazard events (eg. around 80% of the 800 marae across the country are based in low-lying coastal areas and flood plains which is a significantly higher proportion	Low to high	Low

[15] Estimating the cost of new public health legislation (2012) Nick Wilson 1, Nhung Nghiem, Rachel Foster, Linda Cobiac, Tony Blakely: https://pubmed.ncbi.nlm.nih.gov/22807599/

	than the 675,000 people or 14% of the total population that live in areas prone to flooding.[16]		
Central government	Ongoing: Where central government are a landowner, the benefits are as outlined above. Another benefit to embedding the regulation-making power is time. For example, SWELRA took two months to enact after NIWE, with the OIC developed after. This occupied central government time, some resource and cost which could have instead been directed to recovery. Embedding the powers of SWERLA (amended) could remove that two months and allow OIC to be created quicker in response to emergency and recovery needs, thus reducing costs for central and local government, Treaty Partners, and the public.	Low to high	Medium
Non-monetised benefits	Potentially time limited and potentially ongoing: Given the variable nature of emergency events, the recovery and what potential regulations may be developed, it is not possible to quantify the additional benefits, but they may significant dependent on circumstance.	Low to high	Low

Treaty implications

152. Iwi/Māori have not been consulted on these options so it is unknown which one they would prefer, or whether they would suggest a better solution.

153. Where there are existing agreements and rights through Treaty Settlements, statutory acknowledgements, Marine and Coastal Area (Takutai Moana) Act 2011, Joint Management Agreements, or mana whakahono ā rohe, these may be affected by the proposal to override existing RMA provisions and apply new provisions through an OIC.

154. It is proposed that relevant Māori entities[17] will be consulted each time an OIC is created but the proposed timeframe of engagement with Māori (five working days) is short. It is proposed that the Minister be allowed to extend these timeframes when needed, however, there is no guarantee that the Minister will choose to do this during an emergency situation as a speedy recovery is the aim of this proposal.

155. The provision of regulation-making powers in the RMA is intended to allow central government to override aspects of the RMA when required for emergencies. This can include overriding consultation and notification processes that have been established by councils to engage with iwi. There are risks associated with curtailing the RMA

[16] Before the deluge: Building flood resilience in Aotearoa (2024) Te Uru Kahika [Upload_20221207-210351.pdf (gw.govt.nz)]

[17] The definition of 'Māori entities' would correspond to the Urban Development Act and captures PSGEs and other Māori representative groups in a given region.

processes and reducing Māori participation in decision-making, potentially leading to poor outcomes for Māori, their whenua, taonga and values.

156. The Courts and the Waitangi Tribunal have found that the Crown's right to govern under Article 1 is fettered by the right of Māori to rangatiratanga under Article 2. However, they have also said that in emergency situations the Crown may be required to adopt expansive powers for fast and agile decision-making, such as through the measures proposed here.

157. In the Hauora report into the health system and the Haumaru report into the Covid-19 response, the Tribunal agreed that expansive kāwanatanga powers were justified in emergency situations but also found that the Crown's obligation to actively protect tino rangatiratanga and partner with Māori is intensified in such situations, rather than lessened.

158. Overall, the truncated timeframes for feedback and the weakened requirements to take that feedback into account effectively reduce (from normal RMA processes) Māori involvement.

159. However, this can be mitigated on a case-by-case basis by allowing for more time and more in-depth engagement, such as face-to-face hui, on OIC proposals that may have greater impacts on Māori, for example by permitting activities that affect Māori values.

Consultation

Consultation on existing OIC

160. Consultation has been carried out with regard to the existing OIC under SWELA administered by MfE. Cyclone Recovery Unit is engaged with NIWE councils, communities and iwi.

161. Waka Kotahi, Te Waihanga, MOT, and HUD have previously supported a similar proposal developed for the now-repealed NBA. The proposal was also discussed with National Emergency Management Agency (NEMA) who were broadly supportive of additional tools which will support recovery.

162. Multiple parties (councils and communities) have commented (through the review of the existing OIC) that the time taken to enact the legislation needed to create an OIC and then the time taken till commencement date for each OIC was too long. Any steps that can be taken to shorten the process would be good.

Consultation on RM Bill 2

163. The Ministry of Justice supports the embedding of regulation-making powers into the RMA. In consultation, they discussed the occurrence of financial market drops during significant emergency events and the need for the country to progress through to recovery stages quickly in order to return financial markets to pre-event levels. There can be a social mandate during events to outweigh property rights in favour of community rights, but this can fade with time and the further away from an event the less likely communities will be to consider broad powers to override the RMA are appropriate.

164. For the purposes of RM 2 Bill, consultation was undertaken with the New Zealand Planning Institute, Local Government Practitioners Group, NEMA and the Resource Management Law Association. Feedback received was broadly supportive of the proposal.

Consultation on the NBEA

165. Six submissions to the (cl854 which became s796) provisions of the NBA were received during consultation on the NBA. Most submissions suggested minor changes:

the Insurance Council of New Zealand submitted that the recovery after a natural disaster should consider "any work required to improve the resilience or standard of assets," this change was made to the text of the NBA and is proposed to be replicated in the RMA. The departmental report (3B) for the NBA gave careful consideration to the Regulations Review Committee recommendations and many of their suggestions were addressed in the final regulation-making power included in the NBA and replicated here.

166. There is an inherent tension between speed of development of OIC and effective engagement including with Treaty Partners.

167. Iwi have raised concerns through the SWERLA process about the statutory timeframes for engagement and the inequity between the voices of local authorities and Māori in this process. No Māori entities specifically submitted on NBA cl854 which became s796.

Implementation

168. The proposal will be given effect through the legislation that amends the RMA (RM Bill 2).

169. Guidance material may be provided to support the implementation of the changes.

170. The proposals will be implemented nationally, when a declared emergency occurs, the regulation making power will be available.

Monitoring

171. During the next severe weather event RMA processes and recovery assistance will be quicker. This will be monitored through review of the RMA.

Proposal 4: Natural hazards rules have immediate legal effect

Problem

172. New Zealand is at risk from multiple natural hazards. Natural hazard events can have long lasting consequences for individuals, households, communities, regions, and the nation.

173. The scale and risks associated with natural hazards are increasing with climate change, resulting in more intense and more frequent storm events and rising sea levels. This means it is increasingly important that the planning system is proactive and responsive.

174. There are known gaps in the resource management regulatory system for natural hazard management. One of these is the length of time it can take to amend RMA plans so they contain the latest up-to-date information on natural hazard risks.

175. Councils establish rules relating to land use and subdivision in their plans, which will take account of natural hazard risks. These rules (and associated provisions) are initially put forward in proposed plans that are made available for the public to submit comments on them. Usually, proposed rules that seek to address natural hazards only have legal effect once these submissions have been analysed and final decisions have been made. Councils can also resolve that a rule only has legal effect once the proposed plan becomes operative.

176. The time between the notification of a proposed plan and decisions on submissions varies depending on the size and complexity of the plan change and other factors such as availability of decision-makers, often taking years. If a council resolves that a rule only has legal effect once the plan is operative (after appeals are resolved) then the time lag is even greater.

177. For proposals of national significance where a proposed plan is considered by a Board of Inquiry or the Environment Court, rules relating to natural hazards only have legal effect once a decision on the plan change is made.

178. During the period of hazard risk information being known and rules being in place with legal effect, there is the potential that development occurs based on out-of-date information or rules. People can be incentivised to lodge resource consent applications before more stringent rules (than those in an existing operative plan) take effect (known as 'gold rush' behaviour). Decisions based on out-of-date provisions can result in development occurring in inappropriately risky locations, or without appropriate mitigation measures in place.

179. Meanwhile, plan rules relating to water, air, soil, or those that protect areas of significant indigenous vegetation, significant habitats of indigenous fauna, protect historic heritage or provide for or relate to aquaculture activities have immediate effect (ie. from when they are proposed). This means the above-described issues of out-of-date information and rules and gold rush behaviour can more likely be avoided in decisions relating to natural resources.

180. Notwithstanding the above, s86D enables councils to make an application to the Environment Court for rules to have effect from when they are first notified in a proposed plan (or another date specified in an order from the Environment Court).[18] However, Councils have advised that this section is not used very often because of the expense, time required, and uncertainty of outcome. There is not an equivalent provision relating to proposals of national significance under s149N(7).

181. Consequences of inappropriately-located development include potential adverse effects on the social, economic, and cultural well-being and the health and safety of people and communities through being impacted by natural hazard events. Additionally, there will be subsequent (potentially avoidable) costs borne by future owners, the insurance industry, and potentially local and central government eg. through protective infrastructure and /or clean-up costs following a natural hazard event.

Objectives

182. This proposal is closely aligned with the RMA Reform objectives of safeguarding the environment and human health, adapting to the effects of climate change and reducing the risks from natural hazards.

183. Specifically, there is an opportunity to speed-up the applicability of new hazard information and enable consenting decisions to apply new rule frameworks if plan rules for natural hazards have legal effect sooner than they often otherwise do under current RMA provisions (ie. giving rules relating to natural hazards legal effect from notification as opposed to once the decisions version of the plan is released).

184. Certainty for decision-makers and applicants would increase when the latest information and planning rules are applied. Better decision-making and outcomes

[18] An application under s86D can only be made in respect of rules that relate to matters that do not otherwise have immediate legal effect under s86B(3).

relating to avoiding, mitigating and managing natural hazard risks would likely be realised sooner.

185. The proposal seeks to improve the ability and timeliness of local authorities to ensure that development occurs in locations that are appropriate for the level of natural hazard risk. Enabling rules that reflect up-to-date information on natural hazards to have immediate legal effect from the time a proposed plan is notified, rather than from the time when decisions are made on submissions on the proposed plan, can ensure that development occurs in a way that avoids or minimises natural hazard risk.

Proposal – Option 2

Preferred Option 2 – Amend sections 86B(3) and 149N(8) of the RMA:

186. Amend sections 86B(3) and 149N(8) so the default timing for rules in district and regional plans relating to natural hazards is that they have immediate legal effect from the time a proposed plan is notified for public submissions.

187. This would mean that rules need to be complied with sooner than is currently required under the default timing, as described above.

188. For council-led plan processes, this option would be instead of the current ability of a council to apply for an order from the Environment Court (under s86D) for rules (not of a type described in s86B(3)) to have effect from a date specified in the order.

Other options

Option 1 – Status quo:

189. Do nothing, such that rules in a proposed plan or plan change or variation relating to natural hazards do not have legal effect until decisions on submissions received on those rules have been notified (for council-led processes); and decisions are made by a Board of Inquiry or the Environment Court (for proposals of national significance).

190. Councils can continue to apply to the Environment Court to order a different legal effect date, or councils can resolve that the rule has legal effect only once the proposed plan becomes operative.

Option 3 – Non-statutory guidance to encourage greater use of RMA s86D:

191. This option would comprise developing non-statutory guidance for use by councils to assist them in applying to the Environment Court under s86D, for an order specifying that rules are to take legal effect from public notification for submission (or a date specified in the order).

192. Guidance may assist councils with the preparation of applications to the Environment Court, and therefore potentially reduce the time and cost associated with utilising s86D. Applications (if made) would still be determined on a case-by-case basis by the Court.

Option 4 – Rely on RMA national direction on natural hazards (eg. NPS and/or NES):

193. This option would rely on RMA national direction to improve natural hazard risk management under the RMA generally. This could include direction to take a risk-based approach with appropriate and proportionate responses to risk. This could (also) include prescriptive rules to constrain consenting activities in locations that would be inappropriate for the level of natural hazard risk.

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

	Option 1 – [Status quo]	Option 2 – [Amend RMA ss 86B and 149N] (Preferred)	Option 3 – [Provide non-statutory guidance on use of s86D]	Option 4 – [Develop RMA national direction]
Effectiveness	0 Would result in continued time lag of application of natural hazard rules, which can result in poor decisions and outcomes for new development in relation to natural hazard risks	++ More effective at meeting all objectives than the other options as would ensure rules relating to natural hazard risk have legal effect as early as possible	- Guidance is non-statutory and may not be applied. Time lag can continue and can result in poor decisions and outcomes for new development in relation to natural hazard risks	- Would not enable plan changes to take effect immediately. Time lag can continue and can result in poor decisions and outcomes for new development in relation to natural hazard risks
Efficiency	0 May result in avoidable costs being borne by future owners, the insurance industry, and potentially local and central government; and can incentivise a 'gold rush' of applications following the notification of a proposed plan	+ Would avoid the costs arising from the time lag of rule application and also any 'gold rush' of applications. However, could mean costs for some applicants if they apply for consents based on rules that are subsequently changed	- May result in avoidable costs being borne by future owners, the insurance industry, and potentially local and central government; and can incentivise a 'gold rush' of applications following the notification of a proposed plan	- May result in avoidable costs being borne by future owners, the insurance industry, and potentially local and central government; and can incentivise a 'gold rush' of applications following the notification of a proposed plan
Certainty	0 Would be certainty in the sense of when rules relating to natural hazards have legal effect (no change)	++ Would provide certainty about the timing for legal effect of natural hazards rules and is better than Option 4 as it would provide flexibility to	- Uncertainty of outcome and potential variability within a region, across the country, and/or across rules	+ Could provide a nationally-consistent set of regulations to specify how decision-makers should make planning and

		respond to local issues, priorities, and circumstances		resource consent decisions in high natural hazard risk areas
Durability & Flexibility	0 No change in durability, flexibility retained through an order via 86D	++ Would provide for local flexibility (more-so than Option 4). Durable and in-line with the certainty criterion	- High degree of flexibility but in a manner which may lead to inconsistent application. Relatively uncertain as application may vary across rules and regions	- Durability and flexibility is limited given low degree of local application
Implementation Risk	0 Relatively straightforward as continued application of existing provisions	- There are some implementation risks outlined in the overall assessment below (eg.potential shorter-term dampening of development; and some challenges relating to which rules the amendment applies to)	- Straightforward implementation, although a risk that it will be variable across the country	- Limited flexibility to respond to local issues, priorities, and circumstances
Overall assessment	0	++	-	+

Overall Assessment

194. Under Options 1 and 3 (status quo and status quo with guidance, respectively), the default time that plan rules relating to natural hazards will have legal effect for council-led planning processes will remain once a 'decisions version' of a plan is released (absent an order from the Environment Court stating specified rules will have legal effect at a different date, or a council resolving they only have effect once a plan is operative). This can be years after plan rules are first notified based on new hazard risk data and information.

195. These options will not, therefore, address the problems and consequences described in paragraphs 178 and 181 above. These problems include a delay in updated natural hazard and risk information being reflected in consenting decisions and incentivising a gold rush of applications. Consequences include development occurring in inappropriately risky locations, with associated economic, social and cultural damage

to people and property from natural hazard events. With respect to Option 1 as it relates to s149N, a Board of Inquiry must make decisions[19] on proposals of national significance within a defined timeframe. In most cases this will reduce the delay between notification of a plan or plan change and rules becoming operative (as compared to council-led processes). As such, the potential for the problems identified in paragraph 178 is reduced, albeit not avoided entirely.[20]

196. However, it is still considered preferable to amend s149N (as part of Option 2), as it will provide consistency regardless of whether a plan process is council-led or determined by a Board or Inquiry / the Environment Court. This approach is also consistent with the approach to other matters where rules have immediate legal effect, whereby the types of rules currently covered in s86B(3) are identical to s149N(8).

197. While non-statutory guidance could be provided to councils to assist them in applying to the Environment Court under s86D (for an order specifying that rules are to take legal effect sooner), applications would still be determined on a case-by-case basis by the Court. There would be an inherent level of uncertainty of outcome and potentially variability within a region, across the country, and/or across rules (eg. some natural hazard rules may have legal effect sooner than others).

198. Options 1 and 3 are not an efficient and effective way to address the defined problem, and there remains uncertainty, limited flexibility and potential inconsistency of outcomes with Environment Court orders. The implementation of Options 1 and 3 is likely to be relatively straightforward, generally representing a BAU approach.

199. Regarding Option 4, a national direction instrument cannot override the RMA, and therefore could not make a plan change on natural hazards effective immediately and would not address the specific issue this proposal seeks to resolve.

200. An NPS on Natural Hazards would not enable a risk response to happen more quickly than the status quo process, as it still must be consistent with the RMA. In the interim period (following gazettal of an NPS and plan changes having legal effect) there would remain the potential for development to be consented based on out-of-date information and associated rules.

201. Regarding Option 4 and an NES, this could provide a nationally consistent set of regulations to specify how decision-makers should make planning and resource consent decisions in high natural hazard risk areas (eg. with nationally consistent requirements, conditions and/or prohibitions). An NES would have immediate effect once gazetted and prevail over rules in plans to provide certainty and consistency.

202. However, a key limitation of an NES is that it provides limited flexibility to respond to local issues, priorities, and circumstances. While there is the ability for NES to allow plan rules to be more stringent or lenient and target requirements to certain locations, this needs to be finely-balanced if the national consistency and certainty benefits of NES are still to be achieved.

203. In addition, it is unclear whether national direction (particularly an NES) could be developed in a timely manner. As such, if this was a preferred option, then the status quo and the above-described problems may prevail for several months or years.

204. **Preferred option: Option 2** is to amend RMA ss86B and 149N which would ensure proposed plan rules that reflect the latest information on natural hazard risks have

[19] Default period for a Board of Inquiry to make its decision is nine months following notification of a proposed plan or plan change (s149R), although this can be extended by up to 18 months by the Minister for the Environment (s149S), or longer with the applicant's agreement.

[20] The same does not apply where a plan or plan change is referred to the Environment Court for a decision, as there is no set timeframe for decisions.

legal effect sooner. This would help ensure better quality consenting and design decisions that avoid poor outcomes. For example, helping avoid development being consented in inappropriately risky locations or without sufficient mitigation measures being required, with subsequent costs being borne by future owners, the insurance industry, and potentially local and central government. This amendment would provide certainty and clarity and would be an efficient and effective way to address the defined problem.

205. As discussed under the implementation heading below, there are some implementation risks with Option 2 (eg. potential shorter-term dampening of development, and potential challenges relating to which rules the amendment applies to). However, these must be weighed against the longer-term costs arising from allowing development to occur in locations that are inappropriate from a natural hazard risk perspective, or without the necessary mitigation to reduce risks to an acceptable level.

206. Overall, the outcomes/benefits of the amendments (Option 2) outweigh any implementation challenges, with those challenges expected to be able to be reasonably managed by councils and system users.

Cost/Benefit Analysis Overall Assessment

207. The table below is based on Option 2 – the preferred option – relating to amending ss86B and 149N.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (eg. consent applicants)	Consent applicants may need to apply for resource consents under proposed rules sooner than would otherwise occur; and/or they may need to provide more information relating to natural hazards in their applications sooner. This could be a cost for applicants sooner. In some cases the proposed rules may change and the consents may no longer be required or the information requirements changed, thus the cost may have been unnecessary	Low	Medium
Regulators (eg. councils)	Councils' costs relating to consent processing could be incurred sooner if consent applications are required under proposed rules sooner than would otherwise occur (although much of these costs are typically recoverable from applicants). In some cases, the proposed rules may change and the consents may no longer be required or the information requirements changed, thus the council costs associated with consent processing may have been unnecessary.	Low	Medium
Treaty Partners	Where Treaty Partners are consent applicants then they will be subject to costs as described above. In some cases, they may also be involved in consent processing/ assessment to some extent, in which case the costs of processing sooner / unnecessarily are similar to those of regulators described above.	Low	Medium
Non-monetised costs	(Potentially) low costs associated with consenting sooner than would otherwise occur if rules only had legal effect after decisions on submissions	Potentially low	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups (eg. consent applicants)	Consent applicants and communities will benefit from ongoing financial savings of avoiding costs of poor development. For example, insurance claims in the Hawkes Bay	High	Low

Affected groups	Comment	Impact	Evidence Certainty
	from Cyclone Gabrielle have passed $1B,[21] in addition to other costs and loss of life. If some of the damage had been avoided or mitigated because of natural hazard rules having legal effect sooner, then the cost savings (avoided) by communities, landowners and consent applicants would be substantial.		
Regulators (eg. councils)	Regulators such as councils will benefit from ongoing financial savings of avoiding costs of poor development. For example, insurance claims in the Hawkes Bay from Cyclone Gabrielle have passed $1B,[22] in addition to other costs and loss of life. As for regulated groups, if some of the damage had been avoided or mitigated because of natural hazard rules having legal effect sooner, then the cost savings for regulators would be substantial eg. avoided clean up and recovery costs, contributions to buy-outs of affected properties.	High	Low
Treaty Partners	Treaty Partners will benefit from ongoing financial savings of avoiding costs of poor development. For example, insurance claims in the Hawkes Bay from Cyclone Gabrielle have passed $1B,[23] in addition to other costs and loss of life. Some of the damage occurred to cultural infrastructure belonging to Treaty Partners. If some of the damage had been avoided or mitigated because of natural hazard rules having legal effect sooner, then the savings (avoided) to Treaty Partners could be substantial.	High	Low
Others (eg. communities, central government, banks, insurance companies)	Other groups such as communities, central government, banks and insurance companies will benefit from ongoing financial savings of avoiding costs of poor development. For example, insurance claims in the Hawkes Bay from Cyclone Gabrielle have passed $1B,[24] in addition to other costs and loss of life. If some of the damage had been avoided or mitigated because of natural hazard rules in plans having legal effect sooner, then the cost savings (avoided) by many groups would be substantial. For example, reduced clean-up costs and recovery for communities and	High	Low

[21] https://www.icnz.org.nz/industry/media-releases/2023-climate-disaster-payouts-top-2-billion/
[22] Ibid.
[23] Ibid.
[24] Ibid.

Affected groups	Comment	Impact	Evidence Certainty
	central government, reduced financial costs for banks and insurance companies.		
Non-monetised benefits	High (potential) benefits associated with avoiding costs of poor development. The benefits cannot be quantified given it would depend on the nature and timing of the rules, the nature and timing of a specific hazard causing event, and decisions made by multiple actors at different times.	High (potentially)	Low

208. The main costs incurred by regulated groups, regulators and potentially Treaty Partners relate to some resource consents potentially being required sooner than they otherwise would have (ie. consents related to natural hazard risk required from plan notification for public submission instead of from some years later when the 'decisions version' of the plan is released). It is difficult to quantify this cost given it is dependent on future plan rules yet to be developed as well as choices of individuals on whether or not to apply for a consent at a given time.

209. In some cases, regulated groups could apply for consents under proposed rules which are not required in the long run if those rules are removed or amended during the plan-making process. This would be an otherwise avoidable cost for regulated parties, regulators processing the applications and potentially Treaty Partners. It is difficult to quantify this cost for the same reasons noted above.

210. The main monetary benefit for regulated groups, regulators, (potentially) Treaty Partners, and others such as central and local government, banks and insurance companies relate to avoided (potential) costs. Those are the costs that are avoided by way of natural hazard risk related rules having legal effect sooner. That is, had the rules not had legal effect, the development would have not been avoided or modified in a way that the rules provided for, and been impacted by natural hazards with consequent costs arising. This is very difficult, or potentially impossible, to quantify, given it relates to theoretical development that may have occurred, and would have been subject to a range of decision points, as well as impacts and outcomes from a given hazard risk event.

211. However, the value of existing buildings already at risk from natural hazard events because of previous development decisions underlines, in general terms, the need for a more responsive planning system to help ensure future development occurs in appropriate locations. For example, a recent report by NIWA and the University of Auckland[25] found that 441,384 residential buildings are at risk of flooding, with an estimated replacement value of $218 billion, while 12 per cent of New Zealand's housing value is in a flood hazard area. While the proposal would not address the issues faced by existing buildings and development, it would help avoid or mitigate new development being subject to the same level of risk.

Treaty implications

212. Māori land including marae, Papakāinga, urupā, and other wāhi tapu are often located beside or near rivers or streams or in coastal areas, making them vulnerable to

[25] Modelling national residential building exposure to flooding hazards - ScienceDirect

flooding or inundation. This may mean rules relating to natural hazard risk may disproportionately affect Māori. However, the proposal is intended to change the timing of when rules have effect, rather than whether rules controlling development are promulgated at all.

213. It is possible that both disproportionate benefits (long term avoided hazard risk) and costs (missed benefits of developments not going ahead) may occur, but net effect may be uncertain given unavailable information of potential hazard risks.

214. Iwi/Māori have not been consulted on these options so it is unknown which one would be preferred by them or whether they would suggest a different solution. The lack of consultation also means it is not possible to quantify, or comprehensively understand, the full spectrum and scale of potential costs and benefits of the proposal to Māori.

215. The change to give such rules legal effect from notification will increase the importance of pre-notification engagement with any customary marine title groups and the tangata whenua of the relevant area (through iwi authorities) as is already required under RMA Schedule 1 plan-making processes. It also increases the consequences for whenua Māori landowners if iwi authorities – which are the entities the RMA requires pre-notification engagement occurs with – do not consult with them.

216. There is the potential that the increased importance of pre-notification engagement may place additional pressure on existing resourcing constraints that affect the ability of iwi / Māori to engage in resource management processes and underscores the need for local authorities to provide sufficient time for such engagement to occur.

Treaty settlements and other arrangements

217. Where there are existing agreements through Joint Management Agreements, Treaty Settlements, statutory acknowledgements or mana whakahono ā rohe for joint decision-making, mātauranga Māori can inform proposed rules prior to them being notified and having legal effect. This proposal does not supersede any rights provided for through these agreements.

Consultation

218. Timeframes for advice have constrained the extent of engagement possible.

219. The recommended option was discussed at various interagency meetings involving Ministry of Business, Innovation and Employment, Department of Conservation, Natural Hazards Commission Toka Tū Ake (NHC), HUD, Department of Internal Affairs (DIA), Te Waihanga, and NEMA. Of particular note:

    a. NHC are supportive of the proposed change, which they independently put forward as a suggestion for inclusion in RM Bill 2 (in response to an invitation from the Minister for RMA Reform).

    b. A more in-depth discussion was held with HUD and the DIA on 7 May. The main concern arising from HUD was that proposed rules which would prohibit development should not take immediate legal effect. This is provided for via existing RMA provisions; s87B provides that for proposed prohibited activities, applications can be lodged, assessed and determined as if they were a discretionary activity. As such, no changes were required to address this concern.

    c. From an infrastructure perspective, there were no substantive comments from the Department of the Prime Minister and Cabinet or Te Waihanga, both being broadly supportive. Te Waihanga noted they, on balance, support councils being enabled to factor up-to-date hazard information into their consent decision-making earlier than is currently possible (ie. giving rules immediate legal effect). Te Waihunga agree with the assessment of MfE officials that the

outcomes/benefits of the proposed amendment outweigh any short-term uncertainty or implementation challenges.

220. A meeting was held with the Ministry of Justice on 11 July to discuss whether there were any concerns regarding potential impacts on property rights. They did not identify any concerns with the principle of the proposal, but noted it would be important for the advice to ministers to cover the trade-offs between potential costs to individuals vs. societal benefits.

221. The recommended option was tested with Auckland Council, as well as the Aotearoa Climate Adaptation Network (ACAN) reference group working with the Ministry for the Environment on natural hazards policy. Both are generally supportive. s 9(2)(g)(i)

222. Consideration was given to addressing this issue by providing a 'carve-out' from the proposed new default position (of immediate legal effect) that would otherwise apply under the preferred option. This carve-out would enable councils to pass a resolution to effectively retain the status quo timing, ie. rules relating to natural hazard risk would continue to have legal effect following notification of decisions on submissions.

223. However, the preferred option does not include this carve-out. This is because, on balance, there are sufficient existing mechanisms available to councils such that this carve-out is not warranted (eg. consultation on a draft plan prior to formal notification, the ability to propose a variation to a plan change, or to withdraw a plan change). It may also detract from the drive to improve plan-making processes more generally under the RMA, may provide perverse incentives to some councils to delay application of natural hazard rules, and would be anomalous compared to the way in which other s86B(3) matters are currently dealt with (with no carve-out being provided).

224. It is possible that not providing a carve-out runs the unquantified risk of councils being disincentivised from proposing natural hazard plan changes in a timely manner if they are uncertain of the data underpinning proposed rules. This could be an unintended consequence that would not be picked up by the national monitoring system (see Monitoring section). However, the reasons for including a carve-out are not compelling and there are associated issues with doing so, as described above.

225. The recommended options were also tested with RMLA, RMA practitioners, and NZPI who were generally supportive of the provisions. NZPI provided written feedback, with their overall comment being that it will allow more timely action to manage natural hazard risk through a resource consent process, while implying that, in the long term, a more comprehensive reform of the resource management system would help provide opportunity for more effective natural hazard risk management approach.

226. Opportunity for public input will be provided via submissions through the select committee process for RM Bill 2.

Implementation

227. There are some implementation-related risks with Option 2. These include:

- Giving rules legal effect before they have been fully tested (and potentially changed) through a plan-making process could impose unnecessary costs on some applicants (eg. if they apply for consents based on rules that are

subsequently changed, or if the spatial extent of where rules apply is amended to exclude properties that were initially within a natural hazard overlay area).

- Prospective applicants may await the outcome of the plan process until rules become operative (assuming they oppose the proposed rule(s)). Such delay would be to avoid a consenting process, or complying with requirements, that may not ultimately be necessary once decisions have been made on submissions, appeals resolved, and rules become operative. This is a key trade-off with this policy proposal – potential shorter-term dampening of development, vs longer-term benefits through having development that is built in locations and to standards that reflect the latest known hazard and risk information.

- There may be uncertainty and litigation risk in respect of whether a particular rule(s) is considered to 'relate to' natural hazard risk. Guidance on what rules are intended to be within scope would assist in mitigating this risk, although it cannot be eliminated entirely. Councils will need to think carefully about which rules fall within the ambit of natural hazards to reduce the likelihood of legal challenge that either the selection of rules having immediate legal impact is too broad or related rules have been excluded.

- If councils are uncertain about the accuracy of the hazard information and data on which natural hazard rules are based, they may delay the notification of plan changes to avoid imposing costs on potential consent applicants and / or avoid community backlash. Delaying plan changes could result in existing rules (based on out-of-date information) remaining in place longer than would otherwise be the case. However, pre-notification consultation is an opportunity to 'ground-truth' data, and post-notification there are options to either vary or withdraw plan changes if they prove to be fatally flawed. Proposal 5 (replicating the intent of natural hazard aspects of s106, for land use consents) also provides a safety mechanism, in that if plan changes are delayed while data is fully verified, consent authorities will still have an ability to refuse, or require mitigation, for land use consent applications that are subject to significant risk.

228. Overall, the outcomes/benefits of the amendments in Option 2, as described above, outweigh any implementation challenges. The implementation challenges described above are relatively minor (eg. potential consent processing costs sooner), short term (eg. potential short-term dampening of development), and expected to be able to be reasonably managed by councils and system users (eg. potentially with supporting guidance such as on practical implementation).

Monitoring

229. Monitoring on plan development and plan changes will continue via the national monitoring system. However, monitoring of the specific application of the recommended amendments outlined above would not likely be undertaken, given rule-specific monitoring is generally not undertaken or recorded by central government. If desired, future amendments or requirements related to specific reporting on this matter could be considered, but is considered onerous at this time, given this primarily relates to (one) extra tool for councils to use to help manage natural hazard risk.

Proposal 5: Introduce an ability for councils to decline, or grant subject to conditions, land use consent applications where there is significant risk from natural hazards

Problem

230. New Zealand is at risk from multiple natural hazards. Natural hazard events can have long lasting consequences for individuals, households, communities, regions, and the nation.

231. Natural hazards is a key issue about which councils collect data to inform plan-making and consenting. There are known gaps in the resource management regulatory system for natural hazard management. One of these is that RMA plans may not contain up-to-date information on natural hazard risks, which can limit the ability of councils to take that information into account in decisions on resource consents.

232. Councils establish rules relating to land use and subdivision in their plans, which will take account of natural hazard risks (including new and updated information on natural hazard risk). The cycle of undertaking plan reviews means that there will be a time lag between a council obtaining new and updated information, and a plan change being developed to reflect that information. Once developed, proposed plans are then made available for the public to submit comments on them. Usually, proposed rules that seek to address natural hazards only have legal effect once these submissions have been analysed and final decisions have been made.

233. The time between the notification of a proposed plan and decisions on submissions varies depending on the size and complexity of the plan change and other factors such as availability of decision-makers, often taking years. This combination of factors means that there can be time lag of several years when land use consent decisions may be taken based on out-of-date plan provisions and natural hazard risk information.

234. Currently under s106, subdivision consent applications of any activity status may be declined, or granted subject to conditions, on the basis of significant natural hazard risk. This means that new natural hazard risk information that is not necessarily reflected in plan provisions can be used to inform subdivision consent decisions. However, this is not the case for land use consents even if the potential risk is the same for subdivision and new sensitive activities (including new buildings).

235. This can result in councils being unable to consider natural hazard risks, or constrained in the extent they can do so, when determining applications for land use consents. This includes applications for new development, particularly controlled or restricted discretionary activities that have not included natural hazards as a specified matter.

236. The current settings mean that land use consents for new development that is subject to significant natural hazard risk may be granted (including without mitigating conditions). These activities can be subject to significant damage to property, life, and infrastructure from natural hazards, with potentially significant economic, social and cultural costs. Insurers, local government, and hazard and planning practitioners have raised concern for some time about the relatively low importance placed on natural hazard risk in land use planning under the RMA.

Objectives

237. This proposal is closely aligned with the RMA Reform objectives of safeguarding the environment and human health, adapting to the effects of climate change and reducing the risks from natural hazards.

238. Specifically, there is an opportunity to enable new natural hazard risk information to be considered in land use consenting decisions sooner than under current RMA provisions. This is through enabling councils to decline, or grant subject to conditions, land use consents based on significant natural hazard risk.

239. Certainty for decision-makers and applicants would increase when the latest information is applied, and better outcomes and decision-making relating to avoiding, mitigating and managing natural hazard risks would likely be realised.

240. The proposal seeks to improve the ability of local authorities to ensure that development occurs in locations that is appropriate for the level of natural hazard risk. This is through applying the most up-to-date hazard risk information to avoid, or adequately mitigate, development that is at significant risk from natural hazards.

Proposal – Option 2

Preferred Option 2 – Introduce an ability for councils to decline, or grant subject to conditions, land use consents where there is significant risk from natural hazards (ie. replicate the approach in the current natural hazard provision in s106 relating to subdivision consents):

241. Currently under s106, a consent authority may refuse, or grant subject to conditions, a subdivision consent if it considers that there is a significant risk from natural hazards. This section could be extended (with necessary modifications) to land use consents. This would strengthen decision-making on natural hazards and address the gap between a consent authority holding new natural hazard risk information before it is incorporated into regional and district plans.

Other options

Option 1 – Status quo:

242. Doing nothing would result in existing issues described above continuing. The impacts of poor decisions may become more significant over time especially due to the potential increase in more severe natural hazard events as a result of climate change.

Option 3 – Rely on RMA national direction on natural hazards (eg. NPS and/or NES):

243. This option would rely on RMA national direction to improve natural hazard risk management under the RMA generally. This could include direction for councils to take a risk-based approach with appropriate and proportionate responses to risk. This could (also) include prescriptive rules to constrain consenting activities at risk of natural hazards.

Option 4 – Amend s104 to include significant natural hazard risk as matters of control in every land use consent application (including for controlled and restricted discretionary activities):

244. This option would ensure the consideration of natural hazards in every resource consent application.

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

	Option 1 – [Status quo]	Option 2 – [Extend s106] (Preferred)	Option 3 – [Develop RMA national direction]	Option 4 – [Amend s104]

Effectiveness	0 Would result in continued time lag of application of new natural hazard risk information, which can result in poor decisions and outcomes for new development in relation to natural hazard risks	++ More effective at meeting all objectives than the other options (including help reduce future costs of natural hazard events by restricting development in areas of significant natural hazard risk)	- Would not address the current issue as councils' decision-making would still be constrained by the existing RMA	+ Would create a requirement for consideration of natural hazard even if there is no risk posed
Efficiency	0 Would result in continued time lag of application of new natural hazard risk information, which can result in poor decisions and outcomes for new development in relation to natural hazard risks	+ Would place additional costs on applicants to make this consideration part of the assessment of environmental effects required to be lodged with their application, but these costs would be smaller than the costs caused by the problem (risk to life and property)	- Unclear whether national direction would be developed in a timely manner so would not have an immediate effect on new applications for resource consent like Option 1 (and would not likely address the issue)	- Would place additional costs on applicants to make this consideration part of the assessment of environmental effects required to be lodged with their application (even if there is no risk posed)
Certainty	0 Certain as continues current approach where those regulated know the information on which consent applications will be assessed (ie. that which is contained within	+ Would strengthen decision-making and address the gap between a consent authority holding new natural hazard risk information before it is incorporated into regional and district plans, would also	+ Provides nationally consistent set of regulations to specify how decision-makers should make planning and resource consent decisions in high natural hazard risk areas	- Has the potential to create uncertainty because it would apply even where there is no risk posed

	the regional or district plan)	provide a consistent approach for both resource consent types (land use and subdivision), but there may be some inherent uncertainty for applicants if new information is not widely known		
Durability & Flexibility	0 Not flexible or durable, ad continues the status quo approach and poor outcomes that results in	++ Durable and flexible as would readily enable the rapid incorporation of new hazard risk information to inform consent decisions quickly, in a locally shaped flexible manner and leading to better and more enduring decisions and outcomes	- Low flexibility for local application of new information, and still constrained by existing RMA constraints described above (so does not address the problem)	- Low flexibility and durability as would apply in every application, and existing RMA constraints would continue, as described above, (so does not address the problem)
Implementation Risk	0 Relatively straightforward as continues status quo	+ Implementable as it would replicate the subdivision provision, with key risks able to be managed	+ High level of certainty and consistency in implementation but provides limited flexibility to respond to local issues, priorities, and circumstances	- May be difficult to know when it is important to apply and shape decisions as it would apply in all applications to areas where there is no risk posed
Overall assessment	0	++	-	-

Overall Assessment

245. Maintaining the status quo (Option 1) will mean no change to consent authorities' ability to consider natural hazards when making decisions on land use consents where

regional or district plans do not appropriately reflect natural hazard information. This may result in development being consented to occur on land that is subject to significant natural hazard risk.

246. The implications of such decisions could result in significant social, economic and cultural costs to people, communities, iwi, hapū Māori, infrastructure providers and local and central government. The status quo option would not address the above-described problem.

247. Regarding Option 3, an NPS on natural hazards would not address the specific issue this proposal seeks to resolve, in that it would not enable updated natural hazard and risk information to influence controlled and restricted discretionary resource consenting decisions (at least in the short term until plans have been updated and rules have legal effect, which may take years).

248. In the interim period (following gazettal of an NPS and plan changes becoming operative) there would remain the potential for development to be consented based on out-of-date information and associated rules.

249. Regarding Option 3 and an NES, this could provide a nationally consistent set of regulations to specify how decision-makers should make planning and resource consent decisions in high natural hazard risk areas (eg. with nationally consistent requirements, conditions and/or prohibitions). An NES would have immediate effect once gazetted and prevail over rules in plans to provide immediate risk-reduction benefits and a high level of certainty and consistency in implementation.

250. However, a key limitation of an NES is that they provide limited flexibility to respond to local issues, priorities, and circumstances. While there is the ability for NES to allow plan rules to be more stringent or lenient and target requirements to certain locations, this needs to be finely balanced if the national consistency and certainty benefits of NES are still to be achieved.

251. It is unclear whether national direction (particularly an NES) could be developed in a timely manner. As such, if this was a preferred option, then the status quo and the above-described problems may prevail for months or years.

252. Additionally, given s106 places requirements on consent authorities for considering subdivision consents within the primary legislation, applying the same requirements on consent authorities for land use consents in the primary legislation provides a consistent approach for both resource consent types.

253. Regarding Option 4, extending s104 to include natural hazards risk as a matter of consideration in decision-making would ensure it was considered in every resource consent. However, it would also create a requirement for consideration of natural hazard risk even if there is no risk posed. There would be additional costs placed on applicants to make this consideration part of the assessment of environmental effects required to be lodged with their application and could create increased uncertainty and (unnecessary) cost for applicants. Furthermore, RMA constraints for controlled and restricted discretionary activities would continue (ie. limitations on the ability to decline and/or impose conditions relating to certain matters).

254. **Preferred option: Option 2** relates to enabling councils to decline, or grant subject to conditions, land use consent applications where there is significant risk from natural hazards. This will be based on and replicate the intent of the current natural hazard aspects of s106 relating to subdivision consents.

255. This option would strengthen decision-making on natural hazards and address the gap between a consent authority holding new natural hazard risk information before it is incorporated into regional and district plans. The ability to consider this information

when it is available will reduce potential delays in managing risks to people and property, and result in more positive outcomes for communities.

256. This option provides an additional tool in the RM system for councils to manage the risk from significant natural hazards on land use activities (eg. residential housing), helping to ensure that future development is not located where it is at significant risk from natural hazards. This could reduce risk to life and property and help avoid or reduce future costs of disaster events by restricting development in areas of significant natural hazard risk (where risks cannot be sufficiently mitigated).

257. Amending the RMA rather than waiting for the provision of national direction would mean these provisions have immediate effect on new applications for resource consent and would not require a plan change in order to be applied to land use consents. This amendment would only apply to those activities that already require a land use consent and does not create the need for any additional consents.

258. One of the key issues with this proposed amendment relates to whether decisions would, or could be construed to, render land incapable of reasonable use and/or impact natural justice. If so, then it raises issues of whether landowners should be eligible for compensation (as they may be under s85 if they mounted a successful challenge against plan provisions through a plan change process).

259. For example, land could be zoned in a plan for a certain use (eg. residential), with a particular activity being anticipated and classified as controlled (eg. constructing a single-storey dwelling), thus implying that such form of development would typically be expected. However, an application of this nature could be refused, or conditioned, under this proposal based on new information relating to natural hazard risk.

260. However, refusing or conditioning a consent application relates specifically to one application and a specific proposal/design. A decision on one consent application does not pre-determine a decision on a different consent application which would be considered on its own merits (noting that different land uses are more or less susceptible to natural hazard risks). The ability to appeal consent decisions is unchanged.

261. In some cases, however, the decision to refuse a consent application could imply that a certain use of land (eg. to construct a building with habitable space), would likely be unacceptable in any circumstances or with any mitigation, due to significant natural hazard risk. While such a situation would constrain the use of land to some extent, this decision would not necessarily constrain other uses of the land nor extinguish any existing use rights.

262. Furthermore, it is noted that the RMA already restricts the right to develop land. Landowners may apply for consent for development provided they comply with the regulatory conditions, and conditions of consent, that are lawfully imposed. Where permission to develop land is refused, with the consequence that the land is greatly reduced in value, the courts have treated what has happened as a form of regulation rather than a taking of property (ie. the landowner is not entitled to any compensation as there has been no expropriation of their property).[26]

263. Given the above, it is considered that this proposal would not likely, in and of itself in isolated application, be construed to render land of any reasonable use. Furthermore, the potential for some uses of land to be constrained must be considered in the broader context of what this amendment is intending to achieve (ie. to avoid or appropriately mitigate development that is subject to significant natural hazard risk). The benefits and positive outcomes of such decisions (avoidance or reduction in the costs and risks for future users or owners of the land use in question, and potentially

[26] *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112, at [47].

the broader public) outweigh the costs (such as sunk costs in land purchase and preparing consent applications) of not taking such decisions. Any amendments to compensation provisions would be more appropriate through the more comprehensive work programme in RMA Reform Phase 3, if required.

Cost/Benefit Analysis Overall Assessment

264. The table below is based on Option 2 – the preferred option – relating to replicating the intent of the natural hazard aspects of s106.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (eg. consent applicants)	Potential financial costs of consent applications (if more information, assessment and mitigation of natural hazard risk is required, albeit dependent on application design). Potential financial costs to landowners if consent is refused, or conditioned, in a manner that could constrain the use of land. It is not possible to accurately estimate these costs given they are dependent on individual consent applicants decisions and aspirations (eg. to apply for consent or not, and/or the type and scale of a proposed development and the economic value or returns that could provide).	Low Potentially high	Low
Regulators (eg. councils)	Potentially an increase in processing costs when more thorough analysis of natural hazard risk is required, and potentially costs associated with litigation.	Low	Low
Treaty Partners	Potential financial costs of consent applications (if more information, assessment and mitigation of natural hazard risk is required, either by Treaty Partners as applicants or involved in council processing)	Low	Low
Non-monetised costs	Low (potential) costs associated with consenting in terms of additional information requirements. For specific applicants, there may be a higher financial cost in terms of desired development and financial return being unable to go ahead, but this is very difficult to predict).	Low (potentially)	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups eg. consent applicants, landowners	Regulated groups will benefit from ongoing financial savings of avoiding costs of poor development. For example, insurance claims in the Hawkes Bay from Cyclone Gabrielle have	High	Low

Affected groups	Comment	Impact	Evidence Certainty
	passed $1B,[27] in addition to other costs and loss of life. If some of the damage had been avoided or mitigated because of consents for development in the affected areas had been declined, or conditioned, because of this proposal, then the cost savings for regulated groups would be substantial (eg. avoided economic and social costs for damage to life and property).		
Regulators eg. Councils	Regulators will benefit from ongoing financial savings of avoiding costs of poor development. For example, insurance claims in the Hawkes Bay from Cyclone Gabrielle have passed $1B,[28] in addition to other costs and loss of life. If some of the damage had been avoided or mitigated because of consents for development in the affected areas had been declined, or conditioned, because of this proposal, then the cost savings for regulators would be substantial (eg. avoided clean up and recovery costs, contributions to buy-outs of affected properties).	High	Low
Treaty Partners	Treaty Partners will benefit from ongoing financial savings of avoiding costs of poor development. For example, insurance claims in the Hawkes Bay from Cyclone Gabrielle have passed $1B,[29] in addition to other costs and loss of life. Some of the damage occurred to cultural infrastructure belonging to Treaty Partners. If some of the damage had been avoided or mitigated because of decisions made under this proposal, then the savings (avoided) to Treaty Partners could be substantial.	High	Low
Others eg. central government, banks, insurance companies	Other groups will benefit from ongoing financial savings of avoiding costs of poor development. For example, insurance claims in the Hawkes Bay from Cyclone Gabrielle have passed $1B,[30] in addition to other costs and loss of life. If some of the damage had been avoided or mitigated because of consents for development in the affected areas had been declined, or conditioned, because of this proposal, then the cost savings for other groups would be substantial (eg. avoided clean up and recovery	High	Low

[27] https://www.icnz.org.nz/industry/media-releases/2023-climate-disaster-payouts-top-2-billion/
[28] ibid
[29] ibid
[30] ibid

Affected groups	Comment	Impact	Evidence Certainty
	costs through insurance payouts and central government recovery support).		
Non-monetised benefits	High (potential) benefits associated with avoiding costs of poor development. The benefits cannot be quantified given it would depend on the nature of specific consent applications, decisions on design made by applicants, information held by councils and subsequent decisions that councils may make, as well as the nature and timing of a specific hazard causing event.	Potentially high	Low

265. The main costs incurred by regulated groups, regulators, and potentially Treaty Partners relate to the potential requirement that for some consent applications there may be more thorough analysis requirements in the applications (regarding natural hazard risk). At the same time, if consent is granted, some of the mitigation controls/conditions may be more onerous and costly compared to if this proposal did not progress. In some cases, decisions may essentially constrain certain use(s) of land which could have financial implications for landowners.

266. The main monetary benefit for regulated groups, regulators, potentially Treaty Partners, and others such as central and local government, banks and insurance companies relate to avoided costs. Those are the costs that are avoided by way of avoiding, or approving subject to mitigating conditions, development that would be impacted by significant natural hazard risks, because of the requirements of this proposal. Without the amendments, poor development at significant risk to natural hazards may have been approved, which could result in significant costs in a natural hazard event. This is very difficult, or potentially impossible, to quantify, given it relates to theoretical development that may have occurred, but would have been subject to a range of decision points by different actors, as well as impacts and outcomes from a given hazard risk event.

267. However, the value of existing buildings already at risk from natural hazard events because of previous development decisions underlines, in general terms, the need for a more responsive planning system to help ensure future development occurs in appropriate locations. For example, a recent report by NIWA and the University of Auckland[31] found that 441,384 residential buildings are at risk of flooding, with an estimated replacement value of $218 billion, while 12 per cent of New Zealand's housing value is in a flood hazard area. While the proposal would not address the issues faced by existing buildings and development, it would help avoid or mitigate new development being subject to the same level of risk.

Treaty implications

268. Māori land including marae, Papakāinga, urupā, and other wāhi tapu are often located beside or near rivers or streams, making them vulnerable to flooding or inundation. As such, there is potentially a disproportionate number of land use consents that may require natural hazard risk information to be included in applications that may affect Māori applicants. While this would depend on the nature of the information available to

[31] Modelling national residential building exposure to flooding hazards - ScienceDirect

consent authorities that has not yet been incorporated into regional and district plan documents, providing this information can impose an additional cost for applicants where technical advice is required. This in turn has the potential to place additional pressure on existing resourcing constraints that affect the ability of iwi/Māori to engage in resource management processes.

269. It is possible that both disproportionate benefits (long term avoided hazard risk) and costs (missed benefits of developments not going ahead) may occur, but net effect may be uncertain given unavailable information of potential hazard risks.

270. Iwi/Māori have not been consulted on these options so it is unknown which they would prefer or whether they would suggest a different solution. The lack of consultation also means it is not possible to quantify, or comprehensively understand, the full spectrum and scale of potential costs and benefits of the proposal to Māori.

271. Māori are also afforded rights to exercise sovereignty over their assets, including land. This could impact their ability to utilise their land how they see fit, therefore suitable measures to ensure continued cultural connection to the land, and alternative uses of land in the event their preferred land use is inhibited by natural hazard risk, will need to be developed and considered. Options for alternate uses of land should be discussed between landowners and Council on a case-by-case basis as part of the consenting process. MfE is not developing regulation around this as it will depend on the specific risk profile of the whenua in question and decisions must involve the individual landowner.

Treaty settlements and other arrangements

272. Where there are existing agreements through Joint Management Agreements, Treaty Settlements, statutory acknowledgements, or mana whakahono ā rohe for joint decision-making or iwi contribution to resource consents, mātauranga Māori can inform decisions on land use consents in locations subject to significant risk from natural hazards. This proposal does not supersede any rights provided for through these agreements.

Consultation

273. Timeframes for advice have constrained the extent of engagement possible.

274. The recommended option was discussed at various interagency meetings involving Ministry of Business, Innovation and Employment, Department of Conservation, NHC, (HUD, DIA, Te Waihanga, and NEMA. Of particular note, NHC are supportive of the proposed change, which they independently put forward as a suggestion for inclusion in RM Bill 2 (in response to an invitation from the Minister for RMA Reform).

275. A more in-depth discussion was held with HUD and the DIA on 7 May, and with the Ministry of Justice on 11 July.

276. DIA have indicated that they support the proposed changes to provide better development and avoid high risk areas. Initial concerns that this proposal would provide a binary approve/decline process have been alleviated through the ability to approve subject to conditions of consent.

277. HUD overall supports the proposal as it will give councils more powers and tools to manage natural hazard risk, and agree that new housing should avoid places where there are significant natural hazard risks. However, their view is that there may be moderate to significant impacts from emerging hazards, depending on place, in relation to whether local government enables new housing, and on development certainty.

278. MfE officials acknowledge there is an element of uncertainty arising from how councils may exercise the new power, but overall consider the benefits outweigh the implementation challenges. The concerns noted by HUD are alleviated by the limited circumstances when the provision would apply, being where there is already a need to apply for a resource consent, significant risk from a natural hazard is present, and updated or new information is available on the hazard and this has not yet been reflected in the operative planning documents.
279. MfE officials also consider that:
    - the outcome of this provision being used is more likely to be for conditions of consent (eg. requiring a higher floor level to recognise an increase in flood risk, or to apply specific engineering standards, rather than a decline of consent)
    - councils would only use this tool to restrict or control development where they had a high level of certainty that the new science/information indicated there would be an increase in significant risk by allowing the land use activity to occur in that location and conditions of consent cannot manage that risk. This is due to the risk of legal challenge from the developer where they consider development has been unnecessarily restricted. Councils have specifically noted this through engagement.
280. The meeting with the Ministry of Justice on 11 July was to discuss whether there were any concerns regarding potential impacts on property rights. They did not identify any concerns with the principle of the proposal but noted it would be important for the advice to Ministers to cover the trade-offs between potential costs to individuals vs societal benefits.
281. The recommended options were tested with RMLAACAN, RMA practitioners and NZPI who were generally supportive of the provisions. NZPI provided written feedback, with their overall comment being that it will be a useful tool in the council toolkit to allow more flexible and effective management of natural hazard risk through a resource consent process. However, they suggested removal of the word ‘significant’ as this could have unintended consequences and be too constraining in application for councils. The reasons to retain the wording ‘significant’ are outlined below in the Implementation section. They also implied that in the long term a more comprehensive reform of the resource management system would help provide opportunity for more effective natural hazard risk management approach.
282. Due to the challenging timeframes, there has been limited engagement with iwi/Māori. We intend to continue to consult with iwi/Māori as policy decisions are made and RM Bill 2 is introduced to select committee.
283. Opportunity for public input will be provided via submissions through the select committee process for RM Bill 2.

Implementation

284. It is considered that councils will be able to reasonably implement the recommended provision based on s106, particularly given their experience in applying this to subdivision consents for several years already. Any early challenges around precise application are expected to be able to be reasonably managed by councils and system users. Subject to Ministerial decisions, the development of National Direction on Natural Hazards (as part of Phase 2 of the RMA Reform programme) also presents an opportunity to assist with the application of this proposal (eg helping to determine what constitutes a ‘significant risk’).
285. The inclusion of the word ‘significant’ in the recommended proposal will ensure there is genuine significant natural hazard risk if councils apply and make decisions based on

this amended provision. It is important that councils do not use the amended provision to turn applicants towards providing and assessing natural hazard risk in all manner of applications, even where risk is low and/or unlikely (and the council does not hold any information that would indicate significant risk, or otherwise). Furthermore, the inclusion of the word ‘significant’ in relation to natural hazard risk is consistent with the existing s106 in relation to subdivision consents, so is desirable from an implementation perspective as it avoids the need for councils to consider different levels of risk depending on the type of consent being applied for.

Monitoring

286. Monitoring of consent numbers and types will continue via the national monitoring system. However, monitoring of specific number of consent applications that are refused or conditioned (or the applications modified) because of this proposal is not anticipated. If desired, future amendments or requirements related to specific reporting on this matter could be considered, but is considered onerous at this time, given this primarily relates to (one) extra tool for councils to use to help manage natural hazard risk.