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***
27-Nov-24	Supplementary Analysis Report: Resource Management Amendment Bill 2 – analysis to support introduction	Ministry for the Environment

Information redacted **NO**

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

Supplementary Analysis Report: Resource Management Act Amendment Bill 2 – analysis to support introduction

Coversheet

Purpose of Document	
Decision sought/taken:	*Analysis produced to support the introduction of the Resource Management Act Amendment Bill 2.*
Advising agencies:	*Ministry for the Environment*
Proposing Ministers:	*Minister Responsible for RMA Reform*
Date finalised:	*27 November 2024*

Problem Definition

There is widespread consensus that the Resource Management Act 1991 (RMA) is no longer fit for purpose. In some instances, existing RMA processes have been inefficient in delivering intended outcomes for system users and decision-makers.

In particular, infrastructure providers, renewable energy generators and those in the wood processing industry consider there is insufficient certainty around consenting and designation outcomes, and these applications take too long to process. This has contributed to uncertainty around development capacity, infrastructure delivery and investment.

There has been a failure to deliver affordable housing choice, and while it is important that sufficient capacity for housing growth is provided, local communities need to have more say in where and what type of development occurs.

Court decisions have resulted in additional rules which restrict fishing activity, and some parties consider further clarification is needed in the RMA around when, and what types of fishing activity can be regulated under the RMA.

The resource management system ('RM system') has resulted in a lack of responsiveness to natural hazards, emergencies and recovery efforts, and been poor in deterring environmental offending. In addition to this, Cabinet has identified issues with the RMA acting as a barrier to innovation for farming and primary sector activities.

The Government is committed to reforming the RMA. As part of this reform, low complexity amendments that have immediate impact on the RM system can be made in the short term. These amendments would provide more certainty and consistency for system users, specifically in relation to infrastructure and energy enablement, housing growth, farming and the primary sector, managing natural hazard events and emergency responses, and other minor system improvements. These amendments align with the Government's objectives for longer-term replacement of the RMA.

Executive Summary

Context

In June 2024 Cabinet agreed to proceed with targeted amendments to the RMA as part of Phase 2 of resource management system (RM system) reform through the Resource Management (Consenting and Other System Changes) Amendment Bill (RM Bill 2). These amendments are intended to unlock infrastructure, housing and primary sector development, and drive a more efficient and effective RM system.

This SAR assesses the overall impact of the package of amendments proposed by Cabinet. The analysis in this SAR is supported by more detailed analysis of each of the five key themes of RM Bill 2.[1]

The proposals

The proposals are wide-ranging and have been grouped across five themes for the purposes of this SAR: infrastructure and energy, housing growth, farming and the primary sector, natural hazards and emergencies, and system improvements.

Infrastructure and energy

Proposals relating to infrastructure and energy target RMA consenting and designations provisions, primarily relating to consent processing timeframes, consent duration for some infrastructure, and information requirements and lapse periods for designations.

As a package, these amendments intend to provide more certainty to applicants and support the timely delivery of infrastructure by improving the efficiency of RMA designations and consenting processes.

Housing growth

Amendments to the RMA will support the implementation of the Going for Housing Growth (GfHG) programme and embed flexibility into the system. This primarily relates to plan changes to modify or remove the Medium Density Residential Standards (MDRS).

The scope of some of the GfHG amendments has changed following further advice to Ministers. Cabinet had initially agreed to limit these changes to housing national direction instruments. The scope of these has been expanded to apply to all national direction instruments. Appendix 3 provides impact analysis to support Cabinet decision making on these proposals.

Farming and the primary sector

A package of amendments will improve the certainty of investment in the primary sector and deliver on commitments in the Primary Sector Growth Plan and coalition agreements. These amendments are proposed to:

- ensure that marine protection under the RMA is better balanced against considerations of fishing rights and interests,
- more effectively provide for the delivery of industry farm plans,

[1] Refer to documents listed in Appendix 1. All regulatory impact analysis for this package will be proactively released on the Ministry for the Environment website, along with this SAR.

- provide certainty of consent processing timeframes for wood processing facilities, and
- better facilitate changes to resource consent conditions for aquaculture.

Natural hazards and emergencies

The proposals in RM Bill 2 will improve how councils manage and respond to natural hazards and emergencies. These amendments will improve the quality of decision-making on how natural hazards are managed under the RMA and ensure that emergency responses under the RMA are more effective and efficient.

System improvements

RM Bill 2 will deliver a suite of system improvements to support a well-functioning RM system. These amendments target RMA compliance and enforcement provisions, address regulatory uncertainty, address gaps in the system (eg, the ability of councils to cost-recover for certain activities) and provide clarification of original policy intent for some areas where this is causing operational uncertainty.

Impacts on iwi, hapū, Māori, and Post Settlement Governance Entities

Note that where this SAR refers to 'stakeholders' this is intended to refer to system users such as infrastructure operators and developers. This term does not include iwi, hapū, and Māori, and Post Settlement Governance Entities (PSGEs).

Costs and benefits

The costs and benefits of the overall package have been difficult to quantify due to the broad scope of the amendments agreed to by Cabinet. Additionally, timeframes for policy development have constrained the availability of evidence and data, and our ability to undertake wider engagement on the proposals. Because of this, and insufficient data to support monetary costs and benefits, the analysis contained in this SAR is qualitative.

Overall, there are efficiency gains for certain system users through more streamlined and timely processes, which will improve certainty in the RM system. However, these efficiency gains may disadvantage other participants in the RM system, due to reduced opportunities to influence decision-making, and some RM system users being unable to access new RMA pathways (eg, changes to consent duration for some activities).

Limitations and Constraints on Analysis

The quality of analysis in this SAR has been constrained for a variety of reasons.

Scope of the SAR

The purpose of this SAR is to provide an overarching assessment of the policy agreed to by Cabinet in June 2024. The problem definitions and analysis of proposals has been developed at a high level, in a manner which attempts to bring together the multiple legislative policy interventions in RM Bill 2 in a coherent manner.

Delivering on Government commitments

Policy direction from Cabinet and Ministers have impacted the options considered as part of the RM Bill 2 package. Some of the proposed policies, particularly those related to renewable energy and housing, support the delivery of government initiatives such as Electrify NZ and GfHG. The scope of regulatory and non-regulatory options considered to deliver the outcomes sought through RM Bill 2 has therefore been limited.

Limited consultation on the proposed policies

Policy development for RM Bill 2 took place under constrained timeframes, which have impacted our ability to engage with stakeholders. Consultation which has taken place has been condensed and limited to key stakeholders and PSGEs, some Māori groups, planning practitioners at local government and through the New Zealand Planning Institute, and some industry groups from the energy and renewable energy sector, the infrastructure and development sector. In some instances, previous engagement on the policy proposals (eg, select committee submissions on the Natural and Built Environment Act 2023 (NBA) for some of the compliance and enforcement provisions) has been used to inform policy development.

Where relevant, the Ministry for the Environment (MfE) has worked with relevant government agencies to inform policy development. However, engagement in these instances has been undertaken within limited timeframes.

Limitations to the availability of data and evidence to inform policy making:

Data and evidence to support policy development has been limited in its availability, or accessibility. This has limited our understanding of the scale of the issues identified in this SAR and their impact on affected parties.

In most cases, the evidence used to inform impact analysis has been anecdotal and may not be an accurate representation of issues in the RM system or provide an understanding of the impact the preferred options will have on RM system users and affected parties.

Other key evidence and data which would have informed impact analysis was not able to be accessed and analysed within the timeframes set for policy development. This is due to a range of factors including evidence and data not being held by MfE, datasets being spread across multiple councils, or data not being collected.

Treaty of Waitangi considerations

Due to limited timeframes engagement with iwi/Māori on the policy proposals, a full assessment of Treaty impacts, including those affecting Treaty Settlement commitments has not been possible. A Treaty Impact Analysis providing an overview of the RM Bill 2 policy programme has been prepared and appended to this document (Appendix 2).

Responsible Manager(s) (completed by relevant manager)
Rhedyn Law *Manager* *RM Policy – Bill 2* *Ministry for the Environment* *27/11/2024* 

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Ministry for the Environment
Panel Assessment & Comment:	A quality assurance panel with members from the Ministry for the Environment has reviewed the “Analysis produced to support the introduction of the Resource Management Act Amendment Bill 2” Supplementary Analysis Report (SAR) prepared by the Ministry. The panel considers that the analysis partially meets the Quality Assurance criteria. The panel considers that the analysis is clear

	and concise; however, the extent of the analysis is limited. There is limited evidence presented, and there has been limited consultation with external parties. Time and other constraints have applied to the development of the SAR which has prevented a more fulsome analysis, but constraints and limitations are signalled.

Section 1: Diagnosing the policy problem

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

Resource Management Act 1991

1. The Resource Management Act 1991 (RMA) sets the legislative framework for the integrated management of the environment and its resources, covering environmental protection, management of natural resources, and urban planning. The purpose of the RMA is to promote the sustainable management of natural and physical resources in a manner which enables people and communities to provide for their social, economic, and cultural well-being.
2. There is widespread consensus among stakeholders that the RMA is no longer fit for purpose.

Drivers for change

3. Cabinet agreed to a three-phase work programme for reforming the RM system, culminating in the repeal and replacement of the RMA with a system premised on the enjoyment of property rights. The amendments delivered in RM Bill 2 are aligned with the intent of Phase 3 of RM Reform by starting to reset the boundary between resource management and property rights based on effects.
4. RM Bill 2 is one of the workstreams in the Phase 2 package and will comprise of targeted changes to the existing RMA that:
    a. are low complexity,
    b. have immediate impact,
    c. are transferable into a future system, and
    d. support the delivery of government priorities set out in the National Party manifestos, and coalition agreements.

The scope of this SAR

5. This SAR is part of a package of impact analysis documents prepared for RM Bill 2. This document provides an overarching assessment of the policy programme Cabinet has committed to.
6. Detailed impact assessments for each of the individual policy proposals for RM Bill 2 have been undertaken, and were subject to a quality assurance process, in accordance with Cabinet's guidelines for impact analysis. A full list of impact analysis documents can be found in Appendix 1. These documents will be proactively released on the MfE website.
7. A Regulatory Impact Statement (RIS) to support the Going for House Growth (GfHG) programme was developed by the Ministry for Housing and Urban Development (HUD) and MfE.

What is the policy problem or opportunity?

8. There is widespread consensus that the RMA is no longer fit for purpose. In some instances, existing RMA processes have been inefficient in delivering intended outcomes for system users and decision-makers.
9. This has contributed to uncertainty around development capacity, infrastructure delivery and investment, a lack of responsiveness to natural hazard events, emergencies and recovery efforts, and a system that has been poor in deterring offending. In addition to this, Cabinet has identified issues with the RMA acting as a barrier to certain farming and primary sector activities.

10. Due to the wide-ranging nature of proposals in RM Bill 2, the proposals have been grouped into five key themes for the purposes of this SAR: infrastructure and energy, housing growth, farming and the primary sector, natural hazards and emergency response, and other system changes. Problem definitions for each of these themes are below.

Infrastructure and energy

Consent duration and processing timeframes

11. Current RMA resource consent settings have caused uncertainty around consenting outcomes for infrastructure providers and renewable energy generators, particularly around the timeliness of obtaining consent and their duration. This has impacted development capacity for the delivery and operation of major infrastructure projects including long-lived infrastructure, renewable energy, and ports.
12. In the case of renewable energy generation, demand for electricity is projected to increase over the coming years. Longer timeframes for consenting decisions can impact the speed of renewable projects being developed and built, how current electricity supply is maintained, and how future electricity demand is met.
13. This can cause barriers for the development and continued operation of infrastructure as key decisions, such as funding and financing, and whether to proceed with a project, are linked to an applicant's ability to secure resource consent with a consent duration appropriate for the activity's intended lifespan. Applicants are also faced with increased frequency and overall costs of reconsenting existing operations.
14. There is evidence that the cost of consenting processes and the timeframes to obtain consent have increased over the lifetime of the RMA,[2] particularly for large infrastructure projects. In part, increased costs can be attributed to court proceedings, which do not form part of the RM Bill 2 proposals.
15. There is no evidence suggesting consent durations of less than 30 or 35 years are common for long-lived infrastructure or relevant renewable electricity generation projects. Nor is there evidence that consenting timeframes and consent durations are persistent issues across the RM system. There is limited information available to indicate the scale, impact, and the number of consents/applicants affected.
16. Regardless, there is an opportunity to ensure that consenting processes offer certainty to renewable energy and infrastructure operators by introducing a minimum consent duration of 35 years and a one-year time limit for processing these consents, as agreed by Cabinet.

Designations

17. While the existing RMA designations framework has enabled certain activities, it has not effectively facilitated the delivery of complex infrastructure projects and ports. This has contributed to uncertainty around outcomes of designations processes and increased project risk and compliance costs to the Crown, local government, and requiring authorities.
18. There is an opportunity to improve certainty for infrastructure providers and simplify the designations process to enable the delivery of infrastructure in a more effective manner.

Issues related to port infrastructure

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[2] *The cost of consenting infrastructure projects in New Zealand - A report for The New Zealand Infrastructure Commission / Te Waihanga*

19. Existing RMA settings have contributed to uncertainty around the future operation of ports. Port authorities have raised concerns over their ability to secure an alternative consent or plan provision to enable their continued operation prior to the September 2026 expiry date for existing marine occupation permits.
20. Port authorities are unable to designate land as they are currently not requiring authorities under the RMA.
21. There is an opportunity to provide certainty for port operators by extending the coastal permit expiry date for port authorities and extending requiring authority status to ports, as agreed by Cabinet.

Housing growth

22. New Zealand is experiencing a long-running housing crisis with a range of barriers to housing supply inflating house and land prices. This has impacted the delivery of options for affordable housing. Development capacity for housing needs to be balanced with the need for local communities to have input into what development is enabled and where it is located.
23. Recent national direction under the RMA, including the National Policy Statement on Urban Development (NPS-UD) and MDRS has sought to increase development opportunities in existing urban areas. However, the balance between prescriptive direction and providing for local choice has been difficult to get right. Concerns have been raised that the MDRS provides insufficient flexibility for councils and communities to effectively respond to housing and infrastructure pressures in areas experiencing growth.
24. Councils will need to be able to progress a plan change that is efficient and effective where they choose to remove or alter the MDRS. There are opportunities to design a flexible process that can be tailored according to the complexity of the plan change, balances risks to decision makers, and provides assurance Housing Growth Targets are met.

Farming and the primary sector

25. Cabinet has agreed targeted amendments can be made to the RMA to enable farming and the primary sector. While there is limited evidence to suggest that these issues are widespread across the RM system, there are opportunities to better enable certain activities under the RMA to deliver on the Government's manifesto and coalition agreement commitments.

RMA-Fisheries Act interface

26. Recent court decisions have resulted in the creation of additional rules which restrict fishing. This has created some uncertainty as to how resource use and protection is balanced for fishers, Treaty partners, and other interested parties. Both the RMA and Fisheries Act can be used to control the effects of fishing on biodiversity and other matters requiring protection. While some RMA plans do regulate fishing activities to manage effects, this practice is not widespread.
27. Some parties consider that clarification is needed around the role of the RMA when it comes to the regulation of fishing activities, particularly in relation to what is regulated under the RMA and when the RMA is used to regulate fishing. There is an opportunity to clarify the extent councils can use the RMA to control fishing for biodiversity and related values protection purposes to better align with the Fisheries Act 1996.

Freshwater farm plans

28. The existing Part 9A provisions for industry organisation delivery of freshwater farm plan certification and audit services are not fit for purpose. The provisions do not provide

sufficient flexibility, and a national programme must seek approval from multiple regional councils. This situation risks unjustified inconsistency in requirements and increased costs.

29. An effective approval pathway is needed, as without one it will be difficult to integrate suitable industry farm plan programmes into the freshwater farm plan system, resulting in unnecessary costs and duplication for farmers.

Marine aquaculture

30. Under the RMA marine aquaculture farms must have a coastal permit to operate. Requirements set in consent conditions must be complied with and mechanisms which enable minor changes to consent conditions during the term of consent are inefficient and uncertain. This makes it difficult for marine farmers to update their farm practices and may delay changes which enable them to adapt to climate change or improve management of environmental effects.
31. There is an opportunity to introduce more flexibility to change or cancel consent conditions for marine aquaculture activities, and to allow for innovation in farm practices.

Wood processing facilities

32. Cabinet has determined that current RMA timeframes for processing consent applications have impacted the capacity and productivity of wood processing facilities, contributing to increased costs for applicants.
33. While there is evidence of individual consents being delayed, there is no evidence of widespread delays to the cost and processing of these consents, nor is there evidence that wood-processing faces any additional consenting issues when compared to other activities. Regardless, there is an opportunity to ensure that the regulatory framework is enabling of wood processing activities, as agreed by Cabinet.

Natural hazards and emergencies

34. New Zealand is at risk from multiple natural hazards, of which the scale and risks are increasing, due to more intense and frequent storm events, and climate change related sea level rise. The RMA contains mechanisms which enable councils to manage and respond to natural hazards and emergencies.
35. However, these do not always enable the system to be as efficient, effective, and responsive as it could be. There is an opportunity to improve the system to help facilitate more timely emergency response and recovery processes and improve decision-making when it comes to natural hazard management.

System improvements

36. There is an opportunity to make improvements to the RM system which allow for greater efficiency and effectiveness. Targeted improvements will provide regulators (eg, councils, the Department of Conservation) with additional tools to help safeguard the environment and human health and improve the regulatory quality of the RM system. These improvements could:
    a. support a well-functioning resource management compliance and enforcement regime through introducing a range of improvements, some of which were considered as part of previous resource management reforms
    b. address gaps in the system which prevent councils from being able to cost-recover for activities directed by national direction, or common compliance and enforcement activities, resulting in less costs being imposed on the council and passed onto ratepayers, aligning with the user-pays approach

c. clarify the original policy intent of the RMA in instances where more clarity is needed, such as clarifying that sand and shingle royalties are to be collected
d. clarify how councils can manage discharges as permitted activities under section 70 (to address regulatory uncertainty arising from recent court decisions on section 107 and section 70, and to align with changes to section 107 to enable improvement to freshwater over time.

What objectives are sought in relation to the policy problem?

37. RM Bill 2 is one component of a three-phase RMA reform work programme, which Cabinet has agreed will collectively deliver the following objectives:
    a. Making it easier to get things done by:
        i. unlocking development capacity for housing and business growth
        ii. enabling delivery of high-quality infrastructure for the future, including doubling renewable energy
        iii. enabling primary sector growth and development (including aquaculture, forestry, pastoral, horticulture, and mining)
    b. While also:
        i. safeguarding the environment and human health
        ii. adapting to the effects of climate change and reducing the risks from natural hazards
        iii. improving regulatory quality in the resource management system
        iv. upholding Treaty of Waitangi settlements and other related arrangements.
38. In addition to supporting the delivery of the RMA reform objectives agreed to by Cabinet, RM Bill 2 supports the delivery of policies relating to Electrify NZ, Infrastructure for the for the Future, GfHG, and the Primary Sector Growth plan.
39. More specifically, the objectives of this package of amendments proposed by Cabinet are to:
    a. deliver quick, low complexity amendments across the five themes identified in this SAR
    b. deliver short to medium term impacts for system users affected by the proposals, and
    c. ensure system consistency and provide certainty and continuity for system users by delivering amendments that are transferrable into a future RM system.
40. More specific objectives have been developed to assess each individual policy proposal (refer to Appendix 1).

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

Focus of this SAR

41. This SAR is intended to provide an overarching overview of the RM Bill 2 programme, by bringing together the differing policy interventions under one umbrella. Consideration of the proposals and their costs and benefits has been done at a high level.
42. Standalone impact analysis documents prepared for each policy area[3] provide more detailed analysis in terms of impacts, costs and benefits on the specific policy proposals.

What scope will options be considered within?

43. The scope of the policy proposals considered has been constrained through the policy direction set by Cabinet and the Minister Responsible for RMA Reform. The package of amendments has been informed by coalition commitments/National Party manifesto items, timing of impact, level of complexity, and 'least regrets.'
44. Limited engagement with stakeholders and iwi/Māori has taken place, due to constrained timeframes for policy development. Therefore, the proposals have not been informed by stakeholder feedback. Where appropriate, previous consultation on the NBA has been used to inform policy making. This applies to some of the system improvements and emergency response proposals contained in this SAR.

What options were considered by Cabinet?

45. Cabinet considered a single option which was to proceed with a package of RM amendments which unlock development in infrastructure, housing and primary industries, and drive a more effective RM system.
46. MfE acknowledges that there are alternative options which could have been considered by Cabinet as part of the RM Bill 2 package, including retaining the status quo.
47. However, the RM Bill 2 package has been developed to support the implementation of specific government and coalition commitments. For example, the Government has committed to requiring decisions on resource consents to be issued within 1 year, and consents to have a 35-year duration for renewable energy, as part of Electrify NZ manifesto commitments.
48. In June 2024, Cabinet agreed to the scope of a second RMA amendment Bill, subject to further policy development and advice. As determined by Cabinet, these amendments will deliver on:
    a. changes to RMA consenting processes,
    b. improved certainty and simplified designations processes,
    c. extension of section 384A permits (ports),
    d. GfHG commitments,
    e. amendments to the interface between the RMA and Fisheries Act 1996,
    f. improved system effectiveness,
    g. amendments to Part 9 of the RMA to support more cost effective and efficient freshwater farm plans, and
    h. improved natural hazards and emergency provisions.
49. Cabinet delegated detailed policy decisions to the Minister Responsible for RMA Reform, and relevant portfolio Ministers. Ministers have considered advice on alternatives to deliver on the original policy intent of these proposals.

[3] Refer to documents outlined in Appendix 1.

50. Since the initial policy templates were completed for each key proposal, Ministers have agreed to include additional proposals within the scope of RM Bill 2, including:[4]
    a. enabling two new Ministerial intervention powers to ensure compliance with national direction (including Housing and Business Capacity Assessments (HBA) required by the NPS-UD), and
    b. changes to the Streamlined Planning Process (SPP) that require the use of Independent Hearings Panel, which the Minister can appoint up to half the members of, and making the council, instead of the Minister, the final decision-maker. These amendments apply to any plan change using the SPP.
51. A system-wide approach has been taken to adopting these changes, ensuring that, where possible, all topics and activities are treated the same under the RMA. This enables some of these proposals to deliver for a wider group of system users, ensuring system consistency.

What was the Government's preferred option, and what impacts will it have?

Overall impacts of RM Bill 2

52. Due to the constraints this SAR has been developed under, there are gaps in our understanding of the impacts of some policy proposals. For example, we cannot anticipate the exact scale and impact of any unintended consequences which may arise from giving certain activities/industries preferential pathways under the RMA, or how these changes will be received by stakeholders.
53. An indication of this could have been provided through more extensive engagement on the policy proposals. However, the select committee process will provide an opportunity for stakeholders to express their views on the policies introduced.
54. MfE acknowledges that the scope of the amendments proposed will be seen by some stakeholders as not wide enough to address more complex issues with the RMA. However, a trade-off has been made ahead of more substantive changes to the RM system. RM Bill 2 has been tightly scoped to enable changes that are low complexity and will have immediate impact, within existing RMA policy settings, and limit legal uncertainty.
55. Due to the wide-ranging nature of the proposals, an assessment of the overall impacts of the proposals is best organised by the five key themes in RM Bill 2.

Infrastructure and energy

56. Cabinet's preferred package of amendments to the RMA deliver on the RMA Reform objective of enabling the delivery of high-quality infrastructure for the future, and government manifesto commitments outlined in Infrastructure for the Future and Electrify NZ. The amendments to designations and consenting provisions are expected to support the timely delivery of infrastructure.
57. Introducing a time limit for processing specific consent applications might help address concerns that timeframes are too long and uncertain for major infrastructure projects (such as renewable energy) and wood processing facilities. However, introducing a one-year timeframe for processing consent applications may not actually result in a change to processing times, as there is limited evidence of this problem in the current system.

[4] Appendix 3 provides impact analysis on these proposals

However, it provides applicants with greater certainty around when a decision on their consent application will be made.

58. New hydro and geothermal energy generation have been excluded from the one-year processing of consents proposal. This is in recognition of the significant impact the establishment of these activities can have on Māori freshwater rights and interests, due to the impact diverting, damming, or altering water flow could have on the spiritual and cultural connection Māori hold with these taonga under the Treaty of Waitangi. This approach aligns with the Electrify NZ manifesto commitment. This is not to say that their ongoing operation does not impact these values.
59. It is anticipated that introducing a 35-year consent duration for renewable energy and long-lived infrastructure will provide developers with greater certainty to be able to operate into the future. This will help reduce ongoing costs with the risk of re-consenting where a shorter duration is granted (though there is little evidence of this issue, and concerns about the long-term viability of the asset for infrastructure providers, when compared to the status quo.
60. The current RMA framework enables port activities to be provided for through district plans. However, plan provisions often do not accommodate further intensification and expansion of port operations. Expanding requiring authority status to ports will address a barrier in the system by enabling them to designate land and enable their continued operation and expansion where appropriate. This approach aligns with the existing RMA designations framework, and will not alter the processes, checks and balances already in place.
61. Changes have also been proposed to improve the efficiency and effectiveness of notice of requirement (NoR) assessment processes. This includes a proportionate test where requiring authorities can focus NoR information and technical assessments to the actual effects of the proposal on the environment. Alternatives assessments and 'reasonably necessary tests' will only apply to land that is not owned by a requiring authority.
62. Where a requiring authority has an interest in land or owns it, alternatives assessments will then be aligned with those required for resource consent applications. Councils and courts will not be obligated to have particular regard to the adequacy of alternatives considered beyond the general obligations to manage impacts on the environment. It is expected that these changes will reduce compliance costs, timeframes for preparation and assessment of notices of requirement, and project risk. Public participation, decision-making, and appeal rights will not be changed through these proposals.

Housing growth

63. Changes relating to housing growth within scope of RM Bill 2 are expected to improve the flexibility of the RM system and support the implementation of the GfHG manifesto commitments. The overarching objective of GfHG is to "improve housing affordability and increase competition in urban land markets by significantly increasing the supply of developable land for housing both inside and at the edge of our urban areas."
64. The housing proposals in RM Bill 2 will help address feedback received from councils on the MDRS by embedding the flexibility to effectively respond to unexpected circumstances. This will ensure that plan changes to remove or modify the MDRS are undertaken in a more effective and efficient manner and are tailored to reflect the complexity of issues dealt with in plan changes.

Farming and the primary sector

65. The package of RMA amendments may help drive investment into the primary sector, providing system users with certainty that the RM system will not be a barrier to certain activities such as wood processing and aquaculture. These amendments also support the implementation of the government's Primary Sector Growth Plan.
66. The proposals amend the RMA-Fisheries Act interface will provide certainty that biodiversity and related marine protections under the RMA are better balanced with

considerations of fishing rights and interests. The proposals will also maintain the integrity of the RMA as a mechanism for the management of biodiversity and other related values in the coastal marine area.

67. Impacts of the changes to consent processing timeframes for wood processing facilities are aligned with those for infrastructure and renewable energy. This proposal will provide applicants with greater certainty around when a decision on their consent application will be made.

68. Amending the RMA to facilitate changes to resource consent conditions for aquaculture in a more efficient and effective manner will reduce regulatory burden for the aquaculture sector. This will support innovation and growth within the sector, particularly around farming practices.

69. Proposed amendments to Part 9A will provide an improved pathway for industry organisations wishing to deliver freshwater farm plan certification and audit services to their members. Providing more flexibility, and national approval (by the Minister for the Environment) will enable effective integration of suitable industry farm plan programmes into the freshwater farm plan system, removing duplication and reducing costs to farmers.

Natural hazards and emergency provisions

70. Five amendments are proposed to RMA natural hazards and emergency response provisions. These proposals target RMA processes for emergency response and recovery, and how councils manage and account for natural hazards in decision-making. This will support adaptation to the effects of climate change and reduce the risks from natural hazards and safeguard the environment and human health.

71. Amendments relating to natural hazards support climate change adaptation by limiting future development in areas that are inappropriate for development because of significant natural hazard risks.

72. Under the status quo, councils rely on natural hazard maps and information that may be out-of-date and incorrect when issuing land use consents, resulting in development occurring in areas with inappropriately high levels of risk. The ability to use the latest hazard information for land use consents, and bringing in hazard planning rules faster, allows decision-makers to make better decisions that restrict new development in areas subject to significant natural hazards.

73. The proposals relating to emergency provisions are expected to improve the effectiveness and efficiency of emergency response. These amendments would reduce the administrative burden on councils during an emergency by enabling them to prioritise resources into immediate emergency response needs.

74. Two of the proposals on emergency provisions have been consulted on through submissions on the now-repealed NBA. Submissions on the relevant NBA provisions indicated support for these changes.

System improvements

75. Proposed improvements to the RMA compliance and enforcement regime will both improve current tools for regulators (eg, councils and the Department of Conservation) and provide them with additional tools to perform their functions under the RMA. It is anticipated these changes will contribute to compliance and enforcement activities under the RMA being undertaken in a more effective manner, help deter system users from offending under the RMA, and result in better regulatory and environmental outcomes.

76. Where applicable previous consultation processes have been used to inform development of the proposals. Local government practitioners were also consulted on the proposed changes as part of engagement for RM Bill 2. Feedback received from stakeholders indicate a level of support for these amendments.

77. Some of these amendments are more technical in nature and reflect the original RMA policy intent in circumstances where drafting has been unclear. These proposals will

deliver on consistency and certainty in the system through ensuring that decision-makers are interpreting and applying these provisions (eg, provisions relating to sand and shingle royalties) in a manner which reflects the policy intent of the RMA.

78. Addressing gaps in the ability of councils to cost-recover for activities relating to compliance and enforcement consent reviews directed by national direction will reduce the likelihood of costs being incurred by councils and passed onto ratepayers. This approach will also align with the polluter-pays approach for compliance and enforcement related changes, and the user-pays approach for consent reviews.
79. Recent court decisions have reduced the scope of councils to consent or permit discharges in certain circumstances, creating regulatory uncertainty. An amendment will address the regulatory uncertainty and provide councils clear direction on the development of permitted activity rules for discharges, ensuring conditions that result in improvement to freshwater quality over time.
80. A similar amendment has been made through the Resource Management (Freshwater and Other Matters) Amendment Act 2024 to enable consents to be granted in these same circumstances. Without this change, councils have said they would be restricted from providing permitted activity pathways for certain discharge activities and this would significantly increase the number of resource consents needed. This would also risk creating a consenting volume too large to process within the required timeframes, therefore removing councils' ability to recover consent processing costs.

What are the marginal costs and benefits of the option?

81. This section analyses the costs and benefits of undertaking all the amendments in the Bill 2 package.

Constraints on the availability of data and lack of engagement mean the analysis of costs and benefits is qualitative

82. Constraints on the quality of analysis include the availability of evidence and data, limited timeframes to engage with stakeholders, and information on monetised benefits not being readily available.
83. The analysis contained in the table below can only be seen as indicative and has been prepared in a manner which attempts to best reflect the RM Bill 2 policy proposals as a cohesive unit. It is difficult to provide an estimate of monetised costs for affected parties across the wide-ranging package of amendments delivered through RM Bill 2.
84. Across the package of amendments, the costs and benefits are expected to be distributed differently across affected parties. For example, the renewable energy sector is expected to benefit from changes to consent processing timeframes and consent duration in comparison to other consent applicants. These changes may disadvantage system users who will need to go through existing RMA pathways, which may create uncertainty for these applicants.
85. Some of the proposed amendments will have their impacts distributed over time. The proposal to give natural hazard rules immediate legal effect will see their impacts commence faster, in comparison to amendments to RMA emergency provisions which will arise during emergency response.
86. Some policies have been tested through targeted engagement with local government groups, planners, lawyers and stakeholders, some PSGEs and some iwi and Māori groups. However, members of the public and wider iwi and Māori groups have not been consulted due to constraints. Therefore, it is difficult to determine how these proposals will impact them and the level of support for these changes. The select committee process will provide an opportunity for public input.

Affected groups *(identify)*	**Comment** *Nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional <u>costs</u> of the preferred option compared to taking no action			
System users	On-going - Some uncertainty may arise (including legal uncertainty) associated with changes to existing processes and requirements. System users may incur more costs and time navigating these new processes and requirements. Could result in more applications being declined as there is less flexibility for decision makers in the system. Certain system users will not be able to access new pathways.	Low – only a specific proportion of system users will be impacted. While the immediate cost of uncertainty may result in system users incurring additional professional services costs (planner and lawyers etc.) as they navigate the system changes, this should taper off as changes become imbedded and practitioners and councils become more familiar with the changes. The National Monitoring System (NMS) showed that in 2022/23 the average fee charged for a non-notified consent was $4,680 and for a notified consent was $17,552. If consent authorities incur an additional 10% of time to deal with the uncertainties created by system changes this could add $1,756 to the cost of the average notified consent. System users would also incur application costs in order to present a complete application. It is unknown how much these professional services and fees may be. In terms of large-scale development	Low – insufficient evidence which demonstrates that issues exist and are widespread across the system. No calculation of the full costs incurred by system users has been estimated. It is unknown how many system users will lodge consents under the new system and how many will wait for further RM system reform.

		opportunities such as new long-term infrastructure activities, these costs would be proportionately low. For more modest applications, the costs are relatively higher per application but would even over time as case law removes uncertainty and practitioners consolidate practice. There may be latent development costs associated with system change, in particular that system users may delay using the system changes until certainty of practice is assured. Additionally, system users may delay using the new changes if they think there will be additional benefits from RM Phase 3 system changes that would be more beneficial.	
Local Government	On-going – Consent authorities will be required to come up to speed with the system changes quickly. It is likely that consent authorities will rely on existing resources to implement the new requirements, leading to reprioritisation of workloads. Certain pathways under the RMA are changing and will require an update to council plans and processes.	Medium – depends on existing council resourcing and scale of the impact these changes will have on individual councils (eg, some councils may see an increase in consent applications for long lived infrastructure versus others, and some councils may incur costs of withdrawing and resubmitting plan changes – where councils have already partially completed processes eg, IPI	Low – difficult to quantify how much more council resource will be required for RM Bill 2 changes, and how this is balanced out by benefits of the proposals for council resourcing.

	Some consent authorities may apply for additional funding, particularly if new plan changes are required (MDRS), from councils Long Term and Annual Plans, which could require diverting funding from other council programmes of work. There may be some additional costs to consent authorities where the Bill proposes additional decision points (eg, whether to hold a hearing, which pathway to use for incomplete further information requests) which may result in judicial reviews against consent authorities.	hearings, these costs will be lost).	
Central Government	One-off – Implementation guidance will need to be developed to support councils and system users. Updates to monitoring and evaluation of system effectiveness may be required.	Low – costs will be met by existing resource management reform funding.	High - costs associated with legislative changes to the RMA are met by MfE.
Treaty Partners, Iwi, Māori and hapū	On-going - Reduced opportunities for participation in the system. Mechanisms have been built into the policy to enable requirements in Treaty settlement legislation to be met. However, mechanisms for meeting requirements in other arrangements	Low – only applies to specific provisions and pathways under the RMA. The cost of loss of iwi involvement in decision-making may be high in terms of their value as kaitiaki, but the costs to the environment should remain low as consent authorities shoulder the regulatory	Low - it is difficult to quantify how loss of participation is a cost incurred, both by iwi and to the environment. No estimate has been attempted to determine the balance of these costs against the potential

	(eg, Mana Whakahono ā Rohe and iwi management) do not exist across all proposals. Some proposals may result in a devaluing (loss of mana) of iwi involvement in decision-making and result in less total, and effective, iwi involvement in decision-making (eg, where new regulations enabled by the proposed changes make activities permitted instead of requiring consent, there will be no chance for iwi to participate in the decision-making that would normally have been available to them through their Treaty Settlement agreements.)	responsibility of sustainable management.	efficiency and certainty benefits of the changes
General public	On-going - reduced opportunities for participation in the system. Members of the public may incur costs associated with challenging the system in order to enable participation. Reduction in ability to influence decision making in some instances. Members of the public may perceive costs associated with degrading of the environment based on trade-offs made through these	Low – It is unknown how many members of the public will participate in challenging the system changes, or how many and to what extent they may consider that the changes will result in negative impacts/costs on the environment. It is unknow how much monetarised cost would be incurred by members of the public and the relative costs to the general public of these changes.	Low - no estimates of these costs can be realistically calculated at this time.

	changes to enable and support growth.		
Total monetised costs			
Non-monetised costs		Low- Medium	Low
Additional <u>benefits</u> of the preferred option compared to taking no action			
System users	Ongoing yet limited benefits associated with more certainty, improvements to the efficiency, effectiveness, and timeliness of RMA processes. Providers of certain activities, including renewable energy generation, infrastructure, wood processing facilities and aquaculture will particularly experience these benefits, in terms of indirect benefits such as certainty of tenure of consent, and directly in terms of not incurring additional application costs for shorter duration consents.	Medium – potential cost savings for some system users due to shorter timeframes for RMA processes. In 2022/23 average costs for notified consents were $17,552, applicants who have default 35-year consents will no longer have to incur these costs on a less than 35-year basis.	Medium – it is unknown how many applicants will benefit from these changes as the number of renewable energy generation, infrastructure, wood processing facilities and aquaculture applicants may change over time.
Local Government	Ongoing yet limited benefits of flexibility being embedded into the system, additional tools to support their duties under the RMA (such as the decision not to hold a hearing), and more certainty in decision-making processes (eg, immediate legal effect of natural hazard plan changes).	Medium – potential cost savings associated with more efficient decision-making.	Low – the savings costs have not been calculated due to time constraints
Central Government	No tangible benefits have been identified for central government as these changes are primarily targeted towards local government and system users.	Low – difficult to determine if any benefits will be realised.	High – while central government has system stewardship of the RM system, they are not the

			primary decision –makers.
Treaty partners, iwi, Māori, and hapū	On-going -Treaty partners, iwi, Māori and hapū who are system users may benefit from some of the amendments which enable infrastructure and housing. The proposed information requirement changes for applicants (proportionate assessments and further information request) may result in better quality applications which will benefit iwi as submitters. The changes to emergency management and natural hazards may disproportionately benefit iwi as 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. 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	Low – it is difficult to determine which proportion of Treaty partners, iwi, Māori, and hapū will take up the new pathways proposed.	Low - proposals have not been widely consulted on.

	disproportionately higher.		
General public	Ongoing community benefits achieved through the delivery of infrastructure and housing.	Low – these benefits are likely to be concentrated in specific areas.	
Total monetised benefits			
Non-monetised benefits		Low	

Section 3: Delivering an option

How will the new arrangements be implemented?

87. Amendments to the RMA will give effect to the proposed changes. RM Bill 2 is expected to come into effect in mid-2025, with implementation by councils and central government to follow.
88. The individual policy templates outline the specific implementation requirements, and plans for monitoring, evaluating and reviewing proposals.[5]

Councils have a significant role in implementation of the proposals

89. The proposed changes require councils to update their plans through existing RMA processes (eg, Schedule 1 plan changes or the SPP), review certain consents, and update specific processes around consents and designations.

Central government agencies have a role in implementation of the proposals

90. The proposed changes will require central government to provide advice on the use of regulation-making powers in the event of natural hazards, emergency works, or recovery efforts.
91. The Director-General of the Ministry for Primary Industries (MPI) is required to review certain section 32 evaluation reports for plan changes that propose rules that control fishing and must determine whether they concur with the assessment.

Central government agencies will also provide implementation support

92. MfE will work with other government agencies, councils and key practitioner groups (eg, NZPI, RMLA, Taituarā) to support implementation of these changes. Implementation support will involve:
    a. new or updated guidance, including fact sheets on each key policy proposal,
    b. engagement with councils and stakeholders to understand key implementation issues and provide responsive guidance,
    c. where appropriate, transparent monitoring and evaluation of implementation (eg, being clear about how central government will be monitoring processes to remove or alter the MDRS).
93. We anticipate that some elements of RM Bill 2, such as the GfHG proposals, will require more implementation support than others. The extent of implementation support will be determined by ministerial priorities for agency resourcing.

Implementation risks

Engagement with iwi and Māori

94. Due to timeframes for delivery of RM Bill 2, there has been limited engagement with iwi and Māori on the proposals. Thorough engagement with iwi and Māori ahead of announcing the package of proposals would improve implementation of the provisions and assist in mitigating the potential for unintended consequences for iwi and Māori.

Uptake of certain proposals depends on sector-readiness

95. Certain elements of the package, such as the changes to renewable energy and certain long-lived infrastructure consents and the changes to the farm plan regime, rely on

[5] Refer to documents listed in Appendix 1.

industry stakeholders to be ready to act. There is a risk that some proposals are not able to deliver immediate impact as industry stakeholders take time to invest in the capability required to take up amended consenting pathways or offer farm plan certification and audit services.

The RM system is undergoing significant change

96. The RM Bill 2 package is being introduced alongside other changes to the RM system, including changes to national direction tools, a new fast-track approvals process, and amendments to the RMA through the Resource Management (Freshwater and Other Matters) Amendment Bill, ahead of RM Phase 3 reforms.
97. This may create longer-term uncertainty in the system and place additional pressure on council resources.
98. For councils currently implementing changes required by the previous Government as part of the Resource Management (Enabling Housing and Other Matters) Amendment Act 2021, there may be some reluctance to adopt new proposals given how sharply the legislative direction has changed.

Some councils may have limited resourcing to implement these changes

99. Some councils may face challenges with balancing new implementation requirements against existing council resourcing – particularly where proposals require resource-intensive plan change processes or consent reviews, such as the housing growth, or primary sector proposals.
100. We anticipate that the scale of the impact on council resources will differ. Some may be better placed to adapt to these changes than others. It is not possible to determine the scale of these impacts, or on which councils they will have the most effect, without significant consultation with councils about the whole package. Significant consultation has not taken place due to condensed timeframes for delivery.

Court decisions may impact implementation

101. Some system users may challenge how councils implement these proposals through the courts. Any such court decisions will impact how these amendments are interpreted and applied by councils.
102. Where any significant misalignment emerges, risk can be mitigated by making amendments to legislation or national direction.

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

Councils have a role in monitoring implementation

103. Councils will be responsible for monitoring the new arrangements as part of their regulatory functions under the RMA. Where there are unintended consequences, or defects in the proposals, councils will likely bring these to the attention of the responsible Minister.

MfE has a key role in monitoring, evaluating and reviewing implementation of the overall package

104. At a high level, MfE will monitor trends in implementation including by:
    a. Engaging in business-as-usual engagement with councils. This will allow MfE to monitor the implementation of the proposals, and quickly identify any unintended consequences of the proposals.
    b. Monitoring trends in data collected under the NMS. This data will provide MfE with trends in:

i. declined land use consents, which we might see increase slightly if there are more consents declined on the grounds that they are subject to significant natural hazard risk
ii. use of section 37 and section 82, which we might see decrease if changes to further information requests are effective
iii. number of enforcement actions and staff resourcing for monitoring and enforcement. We might see an increase in staff resourcing for monitoring and enforcement to increase if cost recovery proposals are successful, and a slight spike in enforcement action, followed by a downward trend in enforcement action, if the proposals to deter offences are effective.

c. There will be opportunities to review the data collected under the NMS in time, to ensure that the data allows MfE to effectively monitor the system. When the data collected is next under review, it is likely MfE will want to collect more specific data to support monitoring of these proposals (eg, collecting data on the number of declined land use consents because of natural hazard risk, the number of renewable energy and long-lived infrastructure consents issued, time taken to process these consents and other data sets).
d. Building consent data is monitored by MfE and HUD. This data helps us to identify trends in consented housing, and consented housing typologies. We would expect to see no reduction in building consents for new dwellings if the housing growth proposals are successful.

The Minister for the Environment has oversight of planning processes under the RMA

105. Many of these proposals will be implemented through changes to planning documents. As part of existing process, the RMA requires councils to consult with the Minister for the Environment when preparing a proposed plan or plan change. The housing growth proposals require the use of an SPP process that will be closely monitored by MfE and HUD officials.
106. The requirement to consult allows the responsible Minister and MfE officials (and other agencies) to provide input into the plan changes that implement RM Bill 2 proposals should it be required. In some instances, agencies may be required to submit on plans, which is the status quo under the current RMA.
107. We note that agency resourcing can be a barrier to the extent to which agencies are able to monitor and evaluate plans and plan changes as part of business-as-usual.

MfE has a key role in monitoring, evaluating and reviewing the emergency response provisions

108. MfE will have a key role on advising the Minister for the Environment on regulations required to respond to natural hazards, emergency works, and recovery efforts. Inbuilt into these provisions are the requirement that the Minister for the Environment consults with other affected ministers, the committee of the House of Representatives that deals with secondary legislation, and other persons as the Minister sees fit, to ensure that the regulation-making power is implemented appropriately.
109. As natural hazards are increasing in frequency, agencies are rapidly improving their understanding of how the regulatory environment can be more responsive to the needs of those affected. Each time this power is used, MfE will be able to gather lessons learned and use these to ensure its future use is more effective.

The Ministry of Primary Industries has a key role in the monitoring the implementation of certain fisheries provisions

110. The Director General of MPI has a role in assessing section 32 evaluation reports, where they contain proposed rules that control fishing that are proposed for inclusion in a regional coastal plan. The Director General of MPI is responsible for determining whether they concur with the assessment, allowing a very direct means of monitoring the implementation of this proposal.

Proposed plans, plan changes and variations can be subject to legal challenge

111. As is the case under the status quo, proposed plans, plan changes and variations can be appealed, although certain planning processes under the RMA, including the SPP, have limited appeals. Court challenges often provide insights into areas of the RM system that require change.

Impact on Phase 3 of RMA reform

112. The changes made to the RMA through RM Bill 2 are intended to align with the policy direction set for Phase 3 of RMA reform by starting to reset the boundary between resource management and property rights based on effects.
113. The Government has committed to repealing and replacing the RMA in this political term. This means that the Phase 3 workstream runs parallel to the RM Bill 2 workstream, and the ability to use monitoring data from implementation of RM Bill 2 to inform policy development for Phase 3 is extremely limited.
114. However, where MfE is made aware of unintended consequences of the RM Bill 2 proposals through regular engagement with councils, there is a window of opportunity to provide for quick fixes through Phase 3.

Appendix 1: Impact Analysis Documents for RM Bill 2

These documents and their associated delegated decisions briefings will be proactively released on the Ministry for the Environment website.

1. Policy analysis of compliance and engagement proposals for inclusion in Resource Management Amendment Bill no.2
2. Policy analysis of designations proposals for inclusion in Resource Management Amendment Bill no.2
3. Policy analysis of natural hazards and emergency proposals for inclusion in Resource Management Amendment Bill no.2
4. Resource Management Amendment Bill no.2 – Addressing the Resource Management Act 1991 – Fisheries Act 1996 Interface
5. Extending the Duration of Port Coastal Permits under section 384A of the Resource Management Act 1991
6. Consenting I, Improving consent processing efficiency
7. Enable Council to cost recover for activities directed by National Direction
8. Implementing changes to the National Policy Statement on Urban Development 2020 and making the Medium Density Residential Standards optional for councils
9. Better managing outcomes for historic heritage
10. Amendments required to Part 9A of the Resource Management Act to provide for Industry Organisation delivery of freshwater farm plan certification and audit services
11. Consenting II- Providing more certainty on consent durations for renewable energy and certain long-lived infrastructure, and lapse periods for renewable energy
12. Consenting II - Providing more certainty on consent durations for wood processing facilities
13. Consenting II - Managing discharges under s 70 of the RMA

Appendix 2: Treaty Impact Analysis

Introduction

1. This Appendix provides a summary of Treaty Impact Assessments (TIA) undertaken as part of the development of RM Bill 2.
2. Where possible, mitigating factors are also captured and reflected, noting these are not present for all proposals. More detailed assessments are contained in the policy templates for each key proposal.[6]

Policy Proposals

3. The broad areas of analysis relate to:
    a. Infrastructure and energy
    b. Housing growth
    c. Farming and the primary sector
    d. Natural hazards and emergencies
    e. System improvements

Overall Assessment

4. The proposals will have impacts on Māori rights and interests, including some Treaty settlements and agreements. Key impacts identified include:
    a. the ability of Māori to use their land in a manner they see fit,
    b. disproportionate impacts on Māori due to location and underdevelopment of Māori land,
    c. environmental and cultural impacts on freshwater and coastal marine taonga and sites of significance,
    d. limited influence in consenting processes, particularly as it relates to sites of significance, Takutai Moana groups, freshwater and coastal marine taonga, and
    e. precluding options for addressing freshwater and geothermal rights and interests.
5. A more detailed assessment of impacts identified for each policy has been summarised below and included in the attached table.
6. RM Bill 2 has been developed within a relatively short time frame. This has impacted:
    a. Consultation – in particular, the availability of both officials and Māori groups to attend engagements, and the ability to provide detailed information on the policy changes, was limited. This has prevented full engagement with Māori including PSGEs.
    b. Analysis of specific Treaty arrangements – full consideration of potential impacts to Treaty settlement arrangements, statutory acknowledgement areas or process, Takutai Moana applications and existing groups, or on Māori more generally. This analysis is usually also informed by engagement with affected groups.
7. This limited consultation and analysis means it is not possible to quantify or comprehensively understand the full spectrum and scale of potential costs and benefits of the proposals.

[6] Refer to the documents outlined in Appendix 1.

8. Settled or claimant groups and the Crown are required to maintain and avoid risk to the durability of Treaty settlements. The principles of redress, active protection and partnership are all relevant to this assessment.
9. A detailed assessment of impacts identified for each policy has been summarised below and included in the attached table.

A review of the proposed changes show that:

Infrastructure and energy

10. Changes to resource consent processes are likely to have increased impacts on Māori. The extent of impacts will likely be dependent on the consenting process, including whether Māori have had an appropriate and adequate opportunity to be involved prior to the consent being granted.
11. The Bill requires a one-year maximum timeframe for consent processing of existing 'specified energy activities' and establishes default consent durations for renewable energy and infrastructure consents to improve process and outcome certainty for system users.
12. These consent processing times have not been applied to new hydro and geothermal energy developments. This is due to the significance of freshwater and geothermal resources on Māori economic and social wellbeing, and on Māori rights and interests in freshwater. These developments often involve taking, diverting, damming, or altering water flow, affecting the rights Māori hold in relation to freshwater and geothermal resources as taonga (treasures) guaranteed by the Treaty of Waitangi.
13. New hydro and geothermal developments may also preclude recognised rights and interests in freshwater and geothermal from being addressed by limiting future availability of resource allocation and options for governance.
14. Extending coastal port permits for another 20 years will enable ports to continue to operate lawfully under the RMA. This poses risks to the Māori-Crown relationship and was raised as a concern by Māori groups engaged with. The coastal marine area is a significant taonga to Māori, and the need for environmental protections was expressed, including as a food source for future generations.
15. To address this concern the RM Bill 2 includes a requirement for ports to notify Māori of any proposal for new or modified consents. Regional Councils will also have the ability to include review conditions on extended permits which may provide a limited opportunity to address some aspirations or concerns from Māori, particularly where there is a formal relationship through a Treaty settlement or other arrangement.
16. Designation changes are likely to have an increased negative impact compared to the status quo. In particular, the proposal to allow the landward part of ports to be designated may have negative impacts on access to the coast and coastal marine area by Māori.
17. This will also have impacts on Marine and Coastal Area (Takutai Moana) Act areas, particularly areas that are currently under claim, and Māori land and sites of cultural significance.
18. Increasing the designation default lapse period from five years to ten years will also mean requiring authorities have longer to implement designations, acquire land and compensate directly affected landowners. This longer period of uncertainty could lead to a lack of investment in the land, and a loss of social and economic wellbeing for affected Māori, as well as other landowners and parts of the community with interests in the land.

Housing growth

19. Through limited engagement with PSGEs there has been support for initiatives that will enable more affordable housing. However, concerns have also been raised about housing quality, particularly in relation to more vulnerable groups within Māori

communities such as the elderly, who are both more likely to need more affordable housing, and more vulnerable to poor health outcomes because of poor-quality housing.

Farming and the primary sector

20. Both the RMA and Fisheries Act can be used to control the effects of fishing on the environment, potentially resulting in duplication of responsibility and uncertainty for users. Changes are proposed to clarify the role of these two statutes, including ensuring RMA decisions do not prevent customary non-commercial fishing, and requiring RMA decisions to specifically consider effects on fisheries. These changes are expected to reduce uncertainty for fishers, Māori, and other interested parties, and provide a more effective balance between the use and protection of fishing resources and protection of the environment.
21. The Minister for the Environment will now approve industry organisations to certify and audit Freshwater Farm Plans instead of regional councils. Māori have an interest in the quality and compliance of Freshwater Farm Plans, as it impacts freshwater quality. Groups who have a relationship agreement with regional council through a Treaty settlement or other arrangement will still be able to raise compliance or practice concerns to regional council who will continue to monitor the delivery of certification and audit services.
22. The uncertainty around the cost and outcome of aquaculture applications means that marine farmers are less likely to seek resource consents to change their consent conditions. RM Bill 2 proposals will enable more flexibility to change or cancel consent conditions related to aquaculture activities. This increased certainty to be able to vary consent conditions will benefit all aquaculture participants, including Māori aquaculture participants.

Natural hazards and emergencies

23. Proposed changes will enable better response and recovery from emergency events (including from natural hazards) and help ensure decisions on where development occurs is based on up-to-date information on natural hazard risks.
24. 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, it is possible that disproportionate benefits (long-term avoided hazard risk) and costs (eg, the opportunity cost of developments not going ahead) may occur because of the natural hazard related changes.
25. There may be some implications for Treaty settlements where new regulation-making powers enable broad changes to the RMA, including removing the need for a resource consent for certain activities and thereby removing the need to notify affected protected customary rights groups, affected customary marine title groups, or statutory acknowledgement area groups etc.
26. Other regulation-making powers which could include the amendment of notification pathways, and the removal of Environment Court appeals could have adverse effects on Māori. These potential impacts are reduced by the inclusion of safeguards for all regulation-making powers, including the requirement for the Minister to consult with relevant Māori groups when making regulations.

System improvements

27. A range of changes are proposed to compliance and enforcement provisions in the RMA, principally to increase fines and improve enforcement processes and procedures. These changes were included in the now repealed NBA. The feedback from Māori ranged from general support to no objection.

Proposal 1 – Infrastructure and energy	**Renewable energy and long-lived infrastructure - consent timeframes and consent durations**
1. One-year consenting timeframes for renewable energy 2. Increasing default consent durations for renewable energy to 35 years and for long-lived infrastructure 3. Increasing consent default lapse periods for renewable energy from 5 years to 10 years 4. Extending coastal permits by 20 years for major port companies 5. Increasing designation lapse periods from 5 years to 10 years 6. Extending designation powers to inland and coastal ports 7. Streamline consenting and designation processes	Renewable energy projects can have positive effects for Māori by providing significant opportunities to advance development opportunities and economic wellbeing. Renewable energy and long-lived infrastructure developments such as geothermal and hydro power developments can significantly impact Māori rights and interests and redress options in relation to freshwater because they often involve taking, diverting, damming, or altering water flow, and potentially affecting the rights Māori hold in relation to these taonga (treasures) as guaranteed by the Treaty of Waitangi. For this reason, new hydroelectric and geothermal developments will not be subject to the one-year maximum consenting timeframe for processing resource consents. Longer freshwater consent durations and lapse periods for the freshwater use and development are also likely to have a broad impact on Māori rights and interests, and Treaty rights and settlements. This includes potentially precluding options for recognised freshwater and geothermal rights and interests being addressed through allocation and/or governance. Impacts will also be dependent on the consenting process, including whether Māori have had an appropriate and adequate opportunity to be involved prior to the consent being granted. The principle of redress is also an important consideration in the context of reducing the environmental and cultural harm that can occur due to infrastructure projects, and where Māori rights and interests are inadequately protected and provided for. **Port Coastal Permits** This proposal involves extending section 384A coastal permits for the 13 major ports by 20 years as their existing coastal port permits are due to expire in 2026. Feedback received from Māori groups through consultation in general understood the need for these coastal permits and the ongoing certainty that these provide for port operations, though preferred shorter extensions over longer periods. There were also concerns that this proposal would not allow affected groups to influence consenting and may have risks for the Māori-Crown relationship.

	These concerns were based on the historical importance of the coastal marine areas within their takiwā, the protection of taonga including kaimoana and the natural environment, and the need to protect and safeguard the space for future generations. Where joint decision-making arrangements already exist, it was felt these arrangements should continue to ensure mana whenua can be involved in any coastal port permit extension decision-making. Interaction with the Marine and Coastal Area (Takutai Moana) Act 2011 was raised, and groups noted that it is important that this proposal does not disrupt the process for proving customary rights and interests. Written feedback from some Māori raised a concern that this engagement fell short of that required by te Tiriti o Waitangi. Māori groups supported conditions being introduced on these permits which would require engagement, and the protection of taonga including kaimoana and the natural environment. RM Bill 2 therefore includes a requirement for ports to notify mana whenua of any proposal for new or modified consents. **Designations** These designation proposals, whilst improving designation opportunities and approval processes for requiring authorities, could negatively impact Māori land or land of significance to Māori. This could occur through designations being placed over land for longer periods of time before being implemented. These longer periods of uncertainty could lead to a lack of investment and development in Māori-owned land or land of significance to Māori. Port intensification and expansion in coastal areas may have Treaty implications, particularly where it relates to land adjacent to the coastal marine area, or over land that is or has been subject to a Treaty claim or settlement or is within a statutory acknowledgement area. This will also likely have impacts on Marine and Coastal Area (Takutai Moana) Act areas, particularly areas that are currently under claim, including before the High Court. Ports will also be able to designate land for the purposes of creating inland ports, but not for activities not associated with their current port operations. This could happen in a range of locations throughout the country which makes it difficult at this stage to assess how these designation powers might impact Māori rights and interests generally, and identify affected Māori land, Treaty settlements or other arrangements.

	Māori land has specific Treaty considerations that include the protection of rangatiratanga, promoting retention of land; and facilitating its occupation, development and utilization. Designation requirements can potentially override culturally significant Māori land protected under the Te Ture Whenua Māori Act 1993. Established public participation processes will remain unchanged such as consultation, submissions, hearings and appeal processes for affected parties, including Māori. Each designation is likely to have different impacts for Māori depending on its location and the nature of the proposal.
Proposal 2 – Housing Growth 1. Enable councils to modify or opt-out of implementing the MDRS through a modified SPP 2. New ministerial intervention powers: ○ direct councils to amend documents required by national direction; and ○ direct councils to use a SPP to address non-compliance with national direction	The option to opt-out of implementing MDRS will enable councils to decide where intensification occurs. This may provide greater opportunities for Māori to be involved in this decision-making. This will depend on the relationships Māori have with councils and the level of feedback council seek from Māori, sometimes as part of wider community consultation, before making this decision. Enabling councils to decide where growth is enabled may result in 'live zoning' occurring further from urban centres in lower socio-economic areas where Māori are more likely to live. The specific impacts on Māori would depend on the scale and type of new housing being enabled and built, and the types of newly established activities in those areas. Opting out of the MDRS and changes to ministerial intervention powers are part of the broader GfHG package which is expected to increase the supply of developable land for housing and business, which in turn has the potential to increase housing supply and development opportunities. This may improve housing outcomes for Māori. Targeted policy interventions to support improvements in housing outcomes for Māori could support steps to address the disparity in housing outcomes currently experienced by Māori. The type and quality of housing was raised as a concern through limited engagement with PSGEs. Māori communities in general, as well as specific groups within Māori communities such as the elderly, may be particularly impacted by poor quality housing as they are more vulnerable to economic hardship and poor health outcomes.

Proposal 3 – Farming and the primary sector

RMA-Fisheries Act interface

1. Only allow fishing activity rules in proposed regional coastal plans that have been notified
2. Require specific consideration of how council proposals will impact on fisheries
3. Ensure the RMA does not restrict or prevent customary non-commercial fishing
4. Ensure that fishing activity cannot be subject to rules that require a resource consent
5. Notified rules that limit fishing activity in areas of significant biodiversity will not have immediate legal effect.
6. MPI will have a quality assurance-based oversight role over council regarding fishing rules.

Freshwater Farm Plans

The Minister for the Environment will approve industry organisations to certify and audit Freshwater Farm Plans instead of regional councils

Marine aquaculture

Develop a new national environmental standard (NES) for aquaculture

RMA and Fisheries Act interface

Both the RMA and Fisheries Act 1996 can be used to control the effects of fishing on the environment. This has resulted in duplicated efforts from central and local government to monitor, regulate, and enforce fishing activities, and uncertainty in how resource use and protection is balanced for fishers, Māori, and other interested parties.

There is no clear statutory guidance in the RMA on how the rights and interests guaranteed under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Fisheries Settlement) are protected. Māori have raised concerns over risks to the continued and ongoing protection of customary non-commercial fishing rights through regulation-making powers under the Fisheries Act.

The RMA-Fisheries Act interface will be amended to clarify and constrain the extent to which councils can control fishing for marine protection purposes under the RMA. These amendments will support the upholding and consideration of Māori fishing rights and interests by ensuring councils do not restrict or prevent Māori customary non-commercial fishing. Councils will be required to consider the impacts on fishing when proposing marine protection rules, which will include consideration of the impacts on Māori commercial fishing interests.

Marine protection rules that impact fishing will only progress if included in a council notified plan. This will ensure that proposals which impact fishing are subject to the rigor of publicly notified plan changes and appeal processes. However, this may constrain the ability for third parties, including Māori, to progress some new marine protection proposals.

The Ministry of Primary Industries (MPI) will have a quality assurance-based oversight role over council decisions regarding fishing rules, which will include consultation with Te Ohu Kaimoana. This will have no further specific Treaty impacts.

Any amendments to the RMA-Fisheries Act interface creates risks for the Māori-Crown relationship due to different views between iwi, hapū, and Māori groups. Some whānau and hapū support use of the RMA as a pathway for local marine management, whereas some iwi have sought the removal of regional councils ability to make rules to control fishing in order to ensure Māori fishing rights are upheld.

Freshwater Farm Plans

Part 9A of the RMA requires regional councils to approve industry organisations to provide Freshwater Farm Plan certification and audit services. Engagement with stakeholders has shown that the current provisions lack flexibility, and the role of

	regional councils will lead to unnecessary costs, duplication, and limited national consistency. This regulatory approach makes it difficult for organisations to operate nationally, or to provide services across multiple regions or council jurisdictions. Industry organisations support the proposal that the Minister for the Environment should approve industry organisations to certify and audit Freshwater Farm Plans instead of regional councils. Targeted consultation was undertaken with Māori organisations and representatives. PSGEs have been informed of the Government's intention to make changes to the Freshwater Farm Plan system with some limited engagement. Freshwater Farm Plans were raised as an area of interest by PSGEs in relation to their potential impacts on freshwater quality. Groups who have a relationship agreement with regional council through a Treaty settlement or other arrangement will still be able to raise compliance or practice concerns to regional council who will continue to monitor the delivery of certification and audit services. It was recommended that the criteria for ministerial approval of industry organisations could enable a PSGE, legal entity (River or waterbody) and or an authority that represents iwi and community to participate in this process. This would enable protection of waterways and sites of significance within the rohe. Several Māori groups noted that any policy decisions should take a holistic approach and noted the importance of Te Mana o te Wai and the restoration of the mauri of water bodies as important to Māori. Some Māori groups made submissions that supported industry organisations to play a stronger role in the Freshwater Farm Plan system. **Marine Aquaculture** The uncertainty around the cost and outcome of aquaculture applications means that marine farmers are less likely to apply to change their consent conditions. This proposal involves developing a national environmental standard relating to aquaculture activities (NES-MA) that will provide a more enabling activity status for applicant-initiated applications involving changes to consent conditions. This increased certainty will complement the extension of marine farm consent durations. These streamlined approval processes will likely benefit Māori aquaculture participants. Engagement with Māori has been limited due to the tight timeframes for policy development. However, this proposal will enable changes that may bring benefits for aquaculture uses broadly, which will include Māori aquaculture participants, including streamlined processes to change consent conditions. The development of this NES would be subject to consultation and potential amendments in response to submissions received As the proposed change will not involve the consenting of new aquaculture space, there will not be impacts on settlements through the Māori Commercial Aquaculture Claims Settlement Act 2004. The proposed change is enabling rather than

	prescriptive and is unlikely to have a direct impact on Treaty or settlement considerations but could have an impact through the subsequent associated amendments made to the NES-MA.

Proposal 4 - Natural hazards and emergencies 7. A new regulation-making power to respond to and recover from emergency events 8. Notifying occupiers of emergency works 9. Extending timeframes for retrospective consent for emergency works 10. Councils may decline land-use consent applications, or impose conditions on land-use consents where there are natural hazards 11. Natural hazard rules to have immediate legal effect from notification of a plan or plan change.	**Regulation making power** In areas that are subject to statutory acknowledgements, some consent authorities are required under the settlement legislation to give PSGEs a summary of each relevant resource consent application. Where a new regulation makes these activities permitted, no application will be lodged and therefore no notice will be given. In addition, the RMA requires the consent authorities to notify the PSGEs of each resource consent application for an activity within, adjacent to, or directly affecting a statutory area and to have regard to the statutory acknowledgement. New regulations may affect these processes (and other agreements between councils and iwi) either by making activities permitted or when making activities controlled - by removing the rights for Māori to be a submitter (with associated appeal rights to the Environment Court) and replacing them with simpler 'consultation' rights. The amendment of notification pathways, and the removal of Environment Court appeals could have adverse effects on Māori. These potential impacts are reduced by the inclusion of safeguards for all regulation-making powers, including the requirement for the Minister to consult with relevant Māori groups when making regulations. **Notifying occupiers of emergency works** Whilst Māori were not able to be consulted as part of the development of these legislative proposals, the following impacts are considered likely: • the requirements for notifying occupiers of land affected by emergency works may disproportionately affect Māori as a significant amount of hazard-prone land is rural land that is owned or occupied by Māori, and • 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. However, there is a high threshold required to trigger provisions allowing the ability to carry out emergency works on land. In the alternative, if this change is not approved then works might not be carried out which may result in disadvantage to Māori occupiers or owners. **Extending timeframes for lodging emergency consents** The proposal presents a risk that activities can be lawfully undertaken regardless of an adverse environmental impact (including on matters of importance to Māori) for longer. This risk may be appropriate in emergency circumstances where

	there is a risk to the environment, safety, or a serious risk to property. There will be costs to Māori as participants in the RMA system. Once a retrospective application is made Māori can choose to be a submitter if they have been notified in the normal way. However, the longer the time between the works happening and the consent being applied for, the longer the risk that unmitigated adverse environmental effects may be occurring (eg, discharge to streams). Māori may wish to gather evidence of this longer than normal adverse effect and there may be costs associated with collection of this data that may inhibit this from taking place. Being a submitter is a normal RMA process and Māori will be aware of the costs and resources involved. These costs often prohibit Māori from taking part in these processes. There may be environmental costs associated with natural hazard events which cannot be mitigated, such as stream works to remove silt which result in temporary loss of riparian vegetation and a permanent loss of some stream fauna. Māori may disproportionately bear these costs. **Ability to decline land-use consents in natural hazard areas** 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. For Māori applicants a disproportionate number of land use consent applications may need to provide natural hazard risk information. Providing this information can impose an additional cost for applicants where technical advice is required. This could place additional pressure on existing resources and the ability of Māori to engage in resource management processes. In the medium to longer term, the benefits from avoiding these natural hazard risks could outweigh these short-term consenting and development costs. This is because development will occur in areas where the level of natural hazard risk is appropriate to the type of development proposed. These measures will have positive flow-on effects in terms of protecting life and property from damaging natural hazard events. Māori are also afforded rights and interests over land and assets through Treaty settlements, statutory acknowledgements and other agreements. This could impact their ability to utilise their land. In these situations, suitable measures to ensure continued cultural connection to the land, and alternative uses of the land could be developed and considered. **Natural hazard rules having immediate legal effect** The analysis under ‘Ability to decline land-use consents in natural hazard areas’ above, is also relevant in this section. This proposal will increase the importance of pre-notification engagement by local authorities with Māori consistent with current Part 1, Schedule 1 plan-making processes under the RMA. 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. The increased importance of pre-notification engagement may place additional pressure on existing resourcing constraints and may affect the ability of iwi / Māori to effectively engage in resource management processes. This highlights the importance of local authorities providing sufficient time for engagement to occur.

Proposal 5 – System Improvements	**General**
Strengthened compliance and enforcement powers that would include: 8. Reducing the maximum term of imprisonment for RMA offences from 2 years to 18 months so that prosecutions are heard as judge-alone trials rather than a jury 9. Increasing RMA fines for offending to $1,000,000 for individuals and $10,000,000 for corporate offenders 10. Prohibit insurance that indemnifies a person against financial penalties for RMA offences 11. Increase the term of excessive noise directions from 72 hours to 8 days. 12. Increase the fees for infringement notices 13. Enable electronic service of documents 14. Amending regulations for fines and fees 15. Enable consent authorities to initiate a review of conditions of	The Crown has a responsibility to ensure that environmental regulators act effectively and efficiently to intervene when unlawful pollution or resource exploitation is being undertaken. Previous engagement was undertaken with Māori when the same package of changes was introduced as part of the now repealed NBA. At that time, feedback on the suite of compliance and enforcement system changes proposed ranged from general support to no objection. Pursuant to the Treaty of Waitangi the Crown has obligations to Māori including the duty of active protection. Improvements to efficiency and effectiveness of the environmental regulatory system benefits both Māori and the community at large. **Judge Only trials** This proposal will streamline prosecution processes and enable more timely enforcement actions under the RMA. This is expected to help reduce offending and limit adverse environmental impacts caused through unauthorised actions. **Fines and Offences** Māori defendants sometimes argue that their actions were an exercise of rangatiratanga and should therefore not be considered an offence under the RMA. It is unclear whether increasing individual fines for offenders would have Treaty implications (ie. specific to Māori and different from implications for other defendants). However, previous engagement was undertaken with Māori when this same change was introduced as part of the now repealed NBA. At that time, feedback on the suite of compliance and enforcement system changes ranged from general support to no objection. No impacts on Treaty settlements have been identified for this proposal. The feedback noted the need for compliance and enforcement tools to be operationalised in a setting that incentivised good behaviour and prevention in the first instance. There was also interest in empowering iwi to take enforcement action and incorporating mātauranga Māori methods into the framework to identify and measure non-compliance. These suggestions exceed the focus of RM Bill 2 (targeted amendments to facilitate progress in the short and medium term) and would be better suited to a wider review of the RMA penalty regime.

consent in response to non-compliance with the conditions 16. Enabling Environment Court to revoke or suspend a resource consent in response to non-compliance of a consent holder 17. Extending local authorities' ability to recover costs for monitoring and compliance work 18. Authorise Minister of Conservation to appoint enforcement officers with powers to enforce compliance with regional coastal plan rules in the Kermadec and Subantarctic Islands 19. Enable regulators to consider a person's compliance history for resource management authorisation decisions. 20. Technical improvements to DOC functions to manage discharges, compliance and enforcement 21. Past collections of sand and shingle royalties by local authorities are deemed to have been collected lawfully 22. Enable regional councils to cost recover if the relevant national direction directs or enables regional councils to review conditions of consent	

23. Manage discharges under s70 of the RMA	

Appendix 3: Further analysis of the Going for Housing Growth proposals

Background

1. The August RIS focused on options to address identified issues relating to housing and urban development. Material included in the discussion of the options in the August RIS noted that some of the options could be applied more broadly to ensure consistency across the resource management system. This could have been stated more explicitly in the options themselves
2. It has been determined that system-wide changes were out of scope of the recommendations agreed by Cabinet [CAB-24-MIN-0228.01 refers]. Confirmation of the system-wide changes is being sought through the Cabinet Legislation Committee. This appendix provides analysis to support confirmation of those system-wide changes.

Assessment Criteria

3. The following assessment criteria have been used when assessing options for all proposals in this RIS:

    - **Effectiveness** – Extent to which the proposal contributes to the attainment of the relevant high-level objectives, including upholding Treaty Settlements. The proposal should deliver net benefits.
    - **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.
    - **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.

Options are analysed using the following key:

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

Issue 1 – Changes to the Streamlined Planning Process

Problem definition for issue 1

4. Councils need to be able to progress a plan change that is efficient and effective where they choose to remove or alter the MDRS.

Cabinet agreed councils that vote to remove or alter the MDRS will use a modified version of the SPP

5. Cabinet has agreed that councils that vote to remove or alter the MDRS will use a modified version of the SPP as opposed to existing plan change processes under the RMA (the Part 1, Schedule 1 plan change process or the SPP without modification) to remove or alter the MDRS and implement the updated NPS-UD at the same time.
6. The two key drivers of this decision were:
    a. Speed – as set out above, the standard Schedule 1 plan change process involves a range of process steps, and is subject to merits appeals, meaning using the standard process may result in a long timeframe before Housing Growth Targets and other changes to the NPS-UD have an impact on the ground. In contrast, the SPP allows for more customisation of the processes councils need to follow, and does not provide for merits appeals, allowing for a faster plan change process.
    b. Oversight – the MDRS provided significant development capacity. While councils removing or altering the MDRS will still need to comply with the Housing Growth Targets, there is a strong case for close scrutiny of councils removing or altering the MDRS to ensure that they are complying with new requirements – both the quantity of development capacity provided (via compliance with Housing Growth Targets) and the location of capacity (via compliance with specific intensification requirements). The SPP allows for this scrutiny as there is Ministerial oversight of council plan changes at both the start and end of the plan change process.
7. Given these decisions, councils need to be able to progress a plan change that is efficient and effective, while maintaining flexibility to tailor the process according to the complexity of the plan change. It also needs to provide for some oversight to ensure that Housing Growth Targets are met.

The current SPP involves an application process which may create unnecessary additional effort, time and costs for local and central government

8. The RMA requires councils to apply to the Minister for the Environment to use the SPP. The intent of a SPP is to give flexibility in plan-making processes and timeframes, allowing the Minister to tailor it to specific issues and circumstances. The RMA sets out 'entry' criteria for when the SPP may be used, and minimum process requirements relating to engagement with iwi authorities, public participation and consideration of evidence. Other requirements, process steps, and timeframes can be tailored to the scale and significance of the plan change.
9. MfE officials' initial advice to the Minister on the use of the SPP (ie. assessing whether the plan change meets the entry criteria and contains sufficient information) typically takes one to five months. Resource constraints within MfE and the Minister's time constraints to make decisions may also affect these timeframes.

10. However, given councils will be required to use it to remove or alter the MDRS, a full application process may create unnecessary, inefficient steps, as the outcome – whether to use an SPP or not – has already been determined.
11. The cost of SPPs vary due to the scale and complexity of the application. For previous SPPs, some councils engaged consultants to assist them completing specific stages of the process, and to meet timeframes set out in the Minister's Direction. For example, in order for a council to lodge a SPP application and for the Minister to determine whether a particular plan change proposal is suitable to go through this process, councils need to undertake preparatory work to scope the plan change proposal, consider how the proposal meets the 'entry' criteria, undertake pre-application consultation (including with iwi), send an initial draft to MfE officials for feedback (non-statutory step), and apply in writing to the Minister. The time taken by officials and the Minister are not cost recoverable.
12. The Minister for the Environment is also the final decision-maker on all elements of a SPP plan change, with appeals limited to specific circumstances.7 The timeframes to complete the SPP vary, but SPPs undertaken to date have taken between 6 months and 18 months from a council's application to the Minister to use the SPP to the Minister making their final decision to approve it (excluding councils' preparatory work and pre-application consultation).

The current SPP provides Ministerial oversight, but there are opportunities to design a process that balances risks to decision-makers, while providing assurance Housing Growth Targets are met

13. The Ministerial oversight provided as part of the SPP is both a strength and a risk of the process. The core benefit associated with Ministerial oversight is that it provides for central government to ensure planning instruments are consistent with the RMA and national direction (ie, ensuring there is sufficient development capacity). However, in addition to the cost and time involved for both central and local government, the Ministerial role at the end of the process shifts the risk and accountabilities associated with these decisions from councils to Minister. Having the Minister at the end of the process is also viewed as a justification for reducing appeals to the Environment Court as this is seen as additional oversight in the process.
14. The advice on the Minister's final decision to approve the plan change takes appropriately three to four months. These timeframes are driven by the requirement in legislation for the Minister to consider compliance with procedural requirements, legislation and national direction, and any statement of expectations. As with the application process, resource constraints within MfE and the Minister's time constraints to make decisions may also affect these timeframes.
15. However, the plan changes to remove or alter the MDRS will likely include a range of other matters beyond meeting Housing Growth Targets to ensure any proposed changes are integrated and comprehensive. This has led officials to consider alternative decision-making options at the end of the SPP to reflect the more comprehensive nature of these plan changes to support local accountability and balance risks to decision-makers. In addition, there are central government resourcing risks if Ministerial decision-making is retained.

Most SPPs use Independent Hearings Panels (IHP)

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[7] Limited appeals are available only on decisions of a requiring authority or heritage protection authority relating to designations, heritage orders, and notices of requirement.

16. The use of an IHP is available under any plan change process (Part 1, Schedule 1, and the current SPP). The use of an IHP was mandatory as part of the intensification streamlined planning process (ISPP). An IHP can provide a useful check and balance on councils' decision making in a plan change process.
17. The Minister currently can set the number of and expertise of IHP members through their direction at the beginning of the SPP. In some other plan change processes (such as the process to develop the first Auckland Unitary Plan), the Minister has had the ability to appoint members to the IHP.
18. Through the ISPP, officials identified a number of ways in which accountability of IHPs could be improved, to support decision making aligned with the NPS-UD. One is included as part of Issue 1B, and two additional options on the makeup of the IHP are provided in Issue 1C.
    a. Issue 1B: Decision-making at the 'Back end' of the SPP options, Option B2: alternative decision-making model similar to the Auckland Unitary Plan (AUP) process and Freshwater Planning Process (FPP) would retain the ability for the Minister to set a 'direction' at the start of the SPP. This sets out the number of and expertise of IHP members, reporting requirements, timeframes for the process and a ministerial 'statement of expectations.' The statement of expectations for council and IHP would include a requirement for Housing Growth Targets to be met (and to produce HBA) to support this check), and for compliance with NPS-UD policy.
    b. Issue 1C: Makeup of IHP panel, Option C2: Minister has ability to appoint IHP members would expand the Minister's powers to enable the Minister to appoint one or more IHP members as part of the 'front end' of the SPP process. However, the Minister would not be required to appoint members. The Minister would still have the ability to direct councils in respect of the experience and qualifications of IHP members.

Specific objectives for issue 1

19. In addition to the overarching objectives, the specific objectives for a plan change process to make the MDRS optional and implement NPS-UD policy for issue 1 are:
    a. A faster and more efficient process to reduce the period of ambiguity in the planning framework/district plan provisions and to ensure quicker outcomes for delivery of housing
    b. A process that enables Housing Growth Targets and intensification requirements to be met through the plan change
    c. Flexibility to tailor the process and scope according to the complexity of the plan change
    d. Consistency and coherency across the system

Options for addressing Issue 1

20. There are three scenarios for councils to enter the SPP and the changes to the front end of the SPP need to work for each scenario. The scenarios are described below:
    a. Scenario A: councils that vote to remove or amend the MDRS (including councils that have withdrawn an IPI) are required to use a SPP
    b. Scenario B: councils that are directed by the Minister for the Environment to use the SPP to address non-compliance with national direction
    c. Scenario C: councils that choose to apply to use the SPP to make a plan change.
21. Entry requirements for each need to be slightly different to ensure workability. Officials consider that for consistency across the system changes to the SPP should be made to the SPP generally and not just in relation to removing the MDRS. To address the matters described above the following tables have been completed to support workability.

22. Where a council has been directed to use the SPP to remove or alter the MDRS and related matters, the following proposed changes to the SPP will apply.

Issue 1A: 'Front end' options

Option	Description
Option A1: Status quo	The steps to prepare and lodge an SPP application include: • Council considers whether it is appropriate to use the SPP for its proposed planning instrument, and how it meets the 'entry' criteria (RMA section 80C).[8] • Non statutory step: Council should discuss proposal with MfE officials and provide a draft application for initial feedback. • Council applies in writing to the Minister for the Environment requesting a direction to use the SPP. Information requirements (clause 75, schedule 1).[9] Ministerial consideration of the SPP request includes: • The Minister considers the council's written request, whether sufficient information has been provided, any obligations set out in iwi participation arrangements or legislation, and the purpose of the SPP and any other relevant matters. The Minister can require the council to provide further information (clause 76(3), schedule 1). At this point, the Minister can decline the request with reasons. • If the Minister decides to set a direction,[10] the Minister must consult on the content of the proposed SPP with the

[8] A summary of the 'entry criteria' in section 80C includes:
- implements a national direction
- public policy reasons for urgent preparation
- meets a significant community need
- addresses unintended consequences of a plan or policy statement
- combines several plans or policy statements into a Combined Plan
- expeditious preparation required in circumstances comparable to above.

[9] Summary of information requirements in clause 75, schedule 1 includes:
- description of the planning issue and how it meets any entry criteria
- an explanation of why the SPP is appropriate
- desired process and timeframes
- identification of affected parties
- summary of consultation undertaken or proposed to be undertaken, including iwi
- implications of using process for iwi participation legislation or Mana Whakahono ā Rohe.

[10] The minimum requirements of an SPP include (clause 78, schedule 1):
- consultation on proposed planning instrument with affected parties (including with Minister) and iwi (if not already undertaken)
- public or limited notification
- opportunity for written submissions
- a report showing how submissions were considered and any resulting changes made to the proposed planning instrument
- evaluation report on the proposed planning instrument under s32/32AA
- timeframe for completion of SPP.

	relevant council and relevant Ministers of the Crown. The Minister must also consult with requiring authorities, or any person who requested private plan change if relevant and may consult with any other person. • The Minister can add additional process steps and timeframes including reporting requirements or other RMA processes. • The Minister may change proposed process/timeframes as a result of this consultation.
Option A2: Amended 'front end'	Proposed changes to the 'front end' could include amending the RMA, to require all of the following proposed changes: • The use of SPP to remove or alter the MDRS and related matters (section 80C). • Where a council is wanting to remove or alter the MDRS and related matters, instead of "applying" to the Minister to use the SPP, the council must instead meet certain information requirements. This would remove the requirement for the Minister to assess the "appropriateness of using the SPP,"[11] and enable the Minister to determine the process steps and requirements in a direction. • Where a council is wanting to add topics in an SPP in addition to removing or altering the MDRS and related matters, these topics can progress together as one SPP. However, the additional topics would be assessed in accordance with the current 'entry' criteria[12] and information requirements.[13] • Require councils to provide sufficient information to the Minister to demonstrate the proposed planning instrument will provide enough feasible development capacity to meet Housing Growth Targets. • Require councils to provide sufficient information to the Minister to demonstrate the proposed planning instrument will meet the intensification requirements of the NPS-UD. • The Minister may require the council to provide further information, including on the quantity or location of the development capacity provided by the proposed planning instrument, before the council may proceed with the planning instrument to opt out of the MDRS. • For SPPs that remove or alter the MDRS, the Minister is not required to consult on the proposed SPP,[14] except for with the relevant local authority on the direction.

[11] Clause 75, Schedule 1 of the RMA.

[12] Section 80C of the RMA.

[13] Clause 75, Schedule 1 of the RMA.

[14] Clause 76, Schedule 1 of the RMA.

	• At the point at which a plan change is notified, councils must publish updated information about their development capacity to demonstrate the proposed planning instrument will provide enough development capacity to meet Housing Growth Targets and other aspects of the NPS-UD. This may be the same assessment provided to the Minister to set the direction if there has been no material change since that point. • The IHP and council must have particular regard to the Minister's statement of expectations in making its recommendations. • Where a council is directed to use an SPP to address non-compliance with national direction instead of "applying" to the responsible Minister to use the SPP, the council must instead meet certain information requirements. This would remove the requirement for the Minister to assess the "appropriateness of using the SPP,"[15] and enable the Minister to determine the process steps and requirements in a direction. • Where councils are directed to use the SPP either to address non-compliance with national direction or because they are removing or altering the MDRS (or have withdrawn an intensification planning instrument) they would be required to provide information to the Minister on the IHP, including number and expertise of the members of the IHP. • Councils that have been directed to use the SPP to address non-compliance with non-housing related national direction are not required to provide information to the Minister to demonstrate the proposed planning instrument will provide enough feasible development capacity to meet Housing Growth Targets.

Issue 1B: Decision making at the 'Back end' of the SPP options

Option	Description
Option B1: Status quo	Councils are required to submit their finalised planning instrument to the Minister for approval within the required timeframes. The Minister may approve the planning instrument, refer it back to the council for further consideration (with or without specific recommendations), or decline to approve the planning instrument. In deciding what action to take, the Minister must have regard to whether the council has complied with procedural requirements, a Ministerial statement of expectations, and requirements under legislation and national direction (clause 84, schedule 1).

[15] Clause 75, Schedule 1 of the RMA.

	The final decision is then notified by the council and becomes operative (clause 90 and clause 20, Schedule 1).
Option B2: alternative decision-making model similar to the AUP process and FPP	This option would be similar to the decision-making model that was put in place for the AUP and FPP. This model would replace the current decision making model for all SPPs (not just those relating to plan changes that remove or alter the MDRS). Under this model, an IHP makes recommendations to a council. For any recommendations accepted by the council, these aspects of the plan change become operative with no appeal rights. Recommendations rejected by the council can be appealed on merit to the Environment Court. There would be no role for the Minister in making decisions on a plan, and subsequently no ability for a Minister to consider council assessments of development capacity to inform whether to accept a plan change. This option would retain the ability for the Minister to set a 'direction' at the start of the SPP. This sets out the number, and expertise of IHP members, reporting requirements, timeframes for the process and a ministerial 'statement of expectations.' The statement of expectations for council and IHP would include a requirement for Housing Growth Targets to be met (and to produce HBAs to support this check), and for compliance with NPS-UD policy. This option would mean an IHP must be included in the process steps of a SPP which will require the consideration of section 34A of the RMA by the council. This means that a council when appointing commissioners to its IHP it must consult tangata whenua on whether it is appropriate to appoint a commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū. If the council considers it appropriate it must appoint at least one commissioner, in consultation with iwi authorities. The Minister is also still able to provide direction to the makeup of the IHP.
Option B3: ISPP decision making model	This option would carry across the existing ISPP decision making model to plan changes that involve withdrawing or amending the MDRS. Under this model, a Minister has decision-making responsibility in relation to the end of a plan change process only where a council rejects a recommendation of an Independent Hearings Panel. The Minister could only choose between the IHP recommendation or the council recommendation (not substitute their own). There would be no statutory role for council assessments of development capacity to inform Ministerial decision-making.

Issue 1C: Makeup of IHP panel

Option	Description
Option C1: Status quo	The Minister may direct councils in respect of the level of experience and qualifications a person must meet to be appointed to an IHP but may not appoint specific members to a panel.
Option C2: Minister has the ability to appoint IHP members	This option would expand the Minister's powers to enable the Minister to appoint one or more IHP members as part of the 'front end' of the SPP process. However, the Minister would not be required to appoint members. The Minister would still have the ability to direct councils in respect of the experience and qualifications of IHP members.

Options analysis

Issue 1A: 'Front end' options

	Option A1 – *Status Quo*	Option A2 – Amended 'front end'
Effectiveness	0	**HUD and MfE assessment:** + Requirement for council to submit information relating to the quantity and location of development improves the likelihood of compliance with NPS-UD.
Efficiency	0	**HUD and MfE assessment:** + Process changes to streamline front end improve the efficiency and likely speed of the plan change process, although the requirement to provide information about development capacity will require resource from councils.
Certainty	0	**HUD and MfE assessment:** 0 Improves certainty by clarifying and simplifying the pathway to entering the streamlined planning process. However, could create ambiguity by creating some MDRS-specific changes to the SPP process that are not carried over to other parts of the system (however this could be clarified as much as possible through legislative drafting, non-statutory guidance, and central government implementation support for councils).
Durability & Flexibility	0	**HUD and MfE assessment:** 0 As durable and flexible as the status quo.
Implementation Risk	0	**HUD and MfE assessment:** 0

		No material implementation risks relative to the status quo.
Overall assessment	0	+

Issue 1B: Decision making options for the 'back end; of the SPP

	Option B1 – *Status Quo*	Option B2 – alternative decision making model similar to the AUP and FPP processes	Option B3 – ISPP decision making model
Effectiveness	0	**HUD assessment: --** No ministerial oversight as to quality and quantity of development capacity. Prospect of appeal only provides a weak incentive to accept IHP recommendations. **MfE assessment:** 0 Compliance with Housing Growth Targets and other NPS-UD policy relies on IHP and Council following Ministerial direction and NPS-UD requirements. Any non-compliance could be followed up with Ministerial intervention powers outside the SPP process.	**HUD and MfE assessment: -** Limited ministerial oversight as to quality and quantity of development capacity. Does not ensure IHP recommendations are compliant with NPS-UD.
Efficiency	0	**HUD and MfE assessment: +** Substantial reduction in time and costs for central government, faster for local government if they agree with IHP recommendations (eg, no appeals). Places onus on local government to make the right decisions and not defer to Minister.	**HUD assessment: +** **MfE assessment:** 0 Some reduction in costs for central government, may be faster for local government (depending on number and complexity of rejected recommendations).
Certainty	0	**HUD and MfE assessment: +** Prospect of appeal on rejected recommendations limits certainty of outcome for local government, but more certainty for accepted recommendations.	**HUD and MfE assessment: +** Ministerial decision on rejected recommendations limits certainty of outcome for local government, but less-so than broad Ministerial role at present.
Durability & Flexibility	0	**HUD and MfE assessment: +** As flexible as the status quo. More durability through the council retaining greater ownership of their plan.	**HUD and MfE assessment**: - Ministerial decision-making is limited to agreement with the IHP or council recommendation. No ability to refer back to council to direct it to make changes.
Implementation Risk	0	**HUD and MfE assessment:** 0 Reduces risk for the Minister (eg, no role in decision making on plans), but increases risk as to outcome. Provides for local government ownership of the plan, which increases likelihood of implementation.	**HUD and MfE assessment**: - Judicial review risk for the Minister retained, and increased risk as to outcome.

Overall assessment	0	**HUD assessment: -** **MfE assessment: +**	**HUD assessment**: **-** **MfE assessment**: 0

Issue 1C: Makeup of IHP panel

	Option C1 – *Status Quo*	Option C2 – Minister has ability to appoint IHP members
Effectiveness	0	**HUD and MfE assessment: +** Option can be used to ensure the expertise of the IHP, improving likelihood of compliance with obligations.
Efficiency	0	**HUD and MfE assessment: -** Any appointments would likely need to be agreed through the Cabinet Appointments and Honours Committee, which would add time and resource to the direction process.
Certainty	0	**HUD and MfE assessment: +** Improves certainty as to the qualities and qualifications of IHP members.
Durability & Flexibility	0	**HUD and MfE assessment** 0 Reduces flexibility for councils, however, provides additional flexibility for the Minister and improves confidence in the regulatory system.
Implementation Risk	0	**HUD assessment:** 0 **MfE assessment: -** Same amount of risk as status quo. Similar approach has been successfully applied before in AUP model. Availability of commissioners may constrain who is able to sit on particular plan changes. If appointed via APH process, fees framework may limit the commissioners that make themselves available.
Overall assessment	0	**HUD assessment +** **MfE assessment** 0

Discussion

'Front end'

23. Both HUD and MfE recommend Option A2 in relation to the 'front end' of the SPP.
24. Option A2 simplifies the process for councils seeking to use the SPP to remove or alter the MDRS and implement changes to the NPS-UD, by removing unnecessary process steps and application criteria.
25. Option A2 also ensures that there is an ability for the Minister to assess compliance with Housing Growth Targets before a council can progress a plan change to remove or alter the MDRS. While it is possible that the content of a proposed planning instrument may be materially altered following the submission of an application to use the SPP, a check at this point in the process nevertheless reduces the risk of a planning instrument not complying with Housing Growth Targets and other aspects of the NPS-UD. The risk of non-compliance subsequently in the process could be addressed through appropriate checks at the 'back end' of the process.
26. This option could involve a change in practice in how councils apply to use the SPP. Specifically, it would require a plan change to be sufficiently advanced for councils to be able to estimate the development capacity that would be enabled. While this could be a change in practice, it would not necessarily extend the timeframe for the SPP – it would simply shift the application process to be later in the plan development process and as

councils have more certainty of their plan change being accepted to use SPP this is not as much of an issue compared to the status quo.

27. Option A2 would remain a tailored process which allows for local context and to meet local needs, for example the ability to incorporate the context of local Treaty settlement acts. The Minister however will no longer have a role to consider consultation with iwi authorities as part of a council using an SPP for removing and altering the MDRS (and related matters). To mitigate this, existing RMA provisions in clauses 1A to 3C, Schedule 1 will continue to apply to councils when using an SPP. This requires consultation with iwi authorities and when preparing a plan, it must be in accordance with any applicable Mana Whakahono a Rohe. Matters that do not fall within the MDRS and related matters category will still use the normal SPP application process and entry criteria.

Decision-making at the 'back end' of SPP process

28. MfE strongly recommends Option B2 in relation to decision-making at the 'back end' of the SPP process. The use of an IHP, and final decisions sitting with the Council ensures local government retains ownership of the plan and remains accountable for local decisions. It would also minimise risk to the Minister for the Environment and officials (eg, judicial review) by removing Ministerial decision-making on the plan.
29. While there would be no role for the Minister to provide a check on the final development capacity provided through a plan, MfE officials consider that Ministerial direction at the beginning of the process will provide clear expectations for both IHP recommendations and council decisions. The Minister will also have the enforcement powers provided in the RMA at their disposal if there is evidence of non-compliance.
30. This option would provide an efficient process for councils, especially where there is agreement between the council and an IHP. There would be opportunities throughout the process to resolve issues e-g. through expert conferencing prior to final recommendations and decision-making. Councils would likely be incentivised to work with an IHP to avoid appeals, as opposed to deferring difficult, and potentially political, decisions to the Minister.
31. Tweaks to the process at the 'front end' to allow the Minister to specify the number of and expertise of IHP members could mitigate concerns regarding the quality of IHP decisions.
32. While the Environment Court may end up making decisions where the council and an IHP do not agree, mediation between appellants and the council could be undertaken, which further supports devolved decision making and natural justice. Existing powers for Ministers to intervene would still be available at any point in the process. The Environment Court also has the right capacity and capability to make these kinds of planning decisions as well as the ability to make new provisions which the Minister does not have.
33. It is important that any modification of the SPP process provides appropriate checks and balances for process and decision making, recognising that these decisions have impacts on private property rights, and that there are only limited opportunities for appeals. Where accountability for decision-making lies (eg, with councils or the Minister) is also a key consideration. MfE considers that on balance Option B2 would support council ownership and accountability for the plan (and therefore its implementation) while still providing for a flexible process to efficiently deliver development capacity to meet Housing Growth Targets and NPS-UD policy.
34. MFE also considers this option is more appropriate when a Minister requires the use of a SPP (which has been agreed by Cabinet). There are strong issues natural justice issues with the Minister requiring Councils to use a process where they make the final decision as well.
35. MfE considers that other options are not feasible from an MfE resourcing perspective, and should they be implemented, would require additional funding to accommodate

advising on these processes. The ISPP process was agreed to by MFE for a limited number of plan changes and for a certain timeframe. MfE's resourcing has not been predicated on these decisions continuing to be made by the Minister.

36. HUD strongly recommends Option B1 (status quo) in relation to decision-making at the 'back end' of the SPP. HUD considers that only Option B1 is consistent with discussion in the GfHG: Implementing the First Stage Cabinet paper, which stated that:
    a. Councils would be required to prepare a 'transitional HBA' before they are able to opt out or amend the application of the MDRS, demonstrating that they comply with the Housing Growth Targets.
    b. Councils who vote to remove or alter the MDRS would be required to use a variation of the SPP. The Cabinet paper explicitly noted that the SPP provides for central government oversight and approval of council plan changes.
37. HUD considers that a Ministerial check at the 'back end' of the plan change process is even more important than at the front end, given the potential for a proposed plan change to be materially amended by either a council or an IHP subsequent to the SPP application process. The ability for a Minister to approve, decline, or refer a proposed planning instrument back to the council with recommendations for change following these steps provides a credible mechanism for Ministers to intervene to ensure that only plan changes that give effect to the amended NPS-UD (including Housing Growth Targets) are made operative. In particular, HUD considers a Ministerial check that is built into the plan change process is much more credible and timelier than the use of a discretionary enforcement tool within the RMA after a plan change has been made operative.
38. HUD acknowledges that the current SPP Ministerial approval mechanism creates a heavy resourcing burden for MfE, and delays for councils. However, HUD considers the level of Ministerial oversight critical to ensuring sufficient development capacity.

Makeup of IHP

39. HUD recommends Option C2 in relation to the makeup of the IHP. Enabling the Minister to appoint people to the IHP will improve the Minister's confidence in the expertise of the IHP and improve the likelihood the IHP will make recommendations that comply with their obligations. This model has previously been successfully used as part of the AUP process. Any appointments would likely need to be agreed through the Cabinet Appointments and Honours Committee, which would add time and resource to the direction process. However, on balance, HUD considers that the improved effectiveness of this option outweighs the reduced efficiency. Option C2 would be even more important if the AUP model for the back end (Option B2) is chosen, to ensure that the Minister has confidence when the Minister does not have a role in final decision-making.
40. MfE consider that Ministerial appointments to an IHP would be appropriate in some circumstances but may not be in others (eg, if the Minister appoints the IHP, and then makes decisions on the plan then there is a very limited role for the council in the plan change process). Lessons from the FPP have demonstrated a number of challenges with appointing commissioners to IHPs, including that the fees framework under the Cabinet Appointments and Honors Committee is low for renumerating commissioners. There are also additional process steps (and therefore resourcing for agencies) required to appoint through the Cabinet process; and these challenges would need to be carefully worked though.

Issue 3 – Responsible Ministers for intervention powers

Problem Definition for Issue 3

41. Monitoring of councils' compliance with NPS-UD and MDRS requirements is currently conducted by MfE and HUD, with intervention powers held by the Minister for the Environment.
42. Cabinet has approved two new powers under the RMA to ensure compliance with GfHG policies:
    1) enabling central government to require councils to amend their HBA if non-compliant, and
    2) intervention powers for non-compliance with Housing Growth Targets or urban policies, including directing councils on specific plan changes.
43. Cabinet has yet to decide on ministerial responsibility for these powers. MfE suggests applying these powers broadly to national direction and considers a joint decision-making role for the Ministers of Environment and Housing, given HUD's role in NPS-UD monitoring.
44. MfE recommends that the ability to require an amendment to an HBA is broadened so the Minister for the Environment can require councils to amend any document that national direction requires them to prepare. MfE also recommends that the ability for the Minister for the Environment to require councils to use a particular plan change in the event of non-compliance with Housing Growth Targets or urban national direction is broadened so that it can be used as a result of non-compliance with any form of national direction

Specific objectives for issue 3

45. In addition to the overarching objectives set out above, our specific objectives in relation to Ministerial powers are to ensure appropriate central government stewardship and oversight is provided for in the system to monitor implementation of and compliance with the GfHG policies. This will ensure central government's GfHG compliance monitoring, and implementation support to councils, are supported by opportunities for relevant Ministers to intervene if necessary. MfE considers that Ministerial intervention powers should be able to be exercised in relation to other national direction. This would ensure all pieces of national direction are treated consistently under the RMA.

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    1) enabling central government to require councils to amend their HBA if non-compliant, and
    2) intervention powers for non-compliance with Housing Growth Targets or urban policies, including directing councils on specific plan changes.
48. Cabinet has yet to decide on ministerial responsibility for these powers. MfE suggests applying these powers broadly to national direction and considers a joint decision-making role for the Ministers of Environment and Housing, given HUD's role in NPS-UD monitoring.
49. MfE recommends that the ability to require an amendment to an HBA is broadened so the Minister for the Environment can require councils to amend any document that national direction requires them to prepare. MfE also recommends that the ability for the Minister for the Environment to require councils to use a particular plan change in the event of non-compliance with Housing Growth Targets or urban national direction is

broadened so that it can be used as a result of non-compliance with any form of national direction

Specific objectives for issue 3

50. In addition to the overarching objectives set out above, our specific objectives in relation to Ministerial powers are to ensure appropriate central government stewardship and oversight is provided for in the system to monitor implementation of and compliance with the GfHG policies. This will ensure central government's GfHG compliance monitoring, and implementation support to councils, are supported by opportunities for relevant Ministers to intervene if necessary. MfE considers that Ministerial intervention powers should be able to be exercised in relation to other national direction. This would ensure all pieces of national direction are treated consistently under the RMA.

Options for addressing Issue 3

51. Officials have analysed four options.

Option	Recommended additions to the description
Option 1: All powers, including new powers sit with the Minister for the Environment	The Minister for the Environment would be responsible for the use of any intervention power relating to the implementation of the NPS-UD. The Minister of Housing could receive advice on the implementation of the NPS-UD and use current relationship processes to request the Minister for the Environment to use intervention powers. The new intervention power to require an amendment to an HBA is broadened so the Minister for the Environment can require councils to amend any document that national direction requires them to prepare. The new intervention power to require councils to use a particular plan change in the event of non-compliance with Housing Growth Targets or urban national direction is also broadened so that it can be used as a result of non-compliance with any form of national direction.
Option 2: Existing RMA powers sit with the Minister for the Environment, and new powers sit with the Minister of Housing	The Minister of Housing would review the available information on HBAs and, if it did not meet requirements, require councils to amend part or all of their HBA. If non-compliance continued, the Minister of Housing would be able to direct the council to progress a plan change using a specific process (eg, the SPP). The Minister of the Environment would be able to use the existing RMA intervention powers, including oversight of the SPP.
Option 3: Minister for the Environment has existing powers and Minister for the Environment and Minister of Housing both are jointly responsible for the new powers	The above applies, however the Minister of Housing and Minister for the Environment would need to jointly agree to use the new powers.
Option 4: Minister of Housing and Minister for the Environment are jointly both responsible	The Minister of Housing and Minister for the Environment would jointly monitor compliance with the NPS-UD and intervene if necessary. This would include joint oversight over the SPP when plan changes progressed implementing the GfHG powers.

Option	Recommended additions to the description
for all intervention powers	

52. Officials have not analysed a status quo, as there is no established status quo for which Minister/s should be responsible for the new powers and requirements. Option 1 is the closest option to status quo.

Comparison of options for addressing Issue 3

53. The below table compares the options.

	Option 1 – Minister for the Environment responsible for all intervention powers	Option 2 – New powers sit with MinHous, existing with MinEnv	Option 3 – New powers are joint MinHous and MinEnv, existing with MinEnv	Option 4 – Joint MinHous and MinEnv responsibility for intervention powers
Effectiveness	0 No statutory opportunity for a key Minister to intervene as per objective, but standard practice provides for this.	0/+ Both relevant Ministers have ability to intervene, but at different points in implementation process.	+ Both relevant Ministers have access to more intervention tools.	++ All relevant Ministers have the full range of intervention tools available.
Efficiency	0	0	- Higher cost with multiple Ministers involved.	-- Higher cost with multiple Ministers involved.
Certainty	++ Complete clarity of roles and responsibilities.	+ Clearly defined roles and responsibilities.	- Potential confusion about roles and responsibilities.	-- Potential confusion about roles and responsibilities – exacerbated by the number of powers shared.
Durability & Flexibility	+ Provides an enduring legislative change to support the Minister for the Environment's system stewardship role. Ensures consistency with regard to compliance with national direction.	+ Ensures a housing focused lens, responding to the changing circumstances of a more direct role for the government in local planning via national direction.	+ Ensures a housing focused lens, responding to the changing circumstances of a more direct role for the government in local planning via national direction.	+ Ensures a housing focused lens, responding to the changing circumstances of a more direct role for the government in local planning via national direction.
Implementation Risk	0 Aligned with status quo, no implementation risk.	- Some implementation risk with new processes required for MinHous, but manageable.	- Some implementation risk with new processes required for MinHous, but manageable.	-- Some implementation risk with new processes required for MinHous. Large amount of shared decision-making.
Overall assessment	+	0/+	-	--

54. Officials do not consider that the changes to the analysis alter the overall assessment. The discussion also comprehensively covers the proposal to extend the Ministerial intervention powers to be available to national direction more broadly.
55. The following table assesses the potential impacts of extending the new Ministerial powers to apply to all national direction.

Power to require a document to be amended extended to apply to all national direction	**Likelihood and scale of impact**
Impact on the regulator	**Impact = possible increase in costs, but low likelihood** The RMA already provides for the Minister to recommend a course of action to address non-compliance (section 24A). This power has only been used to a very limited extent. The proposed power is more defined and specific – it is about national direction documents and requires them to be changed to address non-compliance. The power will be discretionary. Officials would provide advice on compliance with national direction documents and the Minister can decide whether to use this power, use the existing RMA power in section 24A or take a non-regulatory approach to addressing non-compliance. This may increase costs to the regulator. We consider it likely to function as a clearer backstop than currently exists for Ministers should non-compliance with national direction documents be an issue. It is also about ensuring system consistency. If future pieces of national direction require documents to be prepared they would also have access to this power. This would mean the RMA wouldn't need to be changed again to ensure consistency for the new national direction. It is possible that this power is duplicative of that in 24A (even if the power just applies to urban national direction). However, Ministers have directed this power to be provided and as noted above we consider the addition of this compliance tool will provide a clearer pathway for action in instances of non-compliance. As this is a discretionary power, a minister may or may not chose to use it, non-regulatory approaches to ensuring compliance remain.
Impact on councils	**Impact = possible increase in costs, but low likelihood** There are a three other pieces of current national direction (the National Policy Statements (NPS) on Freshwater, Biodiversity and Greenhouse Gases from Industrial Process Heat) that require documents to be prepared that could then be impacted by this change. The NPS on Freshwater and Biodiversity both require the preparation of documents that set out a councils intended actions to achieve the outcomes of the policy statements. The NPS on Greenhouse Gases from Industrial Process Heat requires a report providing information on resource consents. Amendments to these documents could be sought via section 24A or section 27 (for the Greenhouse Gases NPS) of the RMA or non-regulatory methods. However, these documents are not

Power to require a document to be amended extended to apply to all national direction	Likelihood and scale of impact
	used for compliance purposes in the same way the HBA is (the outcomes of an HBA determine whether a council is compliant), so we consider there is likely to be less value in requiring amendments and less incentive to do so. With regard to the NPS-UD, we expect this power to function as an incentive on councils to produce complaint documents. This may mean that councils expend more effort to ensure initial compliance which may increase costs. However, the costs of preparing a compliant document should be attributed to the requirement to prepare the documents and not to enforcing compliance. The impacts of this policy are avoidable if councils produce compliant documents and arguably already exist in the system via section 24A.
Iwi/Māori	**Impact = possible increase in costs, but low likelihood** Requiring councils to redo non-compliant documents, could potentially result in councils having to re-consult with iwi/Māori. A requirement to reconsult with iwi/Māori as a result of non-compliance would place additional pressure on the resourcing of iwi/Māori. However, as this power is intended to function as an incentive to produce complaint documents, we think it is unlikely that these impacts will eventuate. And as noted above the Minister can already direct that non-compliance be addressed.
Stakeholders/general public	**Impact = possible increase in costs, but low likelihood** Requiring councils to redo non-compliant documents, could potentially result in councils having to re-consult with interested/affected members of the public. It may also increase rate-payer costs, if councils are required to redo non-compliant documents. However, as this power is intended to function as an incentive to produce complaint documents, we think it is unlikely that these impacts will eventuate. And as noted above the Minister can already direct that non-compliance be addressed.

Discussion on Issue 3 Options

56. MfE recommends Option 1.
57. It is standard practice for the Minister for the Environment to consult other relevant Ministers as part of consideration of exercising powers, particularly in instances where issues cross ministerial portfolios.
58. MfE considers giving the Minister for Housing joint access to these powers would likely set a precedent for other Ministerial portfolios that have interests in national direction under the RMA (eg, energy, highly productive land and telecommunications). MfE considers it is more appropriate that decisions made about extending the role of other Ministers in relation to RMA planning processes, including the Minister of Housing is considered alongside advice on the role of ministers more generally through phase 3 resource management reform.
59. MfE recommends that the ability to require an amendment to an HBA is broadened so the Minister for the Environment can require councils to amend any document that national direction requires them to prepare. MfE also recommends that the ability for the Minister for the Environment to require councils to use a particular plan change in the event of non-compliance with Housing Growth Targets or urban national direction is broadened so that it can be used as a result of non-compliance with any form of national direction.
60. Because we are proposing to extend the scope of these powers, we consider this power should sit with the Minister for the Environment, given their system oversight and stewardship role of the resource management system. In MfE's view, any proposed changes to the RMA should, as much as possible, be fit for purpose across the system to support enduring legislative changes, and integrated policy outcomes and decisions.
61. HUD is neutral on the options and does not provide a recommendation. HUD supports the widening of the new powers to encompass all national direction.

Broadening of powers agreed to by Cabinet on enforcing HBAs

62. Although Cabinet agreed to amend the RMA to provide central government with a power to require councils to amend part or all of their HBA, in the event of non-compliance with requirements officials recommend that this requirement is brought up a level so that councils can be required to amend any documents that they were required by national direction to prepare.
63. Because we are proposing to extend the scope of the change, we consider this power should sit with the Minister for the Environment, given their system oversight and stewardship role.
64. There are currently limited examples of documents required to be prepared by national direction (regional biodiversity strategies, freshwater action plans, FDSs and HBAs). However, this change can be used to future proof national direction provisions in the Act.
65. A requirement to consult other relevant Ministers could be included if necessary. However, we think that in practice, as is the case in general, Ministers will consult their colleagues about matters that impact their portfolio interests and therefore this is not required.
66. This change consistent with MfE's position that as much as possible changes to the RMA should work across the board for all topics/activities and should not be made in relation to one topic/activity only. We also think this change would still achieve the desired outcome for GfHG.

Treaty implications

67. Iwi, hapū, and other urban Māori communities are anticipated to have an interest in the process and outcomes of removing or altering the MDRS and if councils withdraw its

intensification plan change. PSGE's, iwi and other Māori groups have not been consulted on the recommendations in this RIS. Officials do not consider there to be direct impacts to Treaty settlement redress but it is difficult to fully assess the impacts on Treaty settlement obligations and broader rights and interests without engagement with relevant PSGE's, iwi and other Māori groups.

68. The SPP will remain a tailored process which allows for local context and to meet local needs, for example the ability to incorporate the context of local settlement acts. The Minister however will no longer have a role to consider consultation with iwi authorities as part of a council using an SPP for removing and altering the MDRS (and related matters). To mitigate this, existing RMA provisions in clauses 1A to 3C, Schedule 1 will continue to apply to councils when using an SPP. This requires consultation with iwi authorities, and when preparing a plan, it must be in accordance with any applicable Mana Whakahono a Rohe. Matters that do not fall within the MDRS and related matters category will still use the normal SPP application process and entry criteria.
69. MfE and HUD have different preferred recommendations for changes to the decision-making at the end of an SPP. MfE's preference for the final decision-making structure for all SPPs will allow for independent decision-making and removes potentially political decision making from going to the Minister. MfE's preference will mean an IHP must now be included in the process steps of a SPP which will require the consideration of section 34A of the RMA by the council. This means that a council when appointing commissioners to its IHP must consult tangata whenua on whether it is appropriate to appoint a commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū. If the council considers it appropriate it must appoint at least one commissioner, in consultation with iwi authorities. The Minister is also still able to provide direction to the make-up of the IHP. HUD's preference does not change the status quo, and therefore does not have any impacts on the existing Treaty implications. HUD's option would not limit the Minister from directing a Council to use an IHP, but it would not be a requirement.

Consultation

70. Engagement with councils and other stakeholders has been undertaken in relation to the GfHG land package, some of which has touched on the issues discussed in this RIS.
71. Targeted consultation on some of the specific issues considered in this RIS has taken place with officials from Auckland Council, Christchurch City Council, Tauranga City Council, and Wellington City Council
72. Auckland Council and Christchurch City Council are supportive of having the ability to withdraw, compared to the status quo.
73. Wellington City Council and Tauranga City Council are supportive of changes to the SPP to make it a simpler process to access, they were agnostic regarding the specific decision making but noted in the case of Wellington City Council a previous set of councillors voted not to progress an SPP as they wished to preserve appeal rights. Auckland Council supports the AUP decision making process.
74. All councils are supportive of having a wide scope to any future plan change process.
75. Other councils will be impacted by the changes to the SPP. Further engagement with councils will be undertaken over the coming months, and councils will have an ability for formally submit on the proposals when the RMA Bill implementing these decisions is considered by Select Committee.

Implementation

76. These proposals will be introduced through the Resource Management Act Amendment Bill 2, likely to be introduced in the by the end of 2024. This means the proposals will likely be in place by mid-2025, with implementation by councils to follow.
77. Councils seeking to remove or alter the MDRS will have to give effect to the Housing Growth Targets requirements, intensification changes, and direction on mixed-use through the same plan change they use to remove the MDRS (ie the modified SPP process).
78. For councils that choose to retain the MDRS, further work will be done by HUD and MfE to develop a process and determine a timeframe for implementation that takes into account other new or amended national direction under the RMA that councils will have to implement as part of the wider Resource Management Reform programme. The Minister Responsible for Resource Management Reform will make decisions on this through the Phase 2 national direction process. This will recognise the significant investment already made in district planning processes to implement the MDRS and intensification policies.
79. Central government will need to support councils in these plan change processes, especially given councils are at different stages of implementation. This includes managing Ministerial roles in relation to the SPP for any council that proposes to remove or alter the MDRS. Beyond this, good practice would include producing non-statutory guidance, engagement with councils and other stakeholders, and transparent monitoring and evaluation, such as an implementation, monitoring and evaluation plan. The level of support provided will be subject to agency resourcing and Ministerial priorities and is considered an implementation risk if sufficient agency resourcing cannot be provided. However, there are opportunities to standardise certain aspects of the proposals including the use of templates for SPP directions and information requirements.
80. Some additional guidance may be required to support councils to understand the changes to the SPP process. Councils may also need guidance on the withdrawal process.
81. These proposals are dependent on changes to the NPS-UD.

Monitoring

82. HUD and MfE will monitor the effect of the proposals both as they are implemented, and following then, to determine the effectiveness of the proposals and whether any unintended consequences have arisen. This includes officials providing advice to the Minister/s on:
    - applications to use the SPP, and applications from councils to withdraw their plan changes
    - progress on plan change processes for councils that have not yet completed their intensification plan changes to incorporate the MDRS into their plans, and implement the NPS-UD intensification policies
    - the need to use any intervention powers (on a case-by-case basis).
83. The timing of such monitoring will be informed by timing of council plan change processes, which is still to be determined.
84. The effectiveness of the monitoring and evaluation will be improved by some of the proposals eg, information requirements before progressing an SPP prior to opting out of the MDRS, as well as clearer requirements in the NPS-UD. In addition to these, some relevant data could be obtained via MfE's NMS, which collects data from all local authorities on their RMA processes, including any plan changes to implement national direction. Other information could be gathered through direct interactions with relevant councils.

85. If monitoring reveals issues, intervention actions are available to central government (Ministerial responsibilities will depend on decisions on the options set out in Issue 3), including to:
    - investigate the performance of local authorities in giving effect to the proposals
    - provide recommendations to local authorities on improving their performance
    - direct plan changes or reviews (including the proposed new power to direct the use of a streamlined planning process)
    - as a last resort, appoint someone to carry out the local authority's functions and duties.
86. Evaluation or review will occur following completion of council plan changes to implement the proposed options.