



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
11-Sep-24	Regulatory Impact Statement: Resource Management Amendment Bill No.2 – Better managing outcomes for historic heritage	Ministry for the Environment Ministry for Culture and Heritage Ministry of Housing and Urban Development
Information redacted YES		
<p>Any information redacted in this document is redacted in accordance with the Ministry for the Environment's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.</p>		
Summary of reasons for redaction		
<p>In the above document, information has been withheld under the following sections of the Official Information Act:</p> <ul style="list-style-type: none">• s9(2)(f)(iv) – to protect the confidentiality of advice tendered by Ministers of the Crown and officials, and• 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.		

Resource Management Amendment Bill No.2 – Better managing outcomes for historic heritage

Coversheet

Proposal	Description
	<p>Better manage outcomes for historic heritage buildings and structures regulated under the Resource Management Act 1991 in heritage schedules in RMA plans with heritage protection rules that limit subdivision, use and development, while enabling development.</p> <p>There is variation in the way heritage is managed across plans, so different system users experience different compliance costs and the experience of the restrictiveness of plan rules varies nationally, creating concerns that heritage protections can unduly restrict property rights or are a barrier to development.</p> <p>In response to this problem, officials' preference is to provide national direction on historic heritage.</p>
Relevant legislation	<p>Resource Management Act 1991</p> <p>Section 6(f) – the protection of historic heritage from inappropriate subdivision, use and development</p>
Policy leads	<p>Ministry for the Environment (MfE) – David Falconer, Michael Cameron, Nicholas Sanders, Logan Samuelson</p> <p>Ministry for Culture and Heritage (MCH) – Amanda Mulligan, Greg Mason</p> <p>Ministry of Housing and Urban Development (HUD) – Reed Inwood</p>
Source of proposal	<p>Hon. Chris Bishop</p> <p>Minister Responsible for RMA Reform</p>
Linkages with other proposals	<p>This proposal is part of the wider package of amendments to improve housing growth under Resource Management Amendment Bill No.2 (RM Bill 2).</p>
Limitations and constraints on analysis	<p><i>Timeframes for delivery of Phase 2</i></p> <p>The Government has agreed to make this policy change, alongside other targeted amendments to the RMA and national direction, through a bill</p>

	<p>which will be enacted by December 2024. These changes are all subject to analysis and advice from officials.</p> <p>This timeframe necessarily limits the full analysis of options and engagement with industry, councils, iwi, hapū and Māori and other stakeholders.</p> <p>However, targeted engagement with councils, Heritage New Zealand Pouhere Taonga, relevant professional bodies and development peak bodies was prioritised in the limited time available.</p> <p>Very limited engagement with iwi/Māori was carried out on this proposal, which is due in part to limited timeframes to deliver RM Bill 2. This means that officials have been unable to fully assess the risks and benefits associated with the options in this proposal.</p>
<p>Responsible General Managers</p>	<p>Liz Moncrieff – Urban and Infrastructure Policy, Ministry for the Environment Polly O'Brien – Arts and Heritage Policy, Ministry for Culture and Heritage</p>
<p>Quality Assurance: Impact Analysis</p>	<p><i>The regulatory impact statement for Resource Management Amendment Bill No.2 – Better managing outcomes for historic heritage was reviewed by a panel from the Ministry for Culture and Heritage and the Ministry for the Environment. The team has assessed that the RIS does not meet the standards required to demonstrate robust regulatory analysis of the objective, problem and options put forward; and that more time would be required to enable the analysis in the RIS to be further developed. Currently there is a lack of clarity on the problems, little evidence supporting the problems and their impacts other than anecdotes, and a lack of connection between the outcomes of the preferred option and the Government's objectives.</i></p>

Context

Historic heritage is a matter of national importance

1. Heritage is a public good that is protected as a matter of national importance from inappropriate subdivision, use and development under the Resource Management Act 1991 (RMA).
2. Retention and conservation of heritage buildings and structures provides public benefits. These include economic benefits (such as tourism), social benefits (eg, cultural and community identity), and environmental benefits (eg, reducing the need for new construction and the associated environmental impact). These benefits have been infrequently quantified in New Zealand. Due to the lack of local data on the economic benefits of heritage, it can be undervalued or deprioritised if it is left solely to a free market.

Background: Drivers of this proposal

3. The Government has committed to replace the RMA with new resource management laws premised on the enjoyment of property rights as a guiding principle. Cabinet has recently approved a cabinet paper on Phase 3 reforms of the RMA that confirmed the new system will be based on private property rights. In the meantime, a number of owners of heritage buildings have written to the Minister expressing concern that heritage protection rules are unduly restricting their enjoyment of property rights and that the consenting process to modify or demolish heritage buildings is time-consuming, costly and the outcome is uncertain. This is seen by some as a barrier to development, including preventing the provision of some new housing to address housing shortages. The Government has also committed to amend the RMA to, amongst other things, make it easier to get consent to build more houses. Ahead of Phase 3, the Minister has directed changes to heritage rules as part of the Resource Management Amendment Bill 2 (RM Bill 2) housing package to free up land for development and remove unnecessary planning barriers. The Minister has said that managing heritage buildings is a significant heritage issue for building owners and councils.¹
4. On 26 March 2024, Wellington City Council (WCC) wrote to Minister Bishop asking for “a law change to enable local government authorities within New Zealand to delist heritage buildings from District Plans, Regional Policy Statements (RPS), and the [independently administered] New Zealand Heritage List by council resolution”. This was initially in the context of council concerns relating to the heritage status of a number of buildings including the Wellington Town Hall and the Gordon Wilson Flats. This option is included for assessment in this proposal.
5. WCC had previously sought to deschedule ten heritage buildings (including the Gordon Wilson Flats) as part of its plan change to implement the Medium Density Residential Standards and National Policy Statement on Urban Development 2020 (NPS-UD). WCC

¹ Minister Bishop’s Speech to the Local Government New Zealand Conference 22 August 2024

rejected the Independent Hearings Panel recommendation to schedule these buildings and so the decision was referred to the Minister. In May 2024, the Minister rejected the descheduling of these buildings on the basis of advice from the Ministry for the Environment (MfE) that WCC had not provided sufficient evidence to justify descheduling these buildings.

6. In May 2024 officials briefed Minister Bishop and Minister Goldsmith on WCC's letter and options for making changes to the management of heritage under the RMA. Ministers agreed to further engagement with WCC and analysis of options.
7. On 1 July 2024, Cabinet agreed to the scope of Phase 2 of RMA reform, which included that (ECO-24-MIN-0113 refers):
 - a. RM Bill 2 would include amendments to "better enable councils to manage heritage," and
 - b. the Housing and Urban Development Package for the national direction programme would include heritage in scope, with decisions on this aspect to be made jointly with the Minister of Housing, Minister for Arts, Culture and Heritage and the Minister of Building and Construction.
8. Officials have since carried out targeted engagement with a range of stakeholders to:
 - a. gather evidence of the problem
 - b. determine the scale of the problem, and
 - c. test indicative options with stakeholders.

How has heritage been considered and regulated under the RMA?

9. Part 2 of the RMA requires decision-makers to recognise and provide for the protection of historic heritage from *inappropriate* subdivision, use and development.² The RMA takes a local approach and devolves regulatory control to local authorities including to determine what 'inappropriate' means in their local context to implement this aspect of Part 2.
10. In order to protect heritage, places with significant heritage values are typically identified in a heritage schedule in district or regional plans and are subject to rules that manage subdivision and physical changes to those places. Newly identified heritage places can be added, and existing heritage places removed from a heritage schedule via a plan change using the process in Schedule 1 of the RMA. There is a faster plan change process, called the Streamlined Planning Process (SPP), where the Minister for the Environment is involved in setting directions for the local authority's plan change. There are no appeal rights with this process, unlike Schedule 1, however, there is also entry criteria that must be met as well as

² Section 6(f), RMA.

other tests. The entry criteria may restrict entry for a variety of heritage-descheduling plan changes.³

11. There is some direction on historic heritage in Policy 17 of the New Zealand Coastal Policy Statement (NZCPS), which seeks to protect historic heritage in the coastal environment from inappropriate subdivision, use and development. Policy 17 provides direction on heritage management, including identification, assessment, conservation and incentives, alongside other coastal management policies. Matters of national importance (including section 6(f)) and heritage orders are both qualifying matters under the NPS-UD. This means that councils must enable the heights and densities in accordance with the policies of the NPS-UD in its urban areas while considering the effects this might have on a heritage site or area. These two pieces of direction are discrete and do not provide a fulsome framework for heritage management at the national level.
12. Heritage New Zealand Pouhere Taonga (HNZPT) is a Crown entity established under Heritage New Zealand Pouhere Taonga Act 2014. HNZPT's role includes identifying, recording, assessing, listing, protecting and conserving historic heritage. HNZPT also plays an important expert technical and advocacy role for heritage under the RMA:
 - a. when councils are making plans, the RMA requires them to have regard to the New Zealand Heritage List / Rārangī Kōrero. The New Zealand Heritage List is a recognition tool and does not have regulatory effect. HNZPT often submits on plan reviews and changes and publishes a triennial audit of heritage provisions in council plans.
 - b. when councils implement their plan, they may seek HNZPT's comments on resource consents that affect places on the New Zealand Heritage List / Rārangī Kōrero or HNZPT may submit on notified consents.

³ The SPP entry criteria under s80C is set out here: a local authority may apply for a direction only if the planning instrument or proposed planning instrument is not a freshwater planning instrument and the local authority is satisfied that the application satisfies at least 1 of the following criteria:

- a. the proposed planning instrument will implement a national direction:
- b. as a matter of public policy, the preparation of a planning instrument is urgent:
- c. the proposed planning instrument is required to meet a significant community need:
- d. a plan or policy statement raises an issue that has resulted in unintended consequences:
- e. the proposed planning instrument will combine several policy statements or plans to develop a combined document prepared under [section 80](#):
- f. the expeditious preparation of a planning instrument is required in any circumstance comparable to, or relevant to, those set out in paragraphs (a) to (e). *Cont.*

(3) In relation to a private plan change accepted under [clause 25\(2\)\(b\)](#) of Schedule 1, a local authority must obtain the agreement of the person requesting the change before the local authority applies for a direction under this section.

13. There is limited recent data collected on heritage management in New Zealand, however, a 2021 study found that over 15,000 historical and cultural heritage sites and areas are scheduled and protected in RMA plans (district, regional, and unitary plans). Many of these places do not have a built component, for example, many are archaeological sites. The number of scheduled places increased by nearly 50% between 2008 and 2021.⁴ Of these 15,000 places, about 6,000 are on the New Zealand Heritage List / Rārangī Kōrero.
14. To help give these numbers context, there were 2,469 heritage places in Auckland in 2022. This equated to 0.47% of Auckland's land area and 0.83% of property parcels being protected for historic heritage values.⁵
15. Research undertaken in HNZPT's national assessment of heritage provisions in RMA plans suggests councils are aware of the importance of incentives in heritage management. 95% of district plans provide for heritage incentives, ranging from exemptions from restrictive rules relating to adaptive re-use of heritage, provision of rates relief, consent fee waivers, and grant funding.⁶ Currently, there is one \$500,000 per annum dedicated national fund for heritage delivered by HNZPT and local authority funding for heritage has decreased over the last five years.

Policy Direction

16. The policy intent of the Government, agreed to by Cabinet, is "better enable councils to manage heritage". The scope agreed by Cabinet covers both amendments to the RMA, through RM Bill 2, or/and national direction. WCC wrote a letter to the Minister Responsible for RMA Reform and Housing, raising concerns regarding its inability to deschedule historic heritage buildings and the costs that this imposed upon fiscally constrained councils. This letter requested the ability for councils to deschedule historic heritage buildings from RMA plans and the New Zealand Heritage List maintained by Heritage NZ (Option 4). The Minister Responsible for RMA Reform and Housing was also approached by historic heritage building owners, who have raised concerns about the impact of historic heritage listing upon their privacy, and the ability to maintain and alter these buildings. s 9(2)(f)(iv)

17. The Cabinet's agreed policy intent and surrounding concerns raised by these stakeholders have informed the development of policy options for Ministers to consider. Officials undertook

⁴ Ibid. p.7.

⁵ Auckland Council, 'Heritage Counts Key Statistics 2022', <https://www.aucklandcouncil.govt.nz/arts-culture-heritage/heritage/docsheritagecountssummaries/aucklands-heritage-counts-2022.pdf>

⁶ Ibid. p.7.

⁷ s 9(2)(f)(iv)

targeted engagement to better understand the extent of the problems expressed and inform this impact analysis.

Problem

18. The problem appears to vary depending on the stakeholder. Through thematic analysis (see *Table 1*), stakeholder views of the problem can be broadly grouped into three categories:
 - a. Some property owners and development advocates argue heritage protection under the RMA can impose unreasonable rules and costs upon property owners without their consent that inhibit the use and development of heritage buildings and structures or delay development more broadly. Generally, these groups experience inconsistency in application of the rules (i.e., a lack of certainty with what one can do with their property, additional compliance costs and the ability to obtain resource consent) as well as that it is too difficult to deschedule heritage buildings and structures when there are no longer sufficient heritage values that merit protection.
 - b. Some property owners consider that heritage protection is unduly restricting their property rights. A number of owners of heritage buildings have written to the Minister expressing concern that heritage protection rules are unduly restricting their enjoyment of property rights, and that the consenting process to modify or demolish heritage buildings is time-consuming, costly and the outcome is uncertain. This is seen by some as a barrier to development, including providing new housing to address housing shortages.
 - c. Most councils and stakeholders are confident in how heritage protections are currently applied but support opportunities by central government to intervene in order to better balance the costs and benefits of heritage protection and provide more consistency in how the heritage requirements of Part 2 of the RMA are provided.
19. Table 1 outlines how the problem has been interpreted by different stakeholders and indicates the source of evidence the problem refers, as well as the scale.

Table 1: historic heritage problems and evidence bases

What is the problem	Who is affected?	Evidence	Scale
1. Inconsistency in application of rules across council jurisdictions creates uncertainty as to whether consents will be granted, delaying development or possibly encouraging demolition by neglect	Local authority Property owners Public, including developers	Engagement responses WCC letter	Nationally, but most severe in Wellington.
2. Heritage protections unduly restrict property rights	Property owners Development advocates	Engagement responses	Limited to a small portion of landowners.
3. There are opportunities to better balance costs and benefits and provide more clarity and consistency in how Part 2 of the RMA is provided	Local authority Peak bodies	Engagement responses	Most stakeholder groups consider there are national and local benefits

Evidence of Problem*Wellington City Council*

20. On 26 March 2024, the Wellington Mayor wrote to Chris Bishop asking for ‘a law change to enable local government authorities within New Zealand to delist heritage buildings from District Plans, Regional Policy Statements (RPS).’
21. Subsequently, officials from MfE, Ministry for Culture and Heritage (MCH) and the Ministry of Housing and Urban Development (HUD) met with WCC staff. The purpose of the engagement was to discuss the letter of 26 March 2024 seeking an amendment to legislation to enable removal of heritage buildings and structures (such as Gordon Wilson Flats) from their district plan via council resolution.
22. Officials heard from council staff that there are issues preventing city development that could be addressed through central government intervention. WCC staff proposed the following system-wide approaches:
- a. rebalancing Part 2 of the RMA to make it easier to use and develop historic heritage sites by introducing another matter of national importance, such as resilience
 - b. national direction for historic heritage
 - c. means to deal with ‘demolition by neglect’

- d. funding or other non-regulatory incentives.

23. WCC staff view was that if Part 2 remains in play, or if there is no national direction on heritage, delisting or development enabled by RMA amendments will be vulnerable to judicial review.

Evidence gathered from targeted stakeholder engagement

24. Officials carried out targeted engagement with a range of stakeholders to gather evidence of the problem as well as determine its scale, and to test indicative options with stakeholders.

25. The problems and opportunities relating to heritage are perceived differently across stakeholders. Some views are distinct to certain stakeholders while other matters such as consistency in the application of heritage rules overlap between stakeholders.

26. MfE has undertaken targeted engagement with representatives from development advocacy groups and business and industry sectors, whose views do not necessarily reflect the official position of those groups on this issue. In the limited time available only limited engagement has been able to be undertaken. The key points made were:

- a. support for national consistency across RMA plans for development controls for heritage. If national direction is set, a high threshold for heritage protection needs to be set. This will align with the enjoyment of property rights and enabling people to use their property as they see fit (within limits)
- b. more investigation is needed including evaluation of how widespread this issue is
- c. some members have raised that resource consent costs do pose an issue, and protection is generally a barrier to long-term development potential, but that this is also anecdotal
- d. concerns that the costs, uncertainty and delays that heritage protection can create for development.

27. A number of property owners have also written to and met with Minister Bishop and has mentioned concerns about the difficulty in removing heritage listings or about the fact that a property can be listed in the first place without landowner consent.

28. MfE, MCH and HUD have undertaken targeted engagement with local government practitioners⁸ and HNZPT. Generally, local government does not consider there are problems relating to how heritage is managed under the RMA.

- a. *Auckland Council* heritage staff does not consider heritage is preventing development and considers the s85 'unreasonable use' test and the Environment Court's powers to

⁸ Including Auckland Council, Wellington City Council, Whanganui District Council, Dunedin City Council, Tauranga City Council, Waitaki District Council, Napier City Council, Queenstown Lakes District Council, Christchurch City Council, and Invercargill City Council.

be adequate tools to deal with heritage rules that may be overly onerous. Auckland Council also considers demolition by neglect to be a major issue and addressing it would make the biggest difference as an intervention. The Auckland Unitary Plan heritage schedules are reviewed periodically, and independent commissioners make decisions with heritage expert support. Auckland Council is wary of national direction taking a blanket approach nationally that does not work for the scale and significance of Auckland.

- b. *Whanganui District Council* heritage and planning staff considers the biggest impact would be to reinstate Heritage EQUIP (a central government financial incentive for owners to upgrade their heritage buildings between 2016 and 2020). The costs that put heritage owners off most relate to engineering advice, fire regulations and building code compliance (particularly earthquake prone buildings), not planning compliance alone. Most owners appreciate heritage and wish to retain them but cannot afford so, but there is also a perception that bowl and start again is a cheaper option.
- c. *Christchurch City Council* heritage staff considers that decision-making for heritage is difficult for notified consents because it is hard to make the case for retention when economic values are prioritised, in combination with a lack of evidence or studies to recognise the economic benefits of heritage. Christchurch City Council also consider New Zealand is “missing some ‘carrots’ compared to other countries. The burden of providing public benefits of heritage shouldn’t necessarily fall on developers...”
- d. *Waitaki District Council* heritage and planning staff considers the problem lies within insufficient incentives to maintain heritage values and that the options lack coherent links to the Building Act 2004, particularly with regards to maintaining the heritage fabric. Waitaki District Council see no need to change the heritage provisions in the RMA.
- e. *Dunedin City Council* heritage and planning staff does not consider heritage blocks development and is not a big issue at the moment. Most scheduled buildings are commercial and not residential. The council also would not encourage demolition of heritage, instead favouring strengthening and repair, and use of their heritage fund as an incentive. Dunedin City Council considers the existing processes are sufficient and that questions on demolition are best considered through a resource consent.
- f. *Invercargill City Council* heritage and planning staff considers that heritage funding is the most important tool to support heritage preservation but there is not enough. Funding was reduced in its current Long-Term Plan by a third; it is now \$200,000. Their largest concern is demolition by neglect, but there are no controls for this, and buildings owners are not held accountable. Council would not encourage demolition, but it may be a viable option for some instances. Invercargill City Council also considers that a national information base for heritage preservation will be helpful.
- g. *HNZPT* regularly engages during heritage consent and plan change processes and works with councils across the country. HNZPT considers there to be a lack of sufficiently qualified heritage planners and specialists, which translates to poorly

applied conditions in the consent. HNZPT considers lower rates and tax relief would have immediate impact. HNZPT also contends that heritage is not preventing necessary development and the needs of developers are achieved without compromising on heritage values. HNZPT encourage re-purposing and would only encourage demolition if all other alternatives to retain, reuse, repair, or relocate the building has been fully assessed and considered by a qualified heritage specialist. Heritage loss is irreversible and restrictive objectives, policies and rules are necessary, particularly so, with the current time of high development pressure.

- h. Professional peak organisations were engaged on this matter. The New Zealand Planning Institute (NZPI) represents planners and resource management practitioners, and the Resource Management Law Association (RMLA) represents resource management lawyers.
 - i. *NZPI* considers there must be a balance between making it easier to redevelop while retaining significant buildings. If there is a clearer definition for what counts as significant heritage at the local level, this would reduce conflicts. NZPI raised that heritage precincts could be a better approach to heritage management rather than scheduling individual buildings. Preference was given to deferring the policy work on this matter until Phase 3 and consider that a system approach is needed because descheduling is not in itself a positive outcome for the system. For change to be enduring, the best mechanism would be national direction.
 - ii. *RMLA* consider more thinking is needed around the scope of this policy work, such as how many buildings the policy seeks to deal with and of what significance those buildings have in relation to urban development, and that heritage has a higher standard than special character areas, and whether they are included too. Wider consideration for heritage other than the 'low-hanging fruit' should be given during Phase 3. RMLA consider national direction is needed to ensure that direction to achieve the outcome of removing buildings from schedules is given to councils. Further, there is a gap with regards to national heritage buildings and rules, as most plans recognise regionally or locally significant heritage particularly.

29. MfE, MCH and HUD have had limited engagement with tangata whenua on the options for this proposal. Ngāi Te Rangi was briefly consulted and prioritise protection of their cultural heritage (ie, wahi tapū) and were comfortable the scope of this proposal pertains to buildings and structures only (although this scope could impact cultural buildings such as marae). Te Nehenehenui was also consulted and consider the following matters are of most practical importance:

- a. Māori cultural heritage is of fundamental concern. The idea of having to pay to maintain something that makes Māori unique and is of critical importance to Treaty settlement relationships cannot have a price be put on it, nor should iwi or hapū have to pay for this

- b. there must be a balance struck with heritage and Te Nehenehenui does not want to see erasure of elements of history
- c. Iwi and hapū have issue with regards to disrepair of heritage buildings and the burden of the costs because of settlement placement. Iwi and hapū cannot afford to pay these costs and this is of much concern because the scope of this work is targeted towards to a certain property right.

Due to the limited timeframes to gather evidence following the Ministerial direction, officials have only been able to gather limited evidence to suggest that RMA plan controls on heritage are creating a wide-spread barrier to urban development

30. Through engagement with local authorities (including Auckland Council), HNZPT, professional organisations, development groups and heritage advocates, and by undertaking an analysis of the existing evidence base on historic heritage, officials have only been able to gather *limited* evidence to suggest that RMA plan controls on heritage are creating a direct barrier to urban development on a national scale nor are the policies and rules within plans overly onerous or restrictive. Many councils consider that there is a perception issue with regards to heritage protection undertaken by local government and consider existing tools under the RMA provide sufficient pathways to regulate heritage. This is because a resource consent is the best way to manage change (eg, subdivision, demolition or alteration).
31. We know that most applications to demolish a heritage scheduled building or structure are successful.⁹ The majority of these between 2014 and 2024 were on a non-notified basis with no appeal.¹⁰ However, despite this the consent process does add time, cost and uncertainty to developments. This data may also mask a pool of potential applicants who do not apply for a resource consent because they do not believe they will be successful. Since 2009, 37 New Zealand Heritage List entries have been demolished due to development pressure or neglect.¹¹ 96% of plans protect built heritage from demolition with at least a discretionary activity rule, which suggests most plans are aligned on demolition. 8% of plans prohibit demolition of heritage buildings, and in 2% of plans demolition is a permitted activity.¹²

But there are some situations where RMA plan controls on heritage have delayed or inhibited development.

32. Despite this there are some particular situations where heritage protections have been a barrier for development. For example, as mentioned before the heritage protections on the

⁹ Ann McEwan, 'Heritage issues', Planning Practice in New Zealand, 2022, p. 253.

¹⁰ Only 1.56% of heritage resource consent were notified over the last ten years between 2014 to 2023/24. [Resource consent applications 2014-15 to 2022-23 | MfE Data Service](#)

¹¹ National Assessment RMA Plans and Policies – Heritage Provisions 2021. Heritage New Zealand Pouhere Taonga (February 2022) p.8.

¹² Ibid. p.34.

Gordon Wilson Flats in Wellington have prevented the property owner (Victoria University) from developing the site. There are a number of other examples around the country where heritage protection has either prevented development, protected neglected buildings, or added costs or delays to the development through the consenting process.

33. In addition, WCC and some property owners (most recently from the wider Wellington region, Auckland, Christchurch and Dunedin) have raised concerns that it is essentially easy for councils to provide protections for heritage (by 'scheduling' it within their regional, unitary or district plan), but difficult to remove those protections ('descheduling' it). Heritage scheduling can limit the choices of owners of buildings and impose opportunity costs (eg, restrictions on the ability to redevelop a site for other uses).

However, there appears to be inconsistency across heritage protection provisions across the country, leading to different experiences of the system, which creates uncertainty for property owners

34. As with some of the variability seen in district plans, the way in which councils identify and apply rules to protect heritage in RMA plans is inconsistent. But the scale of the problem and the costs that both issues add, is unknown and deeper analysis may be needed. This degree of variation could cause unnecessary differences for heritage owners and other system users such as engineers, architects and advocacy groups with regards to cost compliance or how they experience the restrictiveness of plan rules. MfE is also aware that many local authorities do not have heritage specialists in their planning department to help draft and implement plan policies and rules, as only 8 out of 67 (12%) territorial authorities have a dedicated heritage advisor.¹³
35. To a certain degree this inconsistency in heritage policy and rules has likely created concerns that heritage protections can unduly restrict property rights or that heritage is a barrier to land development. The inconsistency creates uncertainty as to how heritage will be managed and whether consents for development will be granted. This can add costs to development and discourage property owners from applying for consents to undertake activities on their property.
36. Stakeholders from across the heritage sector identified in 2018 some common concerns relating to the heritage protection system, which specifically relate to inconsistency.¹⁴
- a. Inadequate statutory identification and regulatory protection of heritage buildings,
 - b. The existing protection system is overly complex and difficult to engage with.

¹³ BR2022-140(MCH). Heritage New Zealand Pouhere Taonga confirmed during engagement that there were insufficient heritage specialists.

¹⁴ *Strengthening protections for heritage buildings: report identifying issues within New Zealand's heritage protection system* (November 2018), Ministry for Culture and Heritage. p.3

- c. The Crown is not leading by example in identifying and protecting heritage buildings in its care.

'Demolition by neglect' is an issue for heritage buildings and structures and a symptom of a lack of legislation, certainty and support for heritage owners and councils

37. Since heritage protection rules impose opportunity costs, some property owners or developers engage in demolition by neglect. Demolition by neglect is defined as the destruction of buildings through abandonment or lack of maintenance. There are a number of circumstances that contribute to the neglect of buildings, including: owners that are on low incomes, absent landlords, loss of utility value, an uncaring attitude on the part of the owner, or a combination of them all. There is no existing legislation or national direction that can prevent owners from allowing their buildings to deteriorate, and the current financial supports for heritage owners are scant.
38. To illustrate, a developer may intentionally use "demolition by neglect" to circumvent rules aimed at protecting heritage places. Once a building has been allowed to deteriorate, a resource consent to demolish the building could be granted on the grounds that it is too expensive to restore it, or because it is dangerous or unsanitary in terms of compliance with the Building Act 2004.
39. Due to the limited timeframe to gather evidence following the Ministerial direction, we cannot determine to what extent heritage owners perceive the costs and regulatory burden of enhancing their heritage buildings and structure to be cost prohibitive or exceeding their willingness to pay. As such we are unable to collect data on the number of heritage owners that would have applied for a resource consent to use or develop (including demolish) their heritage building, and to the extent this is a cause of the demolition by neglect problem. However, a number of property owners and councils have raised this as an issue anecdotally.

There is an opportunity for heritage to be more consistently managed and protected across New Zealand

40. Many stakeholders consulted by MfE, MCH and HUD agreed that improved clarity and consistency would be beneficial for managing heritage matters (see paragraphs 26 to 29).
41. These issues were canvassed in two reports in the 1990s. In 1996 the Parliamentary Commissioner for the Environment (PCE) commissioned a review of heritage and found that the system for managing heritage lacked integrated or strategic planning, was poorly resourced and loss of all types of heritage was continuing. It concluded that the HNZPT

Register be limited to nationally and international significant places, with other listings vested with territorial authorities, among a number of substantive recommendations.¹⁵

42. Following the PCE report, in 1998 the Ministerial Advisory Committee (MAC) produced the Historic Heritage Management Review (“MAC report”) to the Minister of Conservation.¹⁶ Some of the substantial recommendations of the MAC report were:
- a. the removal of the regulatory powers under the HPA and to transfer them to the RMA as the principal tool to regulate heritage (*actioned*)
 - b. central government will prepare a National Policy Statement for historic heritage within 2 years of amendments being made to the RMA (*not actioned*)
 - c. to establish a Schedule of National Historic Heritage, and (*not actioned*)
 - d. to establish a Ministry of Culture and Heritage (*actioned*).¹⁷
43. Since then, in 2018 MCH surveyed 227 stakeholders in response to wider concerns that the heritage protection system was not fit for purpose.¹⁸ Stakeholder groups included local authorities, iwi/hapū, heritage advocacy groups, HNZPT, organisations representing built environment experts, heritage building owners and developers and government departments that manage heritage buildings.
44. Many survey results demonstrate broad support for improved clarity, consistency, and guidance on heritage matters (see *Table 2*). Key themes identified in feedback included:
- a. a lack of understanding of the current system among some stakeholders and New Zealanders
 - b. a lack of consistency in the identification, protection and management of built heritage throughout the country
 - c. insufficient support and guidance for stakeholders around the protection of built heritage, and
 - d. a perception that the Crown does not follow best practice in the identification and protection of built heritage under its ownership.
45. More recently, in 2020 the Resource Management Review Panel noted that local authorities have varied approaches to heritage in their plans and identified that most submissions regarding heritage protection supported enabling strategic consideration of what should be

¹⁵ Historic and Cultural Heritage Management in New Zealand. Helen Hughes, Parliamentary Commissioner for the Environment (June 1996).

¹⁶ Historic Heritage Management Review: A discussion paper for public comment. Department of Conservation (Wellington: January 1998).

¹⁷ Heritage Management Review. Peter Richardson. Christchurch City Council (1998).

¹⁸ Strengthening protections for heritage buildings: Report identifying issues within New Zealand’s heritage protection system. Ministry for Culture and Heritage (November 2018).

protected and how this should be achieved.¹⁹ The panel recommended investigating provisions for national direction on heritage, of which some content was developed as part of the National Planning Framework in 2023.

Table 2: Sample of MCH survey results

Prompt	Agree	Disagree	Neutral	Unsure or N/A
It is acceptable for different TAs to use different approaches to identify, assess and protect heritage buildings	14.1%	79.7%	4.0%	2.2%
TAs need more guidance on best-practice methods for protecting heritage buildings	78.4%	8.4%	6.2%	7.0%
There is enough guidance available on how heritage protection mechanisms can be used to protect buildings	17.3%	51.3%	11.1%	20.4%
The current responsibilities of private owners are appropriate given the costs of owning a heritage building	12.8%	52.0%	13.7%	21.6%
There are financial incentives available that effectively support private owners to maintain and upgrade heritage buildings	2.2%	69.2%	10.1%	18.5%
There are non-financial incentives available that effectively support private owners to maintain and upgrade heritage buildings	13.7%	32.6%	15.0%	38.8%

46. Some inconsistencies in the approaches to heritage protection across the country can be observed in data collected by HNZPT.²⁰ For example, 30% of plans have a discretionary activity rule for additions and alterations to heritage buildings and sites. This could act as a disincentive for owners wishing to adaptively repurpose heritage places. Whereas 36% of plans have a more enabling restricted discretionary activity rule for additions and alterations, 12% of plans have a permitted activity rule, and three plans have no controls or have unclear rules.
47. This variation across the country is likely to be inefficient and can lead to uncertainty around costs and expectations for owners. There are opportunities for heritage buildings and structures to be more consistently managed and protected in New Zealand because it is unnecessary to have divergent heritage policy outcomes across the country (ie, thresholds at which demolition is appropriate, or interactions with urban policy). While it is important that councils still retain a local approach to the identification and protection of heritage in their district, some degree of consistency nationally is needed because the variance observed is unjustified and has distributional effects with regards to how costs and rules are unevenly applied to different groups across each district.

¹⁹ New Directions for Resource Management in New Zealand. Resource Management Review Panel (June 2020).

²⁰ National Assessment RMA Plans and Policies – Heritage Provisions 2021. Heritage New Zealand Pouhere Taonga (February 2022).

48. A key question for planners and developers relating to the protection of heritage buildings and structures is whether the current rules also enable 'appropriate' development, which could include providing for housing and infrastructure. As there is no national direction on this, there is no legal clarity, which may be creating additional uncertainty and complexity with regards to heritage protection. There are also gaps in district plans with regards to integrated management of heritage with other competing land uses, so this appears to be a system gap.
49. When Environmental Defence Society reviewed the NZCPS in 2017, it reviewed Policy 17 (*Historic heritage identification and protection*) and found that the provision reinforced, rather than led good implementation outcomes, and the lack of information on historic heritage constrained the use of a strategic approach.²¹ There is an opportunity to drive more focus on outcomes as well as strengthen how integrated management is achieved in the terrestrial and coastal environment for heritage buildings and structures.

What is the scope?

50. Historic heritage is broadly defined under the RMA.²² For this proposal, to respond to the problem definition, the scope of changes to heritage management will specifically focus on buildings and structures that are in heritage schedules in RMA plans and have heritage protection rules that regulate the development and use of those buildings.
51. Fiscal interventions by central government are considered out of scope for this proposal as this work is focused on improving the regulatory regime for heritage protection under the RMA.

Who are the stakeholders?

52. Stakeholders include property owners, central government agencies, local government, professionals who work with heritage, advocacy groups, iwi, as well as the public who actively and passively derive benefits from heritage buildings and structures. As the scope focuses on heritage buildings and structures, the changes can be designed to avoid impact on non-built heritage places that are significant to Māori.

²¹ Review of the effect of the NZCPS 2010 on RMA decision-making. Environmental Defence Society, p.48.

²² Section 2 RMA defines *Historic heritage: Cont.*

- a. means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities: archaeological: architectural: cultural: historic: scientific: technological; and
- b. includes - historic sites, structures, places, and areas; and archaeological sites; and sites of significance to Māori, including wahi tapu; and surroundings associated with the natural and physical resources.

53. Targeted engagement was undertaken with some iwi, key stakeholders, including development interest groups, NZPI, Local Government Practitioners Group, HNZPT and RMLA. Evidence gathered from targeted engagement can be referred to at paragraphs 26 to 29 above.

Objectives

Overarching heritage objectives

54. These objectives specific to providing better outcomes for managing historic heritage were devised by MfE, MCH and HUD in relation to the problem.
- a. provide greater certainty about heritage protection and improve compliance
 - b. reduce compliance costs for owners
 - c. maintain or improve the protection of heritage buildings and structures
 - d. ensure greater consistency in approach across the country

Resource management reform objectives

55. Cabinet agreed to the following high-level objectives for Resource Management Reform:
- a. unlocking development capacity for housing and business growth
 - b. enabling delivery of high-quality infrastructure for the future
 - c. enabling primary sector growth and development (including aquaculture, forestry, pastoral, horticulture, and mining).

while also:

- d. safeguarding the environment and human health
- e. adapting to the effects of climate change and reducing the risks from natural hazards
- f. improving regulatory quality in the resource management system
- g. upholding Treaty of Waitangi obligations, settlements and other arrangements.

Assessment Criteria

56. The assessment criteria used to evaluate all proposal are:

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

Approach to Options

57. The scope of options considered by officials has been constrained for a number of different reasons:

Delivering on government priorities

58. The purpose of these proposals as agreed by cabinet has been to support the delivery of the Government's priority to unlock development to grow housing supply and enabling delivery of high-quality infrastructure for the future.

Non-regulatory interventions

- 59. Non-regulatory interventions (such as strategy) are out of scope because this is enabled without legislation.
- 60. Fiscal interventions (such as new heritage funding) by central government are considered out of scope for this proposal as this work is focused on improving the regulatory regime for heritage protection under the RMA.

Options not considered further

- 61. Cabinet agreed that policy changes would be made to the RMA to better manage heritage outcomes, subject to further policy work. Options were constrained to matters in scope of the RMA.

- 62. s 9(2)(f)(iv) [Redacted]

- 63. An option to introduce a modified Part 1 Schedule 1 process for local authorities to remove heritage buildings and structures from their planning schedules was initially considered, but officials consider it is an impracticable option and MfE prefer the flexibility and the ability to remove process steps under the SPP.

- 64. s 9(2)(f)(iv) [Redacted]

- 65. Options relating to amending other legislation, such as the Building Act 2004 are out of scope as there is a work programme currently being undertaken by the Government to improve the earthquake prone buildings system.

Options

66. The following six options have been considered by all agencies to address the problem.
- a. *Option 1: Status quo*
 - b. *Option 2: National direction for historic heritage*
 - c. *Option 3: Enable councils to use the Streamline Planning Process to deschedule heritage buildings and structures from district plan schedules*
 - d. *Option 4: Suggestion received from Wellington City Council to deschedule heritage using council resolution*
 - e. s 9(2)(f)(iv)

Option 1: Status quo

67. Local authorities continue to take a local approach to heritage management, without any central government intervention. The property owner has the right to participate in the process, but their written approval is not required to add buildings and structures to a heritage schedule.
68. There are two ways that historic heritage can be managed by the property owner or local authorities:
- a. *Resource consent.* Property owners can apply for a resource consent to subdivide, redevelop or demolish a place on the heritage schedule. Resource consents, if they are publicly notified, could be subject to appeal. Noting that only 1.56% (49) of heritage resource consents were publicly notified over the last ten years.²³
 - b. *RMA Schedule 1 plan change.* Places can be removed from the schedule by private or council-initiated Schedule 1 plan changes. The Council is obliged to review its plan at least every 10 years. This process has minimum requirements for public participation and evaluation and can be subject to appeal to the Environment Court.

Option 2: National direction for historic heritage

69. New national direction for historic heritage would support the Government to implement their policy objectives through the RMA and help local authorities to apply s6(f) and give effect to Part 2 of the RMA. There is currently no specific historic heritage national direction.

²³ 38 heritage resource consents (1.21%) were limited notification consents over the last ten years. This is out of 3143 relevant consents. [Resource consent applications 2014-15 to 2022-23 | MfE Data Service](#)

70. This Option would enable the Government to direct local authorities on 'what' heritage should be scheduled and 'how' councils should undertake scheduling and descheduling processes. This is proposed to be a national policy statement because it would provide the necessary flexibility of application.
71. A national policy statement on historic heritage could include the following policy direction:
 - a. How heritage value is to be considered and traded-off against other matters of national importance and opportunity costs to the owner
 - b. Principles for setting objectives, policies and rules in plans for heritage
 - c. Criteria for scheduling or descheduling heritage buildings
 - d. Principles for the process of scheduling or descheduling heritage buildings
 - e. Principles for making decisions on resource consents (including for modifying or demolishing a heritage building)
72. It is important that direction is provided on subdivision, use and development as this mitigates the risk that only providing direction on scheduling and descheduling will encourage demolition by neglect.
73. These criteria could be based on existing case law and include additional criteria to manage interactions with other matters of national importance and other national direction such as the NPS-UD.
74. This option could be implemented alongside Option 3 (discussed below).
75. The key benefit of this option is that it enables more comprehensive, nuanced direction on how to manage heritage that takes into account the benefits of protection, while better recognising the impacts and opportunity costs that heritage can sometimes create. This option would also:
 - a. reduce the risk of appeal by specifying descheduling and heritage protection requirements, and
 - b. provide for private plan changes, with specified criteria, where councils did not want to bear the costs of descheduling.
76. The key risks associated with this option are that costs to develop national direction are borne by central government and local authorities through plan changes to change their corresponding rules.

Option 3: Enable councils to use the Streamline Planning Process (SPP) to deschedule heritage buildings and structures from district plan schedules

77. This option would allow councils to apply to the Minister for the Environment to use SPP to remove buildings and structures from their heritage schedules. To achieve this, a change would be made to the SPP entry criteria to provide that the SPP can be used where the proposed planning instrument would deschedule a heritage building,²⁴ thereby removing restrictions that apply to the building for the purpose of protecting historic heritage.
78. In practice, councils would still need to follow a plan change process so it is unlikely that any currently scheduled heritage buildings would be descheduled until late 2026 at the earliest.
79. The key benefit to this process is that it is likely to be a faster and less expensive process for descheduling heritage buildings than Schedule 1, as the Minister for the Environment can disapply process steps. However, it does not change the considerations that will be applied in decision making (which may lead to similar outcomes as the status quo). As there are no appeal rights, these decisions have a much greater degree of certainty upon the final decision, but also carry a much greater risk of unintended consequences (such as removing protections on heritage where there is community consensus conservation is necessary).
80. This Option would require additional resourcing to service this process at the central government level, such as processing applications and supporting the development of a statement of expectations and directions. The costs of plan change processes to deschedule buildings would still be borne primarily by councils.
81. Like Options 4 and 5, this Option creates the following risks:
- a. creating a specific legal pathway to deschedule heritage buildings adds complexity
 - b. it will establish an undesirable precedent that stakeholders could seek to be applied to other matters regulated under the RMA. The role of the RMA is to promote the sustainable management of natural and physical resources for present and future generations and does this by limiting the property rights of landowners to provide for public and commons goods, even if there is resistance from landowners.
 - c. creating a specific pathway to enable easier descheduling is likely to undermine public confidence in the heritage protection system and the significant investments made by councils and government over many decades, and
 - d. it could lead to the irreversible loss of highly significant heritage places and the potential for current and future generations to derive benefits from them.
82. Option 2 could be implemented alongside this option. Without national direction, there is a risk that outcomes of decisions taken under this option may not shift far enough from the status quo. National direction for historic heritage would provide a policy framework in

²⁴ Section 80C, RMA.

which decisions on heritage are taken to enable SPP for descheduling heritage buildings and structures.

Option 4: *Suggestion received from Wellington City Council (WCC) to de-schedule heritage using council resolution*

83. WCC proposed that councils could decide to deschedule heritage buildings and structures from their RMA plan heritage schedules by council resolution, rather than carry out an RMA plan change. Part 2 of the RMA would still apply.
84. This Option would require, at a minimum, the following features:
 - a. councils would only be able to use this process to deschedule a heritage building where the local authority has undertaken consultation with affected parties, including with iwi authorities and has the written agreement of all owners
 - b. councils could not deschedule a building if that would be inconsistent with Mana Whakahono a Rohe or with Treaty settlement legislation or other arrangements, and
 - c. councils would be required to give public notice of the amendments within 5 working days after making them, and upon public notice the changes would become operative.
85. There would be no appeal rights to the Environment Court and councils would be held democratically accountable.
86. Like Option 2, it might therefore not change the plan outcome. Councils would continue to need to follow procedures under the Local Government Act 2002 regarding decision-making processes.²⁵
87. Councils would not be able to remove buildings from the New Zealand Heritage List, as requested by the Wellington City Council Mayor, as it is not administered by councils and is outside of local government jurisdiction.
88. This Option would enable the descheduling of heritage buildings for demolition or re-use, and there would be less checks on what is descheduled by the local authority. This could occur solely on a majority vote, irrespective of expert evidence or minority viewpoints. Some councils do not have tangata whenua representation or there may be a poor relationship between the local authority and the local iwi/hapū, which may adversely impact this

²⁵ Under the Local Government Act 2002, councils must have regard to the extent to which the current views and preferences of persons who will or may be affected by or have an interest in the decision or matter are known to the local authority. If the council does not consider that it knows what the current views and preferences of persons who will or may be affected by, or have an interest in the decision, they must undertake consultation with those persons.

outcome. There may be natural justice implications as well, but this could only be tested through judicial review.

- 89. This Option would also place councils at a *high* risk of judicial review due to the lack of process built into decision-making and due to the departure from Schedule 1 or the SPP. There is no current provision in the RMA for councils to make changes to their planning documents without using a prescribed process either (other than correcting minor errors).
- 90. This Option provides a different approach to resource management that could result in loss of heritage resources for present and future generations without adequate testing or evaluation. There are planning reasons such as providing for public goods and protecting resources for future generations that justify the use of powers under the RMA to restrict or limit property rights to protect heritage values. This Option too can create precedent risks and undermine the entire justifiability of environmental law to protect other public values or resources on private property (particularly those s6 matters) as well as Treaty settlements.

s 9(2)(f)(iv) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

s 9(2)(f)(iv)

[REDACTED]

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 1 – Status Quo	Option 2 - National direction on historic heritage (Preferred Option)	Option 3 - Enable councils to use the Streamline Planning Process to deschedule heritage buildings and structures from district plan schedules	Option 4 – Deschedule by council resolution	s 9(2)(f)(iv)
Effectiveness	<p style="text-align: center;">-</p> <p>This option would maintain status quo protection of heritage buildings and structures</p> <p>This option would not be effective for meeting the other objectives of this proposal.</p>	<p style="text-align: center;">++</p> <p>This option would support maintaining and improving protection of heritage buildings and structures; provide greater certainty about heritage protection and could enable improving compliance; enable reducing compliance costs for owners; improve consistency in approach across the country; and enable mechanisms to support unlocking development for housing and business growth.</p>	<p style="text-align: center;">+</p> <p>This option would provide some improvement on certainty of approach (limited to descheduling only) across the country and would support unlocking development for housing and business growth.</p> <p>This option would not be effective for meeting the other objectives of this proposal. In some cases (e.g., maintaining or improving protections for heritage; providing consistency in approach to heritage management), it could be less effective than the status quo.</p>	<p style="text-align: center;">-</p> <p>This option would support unlocking development for housing and business growth</p> <p>This option would not be effective for meeting the other objectives of this proposal. In some cases (e.g., maintaining or improving protections for heritage), it could be less effective than the status quo.</p>	
Efficiency	<p style="text-align: center;">-</p> <p>This option would not achieve the intended outcomes/objectives. No change in costs to regulated parties or regulators.</p>	<p style="text-align: center;">+</p> <p>This option would enable reducing costs borne by regulated parties over time by clarifying them (e.g., compliance costs)</p> <p>This option increase costs for regulators in the short-term relating to interpreting new ND, but this would be offset in the long-term by increased certainty, clarity, and consistency.</p> <p>The regulatory benefits outweigh the burden.</p>	<p style="text-align: center;">+</p> <p>It is not anticipated that his option would change costs borne by regulated parties.</p> <p>This option would create additional ongoing costs for regulators to service a process for descheduling heritage buildings and structures. This may be offset by increased clarity of procedural costs associated with descheduling.</p> <p>The regulatory benefits are likely balanced with the burden.</p>	<p style="text-align: center;">-</p> <p>It is not anticipated that his option would change costs borne by regulated parties.</p> <p>This option would create additional ongoing costs for regulators to service a process for descheduling heritage buildings and structures. This may be offset by increased clarity of procedural costs associated with descheduling.</p> <p>There are social, economic, and environmental costs that may be borne by all parties relating to a potential loss of cumulative heritage values.</p> <p>The regulatory burden may outweigh the benefits.</p>	

<p>Certainty</p>	<p style="text-align: center;">-</p> <p>Regulated parties have limited certainty of their legal obligations (e.g., for compliance or procedural matters when seeking to deschedule) that has contributed to a case for change.</p> <p>While confident in their approaches to heritage management matters, many regulators are supportive of increased clarity and consistency in how legislative requirements should be applied.</p>	<p style="text-align: center;">++</p> <p>Would enable providing regulated parties with greater certainty of their legal obligations.</p> <p>Would enable providing regulators increased clarity and consistency in how legislative requirements should be applied.</p>	<p style="text-align: center;">+</p> <p>Would provide regulated parties some additional certainty of their legal obligations (limited to requirements for descheduling).</p> <p>Would provide regulators some additional clarity and consistency in how legislative requirements should be applied (limited to the descheduling process).</p>	<p style="text-align: center;">+</p> <p>Would provide regulated parties some additional certainty of their legal obligations (limited to requirements for descheduling).</p> <p>Would provide regulators some additional clarity and consistency in how legislative requirements should be applied (limited to the descheduling process).</p> <p>Additional certainty of final decision due to no appeal rights.</p>	<p>s 9(2)(f)(iv)</p>
<p>Durability and flexibility</p>	<p style="text-align: center;">-</p> <p>There is some flexibility in how regulators and regulated parties meet their regulatory obligations, but an existing lack of certainty, clarity, and consistency undermines durability and flexibility. The status quo is not highly durable. This is demonstrated by the existing case for change.</p>	<p style="text-align: center;">++</p> <p>This option would enable the regulatory system to be adaptable in response to changing circumstances or new information (e.g., national direction could be leveraged to achieve particular outcomes).</p> <p>ND could be designed to enable flexibility in how regulated parties meet their regulatory obligations.</p>	<p style="text-align: center;">-</p> <p>This option would have little effect on the ability of the regulatory system to evolve in response to changing circumstances or new information.</p> <p>It would provide regulated parties with an option to deschedule (i.e., disapply regulatory obligations) but it would not enable flexibility in how obligations are met.</p>	<p style="text-align: center;">-</p> <p>Same as Option 3</p>	
<p>Implementation risk</p>	<p style="text-align: center;">-</p> <p>Maintains risk of appeals on consents and plan changes.</p>	<p style="text-align: center;">+</p> <p>Implementation risks are within acceptable parameters.</p> <p>There is potential for ongoing loss of overall heritage values at the local level if it is made easier to deschedule heritage buildings and structures via ND, but this can be mitigated through consultation during development of ND content.</p> <p>This option could be implemented within reasonable timeframes, but change will take time to permeate the system.</p>	<p style="text-align: center;">-</p> <p>Implementation risks are likely not within acceptable parameters.</p> <p>High likelihood of judicial review without adequate consultation period and requirements and no right of appeal. Precedent risk.</p> <p>This option could be implemented within reasonable timeframes.</p>	<p style="text-align: center;">-</p> <p>Implementation risks are likely not within acceptable parameters.</p> <p>Likely to have significant implementation risks. Decisions could be judicially reviewed if sufficient information on community views is not taken into account. Could result in significant losses of heritage. Precedent risk.</p> <p>This option could be implemented within reasonable timeframes.</p>	
<p>Overall assessment</p>	<p style="text-align: center;">-</p>	<p style="text-align: center;">++</p>	<p style="text-align: center;">+</p>	<p style="text-align: center;">-</p>	

Overall Assessment

96. Option 2 (National direction on historic heritage) is the preferred option of all agencies as it would be better than the status quo and it supports the objectives of this proposal to:

- a. provide greater certainty about heritage protection and improve compliance
- b. reduce compliance costs for owners
- c. maintain or improve the protection of heritage buildings and structures and ensuring greater consistency in approach across the country

as well as promote cabinet's objectives to

- d. unlock development capacity for housing and business growth
- e. enable delivery of high-quality infrastructure for the future, and
- f. improve regulatory quality.

97. In the multi-criteria analysis, Option 2 assessed highly for all assessment indicators.

98. Option 2 is better than doing nothing because administrative, economic, environmental and cultural benefits are conferred to the public, including Treaty partners and territorial authorities who regulate heritage.

- a. National direction can clarify how territorial authorities can recognise and provide for the protection of historic heritage from inappropriate subdivision, use and development, including clarifying what appropriate development looks like. This can provide a clearer framework to regulate heritage and will support rule making that is more consistent and proportionate to the extent of heritage values recognised in a building or structure.
- b. Policies and rules for heritage management that are appropriately applied can better ensure that those heritage values are cared for while enabling people and communities to provide for their needs, such as housing and infrastructure provision.

99. Option 2 is also likely to be the most efficient option because the RMA is designed to enable central government to set national direction on issues or matters of national significance, and historic heritage would meet this test. National direction must be given effect to in RMA plans without using a Schedule 1 process. This supports faster implementation of national direction at the local level. National direction also provides the Government with an approach that enables high-level directions on heritage to be set using national policy statements while retaining a desirable level of local discretion.

100. Option 2 is more preferable than Option 3 (enable council to deschedule using SPP) because it can contain a policy framework (objectives and policies for heritage) that will amend the policy direction within RMA plans. Option 3 would not necessarily help local authorities determine what heritage buildings or structures merit descheduling. This may likely not meet

a number of objectives, including providing greater certainty about heritage protection and improving compliance, while reducing compliance costs for owners. The SPP could produce outcomes that remove protection of buildings and structures with significant heritage values (ie, rarity), when there is a high legal obligation under the RMA to recognise and provide for the protection of historic heritage from inappropriate subdivision, use and development. Option 3, however, poses moderate risks in this instance because the final decisions include ministerial involvement. SPP has its advantages such as providing a fast pathway to remove heritage from district plan schedules with no appeal rights. This benefits councils due to less administrative burden as well as heritage owners and developers the most as these groups will have more liberty to alter, relocate or demolish a heritage building or structure once it has gone through this process.

101. Option 4 (deschedule by council resolution) was raised by the Wellington City Council Mayor to address heritage currently scheduled within the Wellington District Plan but would be open to all councils to use. This Option is less preferable than the status quo, national direction on heritage (Option 2), and Option 3 because RMA decisions are required to be process driven and must be evidence-based,²⁶ rather than capricious. Decisions via council resolution are likely to lead to inconsistencies in use nationally and risks significant loss of heritage values due to the *moderate to high* risk that decisions will be taken irrespective of evidence or minority voices. Further, this may also lead to a disproportionate loss of heritage places significant to Māori as some councils do not have Māori representation or positive relationships with their local iwi/hapu.

102. s 9(2)(f)(iv)



103. The status quo (Option 1) does not provide a sufficiently comprehensive framework for heritage management for all councils, however, for some, the tools available under the status quo are perfectly adequate. Without clear and proper direction for some councils, variation in planning policies and rules has led to some variations in land controls and compliance costs. To a certain degree this inconsistency has created concerns that heritage protections can

²⁶ Much of this evidence is tested rigorously through section 32 (evaluation) reports, submissions and hearings.

unduly restrict property rights or that heritage is a substantive barrier to land development. A heritage national policy statement can improve the effectiveness of tools under the status quo because it can set out for RMA plans how heritage should be managed, while still enabling flexibility of application to support local discretion and community perspectives.

104. The content of a national policy statement on heritage could be targeted to include direction on the following matters:
 - a. How heritage value is to be considered and traded-off against other matters of national importance and opportunity costs to the owner
 - b. Principles for setting objectives, policies and rules in plans for heritage
 - c. Criteria for scheduling or descheduling heritage buildings
 - d. Principles for the process of scheduling or descheduling heritage buildings
 - e. Principles for making decisions on resource consents (including for modifying or demolishing a heritage building).
105. National direction enhances the benefits that come from the status quo tools under the RMA because it can reduce appeals risks on plan changes by specifying policies for heritage protection and descheduling (where appropriate) as well as enable private plan changes, where councils need not bear the costs of that plan change. National direction could clarify the application of inappropriate in relation to section 6(f): *the protection of historic heritage from inappropriate subdivision, use and development*, which would be given effect to in all relevant RMA plans.
106. Heritage national direction is likely to be enduring because previous reviews have found the system in need of national direction on this topic, and it is likely that future governments will add further policy.
107. An outcome that is anticipated by providing national direction is that heritage policies and rules will be more consistent, and the degree of variation nationally will be reduced. It is anticipated that buildings and structures with less merit currently scheduled will be removed because of new national direction. This means that land controls will more likely be proportionate to the extent of places that merit protection and better balance the needs (as well as the additional cost imposition) of property owners and other land-users.
108. There has been limited engagement with Treaty partners on these options in this proposal so it is not possible to fully assess the likely impacts on them from developing national direction on historic heritage or whether Treaty partners would support this approach in relation to the problem definition. Stakeholders during engagement did not object to national direction on historic heritage and considered that national direction could be useful.
109. The overall benefits of Option 2 are positive and are more likely than other alternatives to achieve the objectives of this proposal.

Cost/Benefit Analysis

110. The key assumption underlying this cost benefit analysis are:

- Costs largely reflect administrative costs, which we will equate in this analysis to labour costs.
- Councils will implement the preferred option at the same cost and over the same time horizon.
- Treaty partners will participate in policy processes through routine consultation.
- Costs are non-monetised because the nature of the costs are difficult to determine during implementation and some of these costs are indirect (ie, time spent on preparing submissions).

Affected groups	Comment <i>nature of cost or benefit</i>	Impact <i>High, medium or low</i>	Evidence Certainty <i>High, medium, or low</i>
Additional costs of the preferred option compared to taking no action			
Heritage owners	No additional costs incurred by existing heritage owners for national direction. There is a possibility that new heritage will be scheduled following implementation of national direction into district plans, which will depend on the policy direction set out in the direction.	No direct impacts.	No evidence.
Developers	Some one-off costs incurred by developers associated with possible resource consenting associated with new rules arising from implementation of ND into district plans. New heritage rules will have immediate legal effect upon notification.	Low.	Low. However, under the RMA existing activities are protected from rule changes.
Local authorities	One-time (fixed period) direct costs as local authorities must implement national direction into their district plans. Potential for ongoing loss of overall heritage values at the local level, which may have a range of economic, social and environmental costs (eg, for tourism or a sense of city/regional identity/character) if it is made easier to deschedule heritage buildings and structures.	s 9(2)(g)(i) [Redacted]	High. Analysis was undertaken by NZIER in July 2024. ²⁷
Treaty partners	One-time (fixed period) participation costs insofar as Treaty partners are involved in policy development and implementation into district plans (without remuneration) to ensure appropriate allocation for Māori heritage.	Medium.	Medium. Engagement obligation with Treaty partners are high to prepare national direction.
Central Government	Additional costs incurred by Central Government to develop national direction, such as holding engagement. Possible additional costs of judicial review.	Medium. The total costs for national direction process can be as high as ~\$6m, which includes estimates of government staff time.	High. The costs are estimated based on development of NPS-UD in 2020,
Heritage advocacy groups	One-time (fixed period) costs insofar as heritage groups engage with Central Government in policy development for preparing national direction.	Low	Medium
The public	No additional costs incurred by the public for national direction except where it is passed on through rates.	Low.	Medium. It is not likely annual plans will have budgeted for further national directions being issued.

²⁷ NZIER. 2024. Cost impact of central government reforms. A report for Local Government New Zealand. p.iii.

Non-monetised costs	<i>One-time costs over a fixed period for central government, territorial authorities. Some indirect costs for Treaty partners, heritage advocacy and the public in participation.</i>	Medium	Medium.
Additional benefits of the preferred option compared to taking no action			
Heritage owners	Ongoing benefits: increased certainty of costs and evidence required to justify a heritage building or structure's scheduling status, reducing overall cost and risk of redevelopment.	Low	Low
Developers	Ongoing benefits: direction on heritage interactions with urban development will support unlocking development opportunities. Improved consistency in how heritage is managed across territorial authority boundaries.	Medium	Medium.
Territorial authorities	Ongoing benefits: improved clarity and direction on how to manage heritage. Unlocked development capacity can support housing and business growth initiatives and improved infrastructure.	Low	Medium. This was recorded through engagement.
Treaty partners	More consistency (i.e., less complexity and variation) in how heritage is managed across local authorities could benefit Treaty partners who deal with multiple councils (e.g., Ngai Tahu).	Low	Medium.
Central Government	Reduced variation in district policies and rules, and practices relating to heritage management. Further benefits from retention of high-value heritage for tourism, national identity, residential amenity.	Medium	Medium Assessment of RMA plans suggest there is much variance across plan with regards to heritage policy and rules. ²⁸
Heritage advocacy groups	Ongoing benefit: improved clarity, direction, and national consistency on how heritage is managed should reduce time and financial costs associated with participation in the heritage system.	Low.	Low.
The public	Ongoing benefit: the public will benefit from heritage being protected and from newly unlocked development opportunities (i.e., improved housing supply and infrastructure).	Low.	Low.
Non-monetised benefits	<i>Ongoing benefits for local authorities and central government. Overall net national benefits from proposal compared to the status quo.</i>	Medium.	Low.

²⁸ National Assessment RMA Plans and Policies – Heritage Provisions 2021. Heritage New Zealand Pouhere Taonga (February 2022).

Treaty implications

111. The proposal to amend the RMA in respect of the controls that it places on the redevelopment of heritage buildings and structures is significant to Māori groups.
112. Part 2 of the RMA guarantees certain protections including those under section 6(e) and (f), which cannot be reconciled with these proposals.
113. Treaty partners have not been consulted on the options for this proposal. It is not possible to fully assess the likely impacts of the options or whether Treaty partners would support the preferred option.
114. Officials consider there are unlikely to be impacts on existing Treaty settlements or arrangements but cannot confirm this without more fulsome engagement.

Benefits for Māori of descheduling heritage buildings and structures

115. Māori may experience some benefit from national direction that supports descheduling where they are the owners of land on which a heritage building, or structure restricts development or where they are partners or investors in development projects that involve listed buildings. Without speaking with iwi and hapū it is not possible to know to what degree they might benefit from the proposal. It is unlikely that they will benefit in a way that is different from the public in general.

Property owner agreement to schedule buildings and structures

116. Sections 6(e) and (f) do not anticipate that property owners will be arbiters of heritage values. This is because policy intervention in heritage matters is necessary because the market will not prioritise the protection of heritage values. Some options in this proposal (namely Options 3, 4 and 5) challenge the rationale for heritage protection and risks not protecting Māori and their culture, ancestral sites or taonga.

Consultation

117. Option 2 (the preferred option) was presented to stakeholders for their views during targeted engagement.
118. Local government practitioners have told us that national direction (ie, through a national policy statement) would be useful for improving clarity and consistency in how heritage management provisions are applied. Councils strongly prefer that national direction not be overly prescriptive and that it takes into account how heritage is valued differently from community to community.
119. Other stakeholders (development groups and planning and resource management law practitioners) indicated a preference for national consistency, process efficiency, and

certainty of outcomes provided through national direction. These groups (such as NZPI) indicated that this is likely to be the most enduring option.

120. Development groups indicated that they would favour national direction that sets a high threshold for what can be scheduled as heritage.
121. Across stakeholder groups, there was a preference to ensure that changes to heritage management now are strongly aligned with potential decisions in Phase 3 later, or to defer changes to Phase 3 altogether.

Implementation

122. The preferred option of this proposal would be given effect through the development of new national direction on historic heritage. The RMA has established processes for the Minister for the Environment to develop new national direction using their own process. Analysis would be required to determine a suitable instrument and scope of directions, but it is likely that a national policy statement would provide the most flexibility to manage heritage while still providing direction through policies, which could be flexible or rigid. It is likely a targeted piece of national direction on heritage could be quite effective and would not require a comprehensive framework.
123. A Government bill is currently before the select committee (Resource Management (Freshwater and Other Matters) Amendment Bill) and will introduce changes to the RMA to speed up the process to develop or amend national direction.
124. Engagement with tangata whenua, local authorities and other heritage stakeholders such as HNZPT will be necessary in developing the policy content.
125. National direction can be implemented into RMA plans as soon as practicable without using the Schedule 1 process, however, there are likely to be rules developed or amended by local authorities in relation to the new policies in the national direction, and this must go through Schedule 1. Rules relating to the protection of historic heritage have immediate legal effect upon notification of a proposed district plan because it is a section 6 matter.²⁹ There will be costs also associated with these processes, which have estimated to be around \$5m for each council based on implementation of the NPS-UD, but it is likely the directions will be less substantive than the NPS-UD ones.
126. There are *moderate* risks relating to this proposal because officials have not designed or tested any proposed content with stakeholders or have been unable to fully assess the implementation risks without full engagement with tangata whenua. The key risk associated with this proposal is that officials have underestimated the potential loss of heritage and associated benefits that could be lost without full engagement, as well as potential

²⁹ Section 86B, RMA.

disproportionate impacts on Māori heritage or negative distributional cost effects. This risk will be mitigated through engagement undertaken by central government when it is developing a national direction proposal on heritage. Engagement undertaken during the development of heritage national direction can provide an opportunity for system users to raise any concerns or relevant information on this proposal.

Monitoring

127. Following implementation of national direction in RMA plans, the responsible agency for the instrument (likely either MfE or MCH) will monitor implementation progress as part of regular engagement with councils.
128. The monitoring framework for the heritage national direction will need to request information from territorial authorities relating to:
 - *Scale*. How many heritage buildings or structures are scheduled or de-scheduled?
 - *Cost*. How much did the processes cost the council per annum?
 - *Capability*. How many heritage specialists do you have working in your planning department that are working on heritage policy or consenting?
 - *Effectiveness*. How is compliance monitored and what kinds of costs do heritage owners currently face? Information relating to variations in approaches to heritage management will also be required.
129. Evaluation will be a necessary step in the policy cycle. Evaluation will be required at the time of developing the national direction in order to ensure the benefits of the policy outweigh their costs (ie, is rational) and a further review of implementation is necessary, perhaps three years post taking legal effect. Evaluating policy implementation will indicate whether the objectives of the national direction are being met and where there are implementation issues with regards to particular policies. A review will provide an opportune time to assess the policy effectiveness of the national direction and provide feedback to improve the system's operation.