

Impact Summary: Cabinet paper for policy decisions for Resource Management Amendment Bill Departmental Report and other minor and technical matters

Section 1: General information

Purpose

1. This is the third Regulatory Impact Summary (RIS) for the Resource Management Amendment Bill 2019 (the Bill). It is an addendum to the existing RIS “A new planning process for freshwater”¹, and is additional to the first RIS for the Bill. The first RIS provides the majority of the analysis for the proposals in the bill, and can be found on the Ministry for the Environment (Ministry) website.²
2. This RIS covers three key policy proposals resulting from consideration of submissions received on the Bill, and through other recent Ministry consultation processes addressing freshwater management such as the Healthy Waterway Package that closed in Mid-November 2019. The three proposals are:
 - a. improve the practicality and workability of the Freshwater Planning Process through one substantive amendment; and five other technical “fixes” or matters of clarification
 - b. extend the current “call-in” powers for Proposals of National Significance to include changes to Regional Policy Statements (RPS), and
 - c. clarify that section 360(hn) regulation making powers also apply to riparian margins of water bodies.
3. The Ministry is solely responsible for the analysis and advice set out in this Impact Summary, unless otherwise explicitly indicated. This analysis and advice has been produced to inform Cabinet’s final decisions to proceed with policy changes to be taken in relation to the Departmental Report for the Bill.

Key Limitations or Constraints on Analysis

4. This Government is committed to improving New Zealand’s freshwater quality. The key to achieve this is to ensure that councils’ Resource Management Act 1991 (RMA) plans will give effect to the proposed National Policy Statement for Freshwater Management 2020 (NPS-FM) in a timely manner. The NPS-FM is the primary tool in the Government’s Healthy Waterway package and is currently being developed. It was notified as part of the package, and its submission period closed in mid November 2019.
5. To support implementation of the NPS-FM, the Bill introduced a new freshwater planning process which will ensure more robust decisions with limited appeal rights. There is a strong preference to retain the notification date for the freshwater

¹ <https://www.mfe.govt.nz/ris/new-planning-process-freshwater>

² <https://www.mfe.govt.nz/regulatory-impact-summary/impact-summary-proposed-bill-amend-rma-version2>.

planning documents as introduced in the Bill, in order to assist in stopping the further decline of freshwater as an urgent matter.

6. The proposal to enable the Minister to call in a change to a regional policy statement (RPS) was not introduced as part of the Bill, and has not been consulted on. However, this proposal will support the implementation of national policy statements (including the NPS-FM), is relevant to the objective of improving freshwater management and outcomes, and is consistent with the overall purpose of the Bill.
7. The proposal to amend the stock exclusion regulations did not form part of the Bill as drafted, so it is not a matter where public feedback has been sought through this Bill. However, the submissions received on the Healthy Waterway package assumed that regulations to exclude stock from the margins of water bodies would be the same as those used to exclude stock from the water body itself. This proposal is consistent with the intent of the freshwater provisions to address the effects of activities on freshwater and stop the decline of freshwater quality.

Responsible Manager (signature and date):

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Head of the Office of the Chief Executive
Ministry for the Environment

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

Ministry for the Environment

Quality Assurance Assessment:

The Ministry for the Environment's Regulatory Impact Assessment Panel considers the level of information provided in the Resource Management Amendment Bill 2019 – Addendum RIS is appropriate to the additional and technical nature of the proposals, and that the RIA **meets** the Quality Assurance criteria.

Reviewer Comments and Recommendations:

Feedback from RIAP has been incorporated into this RIS.

Section 2: Problem definition and objectives

2.1 Background

8. The RMA is New Zealand's primary environmental statute. The overarching purpose of the RMA is to promote the sustainable management of New Zealand's natural and physical resources.
9. The current resource management and planning system is underperforming in its management of key environmental issues such as freshwater quality. Cabinet has agreed to undertake a two-stage approach to improve the resource management system [CAB-18-0485.01 refers].
10. Stage 1 of the review will progress specific changes to the RMA to introduce new freshwater planning process which will support the implementation of the upcoming NPSFM, enabling address of climate change, reverse certain 2017 changes to the RMA, and address issues with resource consenting, enforcement and Environment Court provisions within the RMA.
11. In September 2018, Cabinet made final decisions on policy proposals and approved the introduction of the Resource Management Amendment Bill (LEG-19-MIN-0146). The Bill is the legislative vehicle to progress with the Stage 1 review. The relevant Cabinet papers and the Regulation Impact Statement(s) can be found on the Ministry's website at <https://www.mfe.govt.nz/rma/improving-our-resource-management-system>. The Bill was introduced on 23 September 2019, and was referred to the Environment Select Committee. Submissions on the Bill closed on 7 November 2019, and over 400 submissions were received.
12. In September 2019, a discussion document on national direction for freshwater³ was released as part of the Healthy Waterways package. Submissions closed in mid-November 2019, and approximately 17,500 submissions were received, with 3,300 being "unique" submissions. Submissions raised issues and opportunities for improvement with the currently drafted Bill.
13. Ministry officials have analysed these written submissions and attended oral hearings on the Bill. Some issues with the currently drafted Bill have been identified.

2.2 What is the policy problem or opportunity?

14. The overarching and specific problems are discussed in the original Freshwater Planning Process (FPP) RIS⁴. As discussed in sections 2.1-2.4 of the original FPP RIS, the proposed FPP is intended to assist in halting the continued decline of freshwater quality in New Zealand as soon as practicable, as the NPS-FM is not being implemented fast enough to manage the scale and urgency of the issue. Through the Bill and Freshwater Discussion Document submissions, we have identified the following problems:

³ A new National Policy Statement for Freshwater Management, National Environment Standards for Freshwater, Sources of Drinking Water, and Wastewater, and Regulations under section 360 of the RMA in relation to stock exclusion and water metering

⁴ <https://www.mfe.govt.nz/ris/new-planning-process-freshwater>

- a. the proposed FPP timeframes in the Bill are too onerous for councils to meet, and there are suggestions to improve the workability of the FPP
- b. the Minister's inability to call in a change to a Regional Policy Statement that is to give effect to a national policy statement, as a proposal of national significance, could unduly limit tools the Minister has to support the implementation of national policy statements, including the NPS-FM
- c. the s.360(hn) regulation making power for stock exclusion cannot be fully effective, because it only enables regulations to be made that address stock in water bodies, estuaries, and coastal lakes and lagoons, and not their margins. The infringement regime provided under s 360(ho), which relates to this regulation making power, would not apply to stock in the margins of these water bodies. Instead, a more complex resource consent processes directed by a National Environmental Standard may be required. This splitting of management across two separate processes is not the most efficient method of managing this environmental activity.

15. This RIS covers three principal proposals, which link to these overarching problems.

- a. clarification, refinement and improved workability for the freshwater planning process in the Bill [paragraphs 29-31, 42]
- b. enable a proposed change to a regional policy statement to be 'called in' as part of a proposal of national significance [paragraphs 52-53]
- c. clarification that the regulation-making power in section 360(hn) of the RMA applies to making regulations that exclude stock from the riparian margins of water bodies [paragraph 57].

16. This RIS is an addendum to the original FPP RIS, which provides the majority of the analysis for the proposed freshwater planning process in the Bill.

17. Three issues require policy change, and the remainder are technical amendments proposed to improve the functioning of Cabinet approved processes. The impacts of the proposed policy and technical changes are set out in this RIS.

2.3 Who is affected and how?

18. Overall, the proposals in the Bill aim to change the behaviour of councils and users of the resource management system, primarily resource consent holders.

19. The key groups of stakeholders that are affected by clarification and refinement of the Freshwater Planning Process were identified in the original FPP RIS. These same groups of stakeholders were involved in all additional changes outlined through this RIS. These stakeholders were also involved in the consultation and work with interest groups to develop the proposed freshwater package recently outlined in the notified discussion documents as part of the Healthy Waterways programme.

20. For clarity, these stakeholder groups include central government agencies, tangata whenua, those helping provide Te Ao Māori perspectives on freshwater management through Kahui Wai Māori and Freshwater Leaders Groups, local government, Primary Industry Representatives that rely on freshwater takes or discharges, cross-governmental and other groups formed as part of the Healthy Waterways Programme, non-governmental organisations such as the

Environmental Defence Society (EDS), Forest and Bird, Fish and Game, and other RMA practitioners.

21. These stakeholders have expressed their opinions and made suggestions through their submissions on the Bill to the Environment Select Committee and feedback on the NPS-FM currently under development, and feedback from the Healthy Waterways consultation the Ministry recently completed.
22. The submissions have been useful in raising possible improvements to the FPP and the RMA. Some of the changes proposed reflect a need to re-evaluate the scope of proposals in light of widespread concerns, whereas some are practical changes proposed to increase the workability of proposals and for the FPP to meet its objectives.

2.4 What are the objectives sought in relation to the identified problem?

23. We consider that the proposed changes will make the Bill proposals more likely to meet the objectives outlined in the original FPP RIS which are:
 - a. assist councils to implement the NPS-FM by 2025 without unreasonable additional cost
 - b. enable robust and high quality decision-making
 - c. enable decisions to be made at the appropriate level
 - d. retain opportunities for meaningful public participation, and
 - e. enable Treaty settlements and other tangata whenua agreements to be complied with.
24. In addition to the objectives identified in the original FPP RIS, the changes currently proposed to the package of proposals as outlined in the Bill seek to:
 - a. improve the workability of certain processes, and
 - b. provide clarification.
25. More detailed discussion on the revised proposal's ability to meet identified objectives is set out in the relevant section for that proposal.

Section 3: Options identification

3.1 What options have been considered?

Freshwater Planning Process

26. Changes are required to the new freshwater planning process proposed in the Bill, to ensure the proper functioning of the process.

Issue 1: proposed FPP plan making timeframes are too short

27. We received feedback that it will be difficult for councils to meet the clause 80A(4)(b) public notification date of 31 December 2023. Submitters stated that there will be insufficient time for councils to collect and evaluate environmental data, and develop plan content in conjunction with their communities. There were concerns that the short timeframe would limit meaningful iwi participation.
28. Submitters were also concerned that the two year timeframe (from publically notifying a plan through to making the final decisions on the plan) across 16 concurrent freshwater hearing panel processes may not be achievable, because of the limited numbers and/or availability of experienced Freshwater Commissioners, planning, science and technical support.

Preferred Option:

29. We do not propose to extend the 31 December 2023 date for notifying planning instruments that give effect to the NPS-FM 2020. Assessment of New Zealand's freshwater quality and the speed at which councils are implementing the current NPS-FM 2017 has highlighted the need to amend the freshwater planning regime quickly. It is acknowledged that councils are at different stages of implementing the current NPS-FM 2017, and therefore have a greater or lesser amount of work to appropriately implement the new 2020 NPS-FM. It may also be difficult for councils to undertake work with iwi and the community and obtain evidence necessary to support the planning instruments. We consider that managing our freshwater is of sufficient significance to prioritise this work.
30. Our preferred option is that councils and/or the chairs of freshwater hearing panels are allowed to seek an extension of time from the Chief Freshwater Commissioner for any part of the two-year planning process (starting post-notification), up to a total of no more than 12 months. This change would potentially shift the timeframe for making final decisions on plans to 31 December 2026.
31. In seeking an extension, the council and/or the chair of the freshwater hearing panel must set out the justification and how it intends to meet the new timeframe. This will ensure the NPS-FM 2020 is still implemented quickly, while improving the practicality of the freshwater planning process by providing greater flexibility for councils, freshwater hearing panels and the Chief Freshwater Commissioner to manage matters as they arise from submissions/further submissions and during the hearing and decision-making processes.

Alternative options considered

32. Three other options were considered.

Option A – to extend the notification date in the Bill for one year (1 December 2024), and enable councils to seek an extension of time from the Chief Freshwater Commissioner for any part of the two-year planning process (including a delay to notification), up to a total maximum of no more than 12 months. This change would potentially shift the timeframe for making final decisions on all plans to 1 December 2027.

Option B – to bring forward the notification date in the Bill to 1 December 2023, and to allow councils to seek an extension of time from the Chief Freshwater Commissioner for any part of the two-year planning process, up to a cumulative maximum of no more than 24 months. This option would shift the timeframe for making final decisions on freshwater planning instruments to 1 December 2027.

Option C – to stagger notification by creating two tiers of catchments. Tier 1 catchments would consist of catchments where it would be a priority for the NPS-FM 2020 to be implemented. For tier 1 catchments, changes to regional plans / policy statements must be finalised by 2025. Tier 2 catchments would include catchments where regional plans / policy statements have already been amended to incorporate earlier versions of the NPS-FM. For tier 2 catchments, councils would be required to set out milestones for this work and the date(s) for the next plan change(s) that would be required to fully implement the NPS-FM 2020.

33. None of these alternative options are suitable because it is unlikely that the additional time for plan/policy development, hearing and decision-making processes will outweigh the benefits of implementing the NPS-FM 2020 sooner. In addition, Option C would result in delays to the Bill because councils and communities would need to agree on a schedule that lists the two tiers of catchments in time for inclusion in the Bill. Option C would also result in a schedule that would eventually be outdated, redundant and need removing from the RMA.

Issue 2: Clarification or technical amendment is required to improve the practicality and workability of the proposed FPP

34. Submitters identified several matters where clarification or technical amendment would assist in the practicality and workability of the proposed FPP.

35. The Bill requires councils to publicly notify their decisions on the freshwater hearing panels' recommendations no later than 20 working days after the report is provided (clause 51(4)). Councils must accept or reject each recommendation, and for each recommendation that is rejected, councils must decide on an alternative solution (clause 51(1)(b)).

36. Submitters consider 20 working days to be too short, particularly where councils choose to develop an alternative provision. Councils also noted that this timeframe was too short to meet their reporting requirements to councillors. Most council submitters requested the timeframe be increased to 40 working days.

37. The Bill specifies the powers and functions of the Chief Freshwater Commissioner. The Bill does not provide the Chief Freshwater Commissioner with powers to manage the appointment of freshwater hearing panel members, which may reduce the workability of the freshwater planning process.
38. Clause 48(2) of the Bill allows freshwater hearing panels to make recommendations which are outside the scope of submissions. Drafted provisions cannot appropriately deal with out of scope matters. For example, councils must develop alternative solutions to recommendations they reject that are outside the scope of submissions, but the current wording of the Bill limits these alternatives to being *within* scope of submissions (which is not possible). In addition, there is an issue of natural justice, whereby submitters have no opportunity to raise concerns about any out of scope recommendations, and have no right of appeal on their merits.
39. Clause 40(2) of the Bill enables cross examination during the freshwater hearing process. Cross examination has the potential to be an intimidating process for submitters. This concern was raised in a number of submissions on the Bill, where it was noted that cross examination may deter submitters from participating in freshwater hearings.
40. Clause 61 of the Bill specifies that the relevant regional council is responsible for all costs incurred by the freshwater hearing panel, including remuneration for each member. However, the Bill is silent on where costs fall for the commissioner roles/tasks that are not specific to a freshwater hearing⁵. There is also uncertainty about who has responsibility for setting the daily rates for all commissioners on a freshwater hearing panel.
41. Council submissions indicated concern about the costs because freshwater hearing panels will require five commissioners, and councils will not have control over setting commissioners daily rates. Some submitters were unclear where remuneration costs would fall for some commissioner roles. The policy intent of the Bill should be clarified in relation to commissioner remuneration for the three types of commissioners identified under the freshwater planning process.

Preferred Option

42. We propose five technical amendments, or clarification be provided to address the above issues.
- a. *The timeframe for councils to make decisions on the freshwater hearing panels' recommendations should be increased from 20 to 40 working days.*
 - b. *Expressly provide three further powers and functions for the Chief Freshwater Commissioner to enable them to notify members when their appointment to a freshwater hearing panel commences/ceases; remove members (at any time for just cause); and appoint new members.*

⁵ Roles/tasks that are not specific to a hearing include the role of the Chief Freshwater Commissioner (unless he/she is appointed to a freshwater hearing panel) and any training or moderation meetings that the Chief Freshwater Commissioner directs Freshwater Commissioners to attend.

- c. *Further detail be provided in the Bill to ensure the workability of the policy intent to enable freshwater hearing panels to recommend matters that are outside the scope of submissions.* The following detail is proposed:
- i. where a council rejects a recommendation which is beyond the scope of submissions, the council must develop an alternative solution
 - ii. where a council rejects a recommendation which is beyond the scope of submissions, and it chooses to develop an alternative solution, the alternative solution may be outside the scope of submissions. Any existing submitter on the freshwater planning instrument may appeal the alternative provision on merit to the Environment Court
 - iii. if a council accepts a recommendation which is beyond the scope of submissions, any existing submitter on the freshwater planning instrument may appeal the alternative provision on a question of law to the High Court.
- d. *The chair of each freshwater hearing panel can appoint a 'friend of submitter' in consultation with the relevant council.*
- e. *Clarify the policy intent for funding and remuneration matters related to commissioners involved in the freshwater planning process in the Bill.* The following clarifying detail is proposed:
- i. costs of the Chief Freshwater Commissioner will be met by the Crown, except where they are appointed to chair a freshwater hearing panel (in which case the relevant regional council will be responsible for the costs of the chair)
 - ii. costs of Freshwater Commissioners for tasks that are not specific to a freshwater hearing panel, but are directed by the Chief Freshwater Commissioner will be met by the Crown (such as meetings and training). The same daily rates for Freshwater Commissioners will apply to both hearing related and non-hearing related tasks
 - iii. daily rates for the Chief Freshwater Commissioner, all Minister-appointed Freshwater Commissioners and council and iwi-nominated commissioners other than councillors (ie, iwi panel members and other independent commissioners), will be set by Cabinet under the Fees Framework
 - iv. existing councillor rates set by the Remuneration Authority will continue to apply to any councillors appointed to a freshwater hearing panel.

Alternative options considered

43. The alternative option to increase the timeframe for councils to make decisions on the freshwater hearing panel's recommendation is to retain the 20 working day timeframe for council decision-making. This option is not favoured as it is likely that many councils will require more than 20 working days to consider the recommendations, which would result in a number of requests for extensions to the

timeframe made to the Chief Freshwater Commissioner. As the preferred amendment simply changes the amount of time specially allocated to make a decision within the overall 2-year timeframe; there is no benefit in not enabling an increase in this timeframe.

44. The alternative option to managing the appointment of freshwater hearing panel members is to retain the Bill as currently drafted, without specifying detail on whose responsibility it is to manage the appointment of members on freshwater hearing panels. This option is not favoured because a lack of clarity in the Bill may create inefficiencies when the first freshwater hearing panels are being established. This would be unsatisfactory given the tight timeframes to implement the NPS-FM 2020.
45. An alternative option to addressing concerns about recommendations that are outside the scope of submissions would be to remove the ability for freshwater hearing panels to make these recommendations. This option is not favoured because it may limit the ability to deliver high quality regional plans and policy statements. There may be situations where freshwater hearing panels identify improvements to plans/policy statements that were not raised through the submission process. Another option would be to retain the Bill as currently drafted. This is not favoured because it is not consistent with the RMA foundation of public participation. In addition the same high quality freshwater planning instruments may not be achievable as testing would be more limited.
46. The alternative option related to the use of cross examination during freshwater hearings is to retain the Bill as currently drafted and not enable a friend of submitter to be appointed. This option is not favoured because it may deter submitters from appearing at the hearing (or even making a submission) if cross examination is considered intimidating. This may reduce public participation opportunities and the ability to appropriately test proposed provisions, which in turn may reduce the quality of freshwater planning instruments produced under the freshwater planning process.
47. The alternative option about commissioner remuneration is to only cap remuneration rates for Minister-appointed Freshwater Commissioners, and allow councils to determine daily rates for the three council and iwi nominated commissioners. Rates under the Cabinet Fees Framework are typically lower than rates sought by independent commissioners. This option may create different pay scales between the Minister-appointed Freshwater Commissioners and the council/iwi nominated commissioners, which may dissuade commissioners for the Minister-appointed roles.

Proposals of National Significance

48. Amendments are needed to Part 6AA of the RMA to enable changes to a regional policy statement needed to give effect to a national policy statement (eg NPS-FM 2020), to be able to be called in by the Minister and decided by either a board of inquiry or the Environment Court.

Issue 3: Changes to regional policy statements, including those required to give effect to a national policy statement, cannot be called in

49. The RMA enables proposals of national significance to be called in by the Minister for the Environment (or the Minister of Conservation if it is in the coastal marine environment) and referred to a board of inquiry or the Environment Court to hear and decide the matter.
50. The matters that can be called in do not include changes to a regional policy statement. This was because regional policy statements were considered core policy documents of local government, and should generally be determined by local government in the first instance. However in 2017 the RMA was changed to include in the factors the Minister considers when deciding if a proposal is of national significance – whether the matter gives effect to a national policy statement. Councils may be required to change not only their regional or district plans but also change their regional policy statements in order to give effect to a national policy statement.
51. We received feedback that under the current legislation, any changes to regional policy statements required to give effect to a national policy statement (or to recognise and provide for other matters of national importance under section 6) will not be able to be called in, which reduces the effectiveness of call-in as a mechanism for the Minister to support the implementation of national direction.

Preferred Option

52. The list of matters that can be called in, as a proposal of national significance, should be expanded to include a change to a regional policy statement. Enabling a change to a regional policy statement to be called in and decided at a national level (by either a board of inquiry or Environment Court) is a cost effective option, if the proposed change is determined by the Minister to be of national significance, having regard to the factors under section 142(3).
53. Only a council can change a regional policy statement and it is likely that the majority of these changes will be proposed by councils in order to respond to requirements of national direction. Where the government has provided national direction to local government in the form of a national policy statement, or the matters set out in section 6 of the RMA, it has already sought to influence councils' policy objectives and outcomes. It is appropriate that changes to regional policy statements can be called in and decided by a board of inquiry or Environment Court, at a national level, as the policies and objectives they deal with relate to matters of national significance. This is cost effective and efficient, will enable more integrated management of natural resources as all matters will be considered by the one decision-maker, and will result in more comprehensive support for the implementation of national direction.

Alternative options considered

54. An alternative option is to narrow the matters that can be called in to changes to a regional policy statement that are specifically giving effect to a national policy statement.

55. This option is not favoured at this stage, as being too narrow. National policy statements have been provided on only a few of the matters that councils must deal with. Section 6 of the RMA lists matters of national importance that councils must recognise and provide for in their regional policy statements and plans. It is appropriate that changes to regional policy statements that are required to address section 6 matters could also be considered as candidates for call-in. There may be other situations when a change to a regional policy statement has been proposed by a council and the Minister considers the proposal is of national significance and would benefit from consideration and decision by either a board of inquiry or the Environment Court.

56. For these reasons it is not proposed that there are any restrictions on the types of changes to a regional policy statement that can be called in. The proposed change to the regional policy statement would still need to meet the criteria for a proposal of national significance under section 142(3) of the RMA that the Minister must consider, before it could be called in. Whole plans or whole regional policy statements are not able to be called in and this restriction is appropriate given the need to ensure councils remain accountable to their communities for their whole planning documents.

Stock Exclusion regulation making power (s 360(1)(hn) of the RMA)

Issue 4: Managing stock around water bodies cuts across separate regulatory tools with the stock exclusion regulation making power able to apply to water bodies while the rule-making power in the a national environmental standards is able to apply to the riparian margins of water bodies

57. Currently the RMA provides the Minister with a power to make regulations prescribing measures for the purpose of excluding stock from water bodies, estuaries, and coastal lakes and lagoons. We received feedback that this consequently limits councils' ability to issue infringement fees in accordance with section 360(1)(ho) for stock on the riparian margin. The key issue is having a clear set of regulations that set out the obligations on stock owners and the powers of councils.

Preferred Option

58. Amend section 360(1)(hn) of the RMA to extend the Minister's regulation-making power to enable consequent regulations to be made for the purpose of excluding stock from the riparian margins of water bodies, estuaries, and coastal lakes and lagoons.

Alternative options considered

59. The principal alternative is to not amend the RMA. The Minister would rely on a national environmental standard which may involve a resource consenting process to regulate stock access to riparian margins.

3.2 Which of these options is the proposed approach?

Freshwater Planning process

Issue 1: proposed FPP plan making timeframes are too short

60. We propose to progress the preferred option: that councils and/or the chairs of freshwater hearing panels are allowed to seek an extension of time from the Chief Freshwater Commissioner for any part of the two-year planning process (starting post-notification), up to a total of no more than 12 months. This option provides flexibility for councils to address matters as they arise from submissions/further submissions and during the hearing and decision-making processes, and to accommodate the October 2025 local body elections. It also provides flexibility to manage any scheduling issues that may arise with potentially 16 regional hearings occurring concurrently, including sourcing sufficient experts to support those hearings (eg., experienced commissioners, modellers, planners, scientists and other technical support).
61. Retaining the requirement for councils to notify their freshwater planning instruments by 31 December 2023 will ensure freshwater planning instruments are in place in a timely way to halt further freshwater degradation. As identified in the original FPP RIS, the Ministry will mitigate the potential risk that the 2023 deadline will not provide enough time for councils to develop plan changes of sufficient quality, by providing implementation support to councils.
62. This amended process will still meet the objectives under section 2.4 above. Although there will be an ability for councils and freshwater hearing panels to extend the process by up to 12 months, which would result in a delay to the NPS-FM 2020 being implemented until 31 December 2026 (rather than 2025), this will only be approved in those circumstances where it is considered appropriate by the Chief Freshwater Commissioner.

Issue 2: Clarification or technical amendment is required to improve the practicality and workability of the proposed FPP

63. We propose to progress the preferred option. It will:
- a. create a more efficient process for councils, by providing a more suitable decision-making timeframe to work within, increasing it from 20 working days to 40 working days, while providing an opportunity to increase the timeframe further if this extension does not result in the addition of more than 12 months to the overall two-year timeframe. It will also create efficiencies for the Chief Freshwater Commissioner, by resulting in fewer applications from councils to consider extensions to the decision-making timeframe. It will provide a more suitable timeframe for councils to complete their work, does not affect the overall “delivery” timeframe of 2-years from notification, and will not create additional delay to the delivery of the NPS-FM 2020
 - b. provide clarity about whose role it is to notify members on freshwater hearing panels when their appointment commences and ceases, to remove members, and to appoint new/replacement members. This will avoid potential delays that a lack of clarity in the legislation may cause when the first freshwater hearing panels are being established, and will help create

- on-going efficiencies in the freshwater hearings process. This will improve efficiencies in establishing and managing panels
- c. improve the quality of regional plans and policy statements, particularly given the complexity of freshwater planning instruments and the short timeframes required to produce them to implement the NPS-FM 2020 by enabling consideration of out of scope matters. Compared to the other options, it is more consistent with the approach to public participation that underpins other planning processes in the RMA
 - d. provide support to submitters on hearing and appeal processes by enabling the appointment of a 'friend of submitter'. It will remove a potential barrier to public participation in the freshwater planning process, which may arise from the more judicial approach to freshwater hearings (particularly due to cross examination), while still allowing for cross examination which will contribute towards the development of high quality freshwater planning instruments. This will assist people in the FPP process by providing submitters with support through the hearing, the cross-examination process, and appeals processes. This will reduce the risk of deterring public participation in the freshwater planning process and contribute to higher quality freshwater planning instruments, and
 - e. improve the transparency of commissioner rates, providing greater certainty for councils about expected costs of the hearing process. It will create pay parity across all independent commissioners (Minister-appointed and council/iwi-nominated), which will reduce the risk that commissioners will choose not to take Minister-appointed roles. It also clarifies that councils can continue to pay councillors at their normal councillor rates determined by the Remuneration Authority, which is a means of providing cost effective and local knowledge on a hearing panel. This will improve efficiencies in establishing and managing panels.

Proposals of National Significance

Issue 3: Changes to regional policy statements, including those required to give effect to a national policy statement, cannot be called in

64. We propose to progress the preferred option: enabling a change to a regional policy statement to be called in and decided at a national level (by either a board of inquiry or Environment Court). This will improve workability of the call-in process and enable the call-in powers to be more effective in terms of the implementation of national direction. It better provides for integrated management, when changes to combined planning documents have been developed to give effect to national direction and more cost effective processes. It enables robust and high quality decision making and will support improved implementation of national policy statements, including the NPS-FM.

Stock Exclusion regulation making power (s 360(1)(hn) of the RMA)

Issue 4: Managing stock around water bodies cuts across separate regulatory tools with the stock exclusion regulation making power able to apply to water bodies while the rule-making power in the a national environmental standards is able to apply to the riparian margins of water bodies

65. We propose to progress the preferred option: amending the RMA to extend the Minister's regulation-making powers to enable Regulations to be prepared that exclude stock from the riparian margins of water bodies. This would mean the effects of stock on water bodies and their margins would be able to be controlled in one regulation. The main advantage of enabling regulations to be made, is that making a section 360 regulation to control stock access can apply immediately, regardless of any existing use rights or compliance with regional rules. This is a simple process where no consent is required, meaning there is no administrative cost for applying for and assessing a land use consent (as there would be for a national environmental standard). Stock owners must either comply with the regulation or seek an exemption. This amendment seeks the ability for a Regulation to be made. Assessment of the impacts of any particular regulation will be undertaken when the policy work for preparing such a regulation is undertaken.

66. Requiring the exclusion of stock from the riparian margins of water bodies in an NES would be less efficient and effective because it would not be subject to the same infringement regime as a regulation made under section 360(1)(hn). The two aspects of the same activity would be dealt with using different mechanisms subject to different processes.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties <i>(identify)</i>	Comment: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts</i>
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Additional costs of proposed approach, compared to proposals in the Bill

<p>Councils</p>	<p>The proposed amendments to the FPP will to a large extent retain additional costs at the levels addressed in the earlier RISs. The exception to this is the provision of the "Friend of Submitter" where this is deemed appropriate. It is considered the benefit this person will bring to the efficient and smooth functioning of hearings will outweigh the additional costs incurred.</p> <p>Extending the call in of Proposals of National Significance to include a proposed change to a RPS may require potential additional costs if such a matter is directed to a board of inquiry, or to the Environment Court rather than being heard and determined by the council. These costs will be recovered from the council.</p> <p>Also, council will not have the final decision-making power on the proposed change to the regional policy statement, in a call-in situation. It will be required to prepare a report on the key issues and will be able to make a submission and further submission. The costs of the report and submission(s) will be met by the council.</p> <p>There are no increased costs with the widened regulation making power. However, increased costs will result from monitoring and enforcement of any resulting Stock Exclusion Regulation. These costs would be less than implementing any of the alternative options.</p>	<p>Low</p>
<p>Central Government</p>	<p>The proposed amendments to the FPP will retain additional costs at the levels addressed in the earlier RISs. The new matters will not increase costs to central government.</p>	<p>Low</p>

	<p>There may be a very small amount of additional central government staff time costs in providing advice to the Minister on possible Proposals of National Significance that include changes to an RPS. That work forms part of current baseline work.</p> <p>There are no increased costs with the widened regulation making power. However, there are additional costs to central government associated with staff time and budget required to subsequently amend the existing Stock Exclusion Regulation and support its implementation.</p>	
<p>Resource Management System Users (including resource management professionals, water users, developers and general public)</p>	<p>The proposed amendments to the FPP will retain additional costs at the levels addressed in the earlier RISs. The new matters will not increase costs to Resource Management System Users. It is noted that the daily rates of Commissioners will be set by the Cabinet Fees Framework which we understand is less than market rates. This cost may be offset to some extent by the steady availability of work across the hearings.</p> <p>Extending the call in of Proposals of National Significance to include changes to RPS may mean some additional costs to system users, where such a matter is called in, in terms of preparing and participating in a hearing by a board of inquiry or the Environment Court (rather than the council) where cross examination is allowed.</p> <p>There are no increased costs with the widened regulation making power. However, there may be increased cost associated with complying with the consequential extended Stock Exclusion Regulation, which may involve moving fencing around riparian margins of water bodies. Those costs will be assessed as part of the regulation making policy process. It is also anticipated those costs would also be incurred with any alternative process. There may also be additional enforcement costs resulting from infringements of any non-compliance with the consequent regulation. Those costs will be assessed as part of the regulation making policy process.</p>	<p>Low</p>

Tangata Whenua	<p>The proposed amendments to the FPP will retain additional costs at the levels addressed in the earlier RISs. The new matters will not increase costs to tangata whenua.</p> <p>Extending the call in of Proposals of National Significance to include changes to RPS may mean some additional costs to tangata whenua where such a matter is called in, in terms of preparing and participating in a hearing by a board of inquiry or the Environment Court (rather than the council) where cross examination is allowed.</p> <p>There will be no increased costs to tangata whenua resulting from the consequential extended Stock Exclusion Regulation making power. The consequential costs resulting from any subsequent regulation directly affecting resource management users will also apply to tangata whenua. These costs will be assessed as part of the regulation making policy process.</p>	Low
Environmental Protection Authority (EPA)	The only matter addressed in this RIS that may create additional costs on the EPA is the extension to call-in powers. There have been relatively few call-ins to date, and existing officers should have the skill set to address proposals that include proposed changes to Regional Policy Statements.	Low
Environment Court	<p>The amendment to the FPP that enables appeals on out of scope rejected recommendations may increase costs on the Environment Court by increasing matters that may be appealed.</p> <p>The extension to call-in powers may mean a small increase to the Court's case load. The costs of the Environment Court hearing and deciding call-in applications can be recovered by the Court through the award of costs powers in the RMA. The inclusion of a change to a Regional Policy Statement in the list of matters that can be called in should not significantly affect the scale of call-ins.</p>	Low/medium
Total Monetised Cost		Potential range of costs above those addressed in earlier RISs is likely to be low/medium.

Non-monetised costs		Low/medium
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Expected benefits of proposed approach, compared to the proposals in the Bill

Councils	<p>More workable timeframe to make a decision on a FPP, resulting in better reasoned decisions or amendments following recommendations. The ability to prepare an alternative solution that is out of scope of a submission (when a hearing panel recommendation is out of scope of submissions) enables better resource management decisions to be issued. Friend of submitter will enable smoother resource management hearings, with a single person to answer submitters' questions, and more informed decision-making if submitters feel supported through the hearing process (and hence are not dissuaded from presenting at hearings). The set remuneration rates is likely to decrease costs to councils from those anticipated in the original FPP proposed in the Bill.</p> <p>The ability for a change to a regional policy statement to be determined a proposal of national significance and therefore able to be called in by the Minister creates efficiency in the planning process and enables better support for national direction, resulting in better environmental outcomes.</p> <p>The call-in process involves a robust hearing and decision by either a board of inquiry or the Environment Court and then appeals are limited to points of law. This has time and costs savings for councils.</p> <p>Where the council is proposing to change a combined planning document (eg a combined regional plan and RPS), all matters would be able to be called in, removing the current risk of call-in of only part of the combined plan change, and the added costs of participating in two hearing process and a loss of integrated management.</p> <p>The widening of the regulation making power provides no direct benefits. However, the consequent ability to manage the use of riparian margins of waterways through regulation rather than</p>	Medium
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	<p>National Direction is much simpler and less costly for Councils. It will be easier to monitor, use and enforce. The integrated management across the waterbodies is likely to result in faster improvement in water quality by regulations being much faster to development and update.</p>	
Central Government	<p>No change to the benefits to central government as specified for the FPP in the Bill.</p> <p>Expanding matters that can be called in to include a change to a regional policy statement enables better support for the implementation of national direction, improving effectiveness of tools and outcomes on the ground.</p> <p>The widening of the regulation making power provides no direct benefits. However, the integrated management of stock across water bodies and their riparian margins will result in more efficient monitoring of the effects of intervention through regulation.</p>	Medium
Resource Management System Users (including resource management professionals, developers and general public)	<p>The proposed amendments to the FPP will improve the ability for resource management system users to engage in the freshwater planning process, by providing a friend of submitter and extending appeal rights.</p> <p>Expanding call-in matters to include changes to a regional policy statement means that (should such a matter be called in) there would be a national level hearing, tighter decision timeframes (9 months is specified for a board of inquiry) and reduced opportunities for appeals – reducing potential costs to council and participants.</p>	Medium/low
Tangata Whenua	<p>The proposed amendments to the FPP will provide limited improvement for tangata whenua to engage in the freshwater planning process, by enabling councils and/or hearing panels to extend timeframes, providing an opportunity for a friend of submitter and extending appeal rights.</p> <p>Call-in process can result in reduced decision-making timeframes (9 months for a board of inquiry) and reduced appeals, meaning the cost of protracted planning</p>	Low

	processes to iwi and other participants are reduced.	
EPA	No benefit to the EPA as a result of changes proposed in this RIS.	Low
Environment Court	No benefit to the Environment Court as a result of changes proposed in this RIS.	Low
Total Monetised Benefit		Potential range of benefits above those addressed in earlier RISs is likely to be low/medium. We have not looked at them in detail for this RIS.
Non-monetised benefits		Low/medium

4.2 What other impacts is this approach likely to have?

67. While the RMA has been amended numerous times since enactment and further amendment may perpetuate issues with effective implementation, in the main the proposals contained in this RIS clarify or expand matters that are either already addressed through other RISs for this Bill or that are already in the RMA.

68. We have not consulted on the technical fixes or matters of clarification sought to these provisions. However the impact would be minimal and checks and balances have been addressed in earlier RISs. Although we have not consulted on the technical fixes and clarifications recommended in this RIS, many of the changes have been informed by submissions on the Bill. Furthermore the impact of these fixes and clarification would be minimal as the proposals will improve the more fine-grained workability and increase certainty of the FPP, but will not fundamentally change the process itself or outcomes sought by the FPP.

69. The interim regulatory impact assessment⁶ for the stock exclusion proposals in Action for Healthy Waterways includes a preliminary assessment of the relevant mechanisms to achieve the objective of stopping the decline in water quality. If the amendment to the RMA is made, the final RIS for the stock exclusion proposals will contain a more detailed assessment of the appropriate regulation mechanism/s to use.

70. The amendments proposed in this RIS are not intended to limit the flexibility needed to ensure Treaty of Waitangi obligations including Treaty Settlement Legislation are able to be met.

⁶ <https://www.mfe.govt.nz/more/briefings-cabinet-papers-and-related-material-search/regulatory-impact-statements/interim>

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

71. Approximately 80 submissions were received on the new freshwater planning process in the RM Bill, of which 58 supported the process as a whole, 8 were neutral or unclear whether they supported or opposed the process as a whole, and 14 were against or partly against the process. The matters raised in these submissions have been used to identify the issues and options presented in this RIS, assess the costs and benefits, and to select the proposed approach. The main stakeholder feedback (via submissions on the Bill) of relevance to this RIS is summarised below.

FPP timeframes

72. Councils, iwi and some industry representatives considered it will be difficult for councils to meet the public notification deadline of 31 December 2023. They viewed the speed of notification as a trade-off of plan quality, iwi engagement and community participation. Some councils and farming representatives requested an ability to stagger changes to regional plan/policy statements based on identifying priority catchments or giving effect to earlier versions of the NPS-FM before implementing the new NPS-FM 2020. In contrast, environmental groups and some individuals supported this deadline given the urgent need to improve freshwater management.

73. Councils, iwi and some industry representatives were concerned that the two year freshwater planning timeframe that will apply across 16 concurrent freshwater hearing panel processes may not be achievable because of a lack of capacity. They cite the limited number of commissioners and technical support available in New Zealand, and the difficulties that nation-wide organisations will face to adequately resource this number of concurrent hearing processes, as reasons for having this concern.

74. Most councils considered the decision-making timeframe to be unrealistic and requested it be increased to 40 working days.

Cross examination

75. Some industry representatives supported the ability for freshwater hearing panels to permit cross examination as a means of robustly testing evidence. However, some councils, iwi submitters and academic institutions were concerned that cross examination would dissuade participation at hearings, and this may disproportionately affect whanau, hapu and iwi.

Recommendations that are out of scope of submissions

76. Councils and some industry representatives provided differing perspectives on whether they supported or opposed freshwater hearing panels having the ability to recommend changes that are outside the scope of submissions. Those in support considered it would improve plan/policy statement quality.

77. In contrast, those in opposition considered it was contrary to community participation which underpins the RMA. They were also concerned that appeal

rights do not apply in this situation which further limits peoples' rights to be involved in matters that affect them. Some councils sought that appeal rights apply.

Costs to councils from freshwater hearing commissioners

78. Councils were concerned about the cost of the process, because they will have no control over the hearing process and the costs of five hearing commissioners. They requested the daily rate for commissioners be capped or the Minister-appointed freshwater commissioners be paid for by the Government.

Call-in matters for regional policy statements

79. Two submitters recommended that the call-in matters be expanded to include a change to a regional policy statement. We have not had the opportunity to seek councils' or wider stakeholder views on this matter. If a call-in is being contemplated the Minister would be required to consider the views of the local authority. A change to a council's regional or district plan is already a matter that can be called in and determined by either a board of inquiry or the Environment Court. We consider the proposal strengthens the support that can be provided for implementation of national direction and offers cost savings in terms of an enhanced hearing process and reduced appeals.

Stock Exclusion regulation making power (s 360(1)(hn) of the RMA

80. One submitter questioned how a council could make use of the infringement provisions for stock exclusion, given the regulation must apply to the water body and not the margin. The proposed change is designed to address this limitation. We do not expect that any submitter would have any concerns because the main impact of extending the power to the margins of water bodies and the coastal marine area is largely one of improving administrative efficiency.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

Freshwater Planning process

81. Section 6.1 of the original FPP RIS has discussed implementation and operation for the FPP aspects of the Bill. These are applicable to progressing the preferred option to address issue 1 and the clarification or technical amendments proposed to improve the practicality and workability of the proposed FPP (issue 2).
82. In terms of the implementation risks identified in section 6.2 of the original FPP RIS; it is anticipated that the proposed approach will help mitigate some of those risks.
83. Costs will not increase as a result of these amendments above those costs identified in the original FPP RIS. Some cost increases will be more constrained as a result of the clarification on commissioner rates.

Proposals of National Significance

84. The amendment to call-in provisions will largely be given effect through legislation to amend the RMA, and implementation assistance provided by the Ministry when progressing national direction and by the EPA when supporting the administration of the call-in process.
85. The Ministry will communicate the changes through updating relevant fact sheets and technical guidance products, and engagement with councils and other stakeholders.

Stock Exclusion regulation making power (s 360(1)(hn) of the RMA)

86. The amendment to the Stock Exclusion regulation making power (s 360(1)(hn)) will largely be given effect through legislation to amend the RMA, and consequent stock exclusion regulations made using that regulation-making power. The Ministry would provide implementation assistance along with any regulation made using that power.
87. The Ministry will communicate the changes when making any regulation, and providing relevant fact sheets and technical guidance along with the regulation.
88. No additional transitional arrangement are required to implement the matters proposed in this RIS; above those already proposed in the other relevant RISs. .

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

Freshwater Planning process

89. Section 7.1 of the original FPP RIS has discussed impacts of the implementation and operation for the FPP aspects of the Bill will be monitored. These are applicable to progressing the preferred option to address issue 1 and the clarification or technical amendments proposed to improve the practicality and workability of the proposed FPP (issue 2).

Proposals of National Significance

90. The Ministry has the responsibility for monitoring and evaluating the effectiveness of National Policy Statements. That will include monitoring of any changes to councils planning documents that give effect to a National Policy Statement and consideration of whether these matters are proposals of national significance. Through that monitoring, the Ministry will assess any additional effectiveness of the widening the matters that can be called in, in terms of support for national policy statements and combined/integrated planning documents.

Stock Exclusion regulation making power (s 360(1)(hn) of the RMA)

91. The Ministry has the responsibility to ensure the quality and quantity of New Zealand's freshwater is being appropriately monitored and managed. The National Monitoring System requires councils to report yearly on enforcement matters. This will enable monitoring and evaluation of extending this regulation making power.

7.2 When and how will the new arrangements be reviewed?

Freshwater Planning process

92. Section 7.2 of the original FPP RIS addresses how the proposed FPP will be reviewed. This proposal is equally relevant to the amended process proposed in this RIS.

Proposals of National Significance

93. The Ministry has the responsibility for undertaking ongoing review of National Policy Statements. That review will consider the implications of the amendment proposed in this RIS.

Stock Exclusion regulation making power (s 360(1)(hn) of the RMA)

94. The Ministry has the responsibility to review the RMA and RMA regulations it makes, and to ensure they achieve their required outcomes. That review process will continue factoring in the additional matters to be addressed through this regulation making power. Stakeholders will have an opportunity to be involved in that review process.

95. As the new arrangements are reviewed, progress is continuing on a more comprehensive reform of the resource management system to address wider issues.