

Impact Summary: Making permanent recent RMA changes to allow documents to be made accessible electronically, and hearings to use remote access facilities

Section 1: General information

Purpose

The Ministry for the Environment is solely responsible for the analysis and advice set out in this Impact Summary, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing policy decisions to be made by Cabinet for a proposal to make two recent technical Resource Management Act 1991 (RMA) amendments, made on a temporary basis through the COVID-19 Response (Further Management Measures) Legislation Act 2020 and due to expire on 31 October 2021, permanent by Supplementary Order Paper to the Resource Management Amendment Bill (the RM Bill).

Key Limitations or Constraints on Analysis


The issues this analysis deals with have emerged recently, in light of restrictions imposed by COVID-19 Alert Levels and local authorities' obligations to continue exercising their various functions and powers under the RMA as far as possible.

When temporary changes were introduced, the Government signalled its intent to consider making these permanent through a future amendment (see the explanatory note on the COVID-19 Response (Further Management Measures) Legislation Bill (CRL Bill)).

The Government intends for the current RM Bill to be passed mid-2020. There are no other plans for a further bill to amend the RMA in advance of 31 October 2021. Given time constraints to use the current RM Bill as a vehicle to make these amendments permanent, there has been limited opportunity for consultation beyond submissions received on the CRL Bill, in advance of seeking Cabinet's agreement.

Responsible Manager (signature and date):

Katherine Wilson



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Quality Assurance Reviewing Agency:

Ministry for the Environment

Quality Assurance Assessment:

Partially meets the quality assessment criteria

Reviewer Comments and Recommendations:

The RIS is clear and concise and makes a convincing case for the changes proposed. While the analysis has been informed by some consultation on the Covid-19 response legislation, consultation on these specific changes through the RM Bill has not been carried out. While the known impacts are adequately articulated, the lack of a proper consultation process raises a risk that there are impacts on stakeholders that have not been able to be identified.

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

Background

Requirements to have physical documents available for inspection at specific locations under the RMA

The RMA has various requirements for documents to be made available physically for inspection by members of the public (for example, in council offices or libraries). Relevant sections of the RMA are set out in the Appendix to this RIS.

During Alert Level restrictions, the *principle* of making these documents available for inspection by the public could be met by the council voluntarily providing the document to a person electronically upon request (such as by email), or by uploading the document onto a council website. However, the explicit statutory requirements to have copies available at certain locations could not be complied with, given these buildings were inaccessible. Even if the documents were physically present at those locations, those facilities were not open for the public to inspect those documents during that time.

Sole use of remote access facilities for hearings under section 39 of the RMA

Section 39 provides for hearings to be undertaken as part of the following RMA processes¹:

- councils: proposed regional policy statements, plans/plan changes or variations, resource consent applications and reviews, and designations/heritage orders
- boards of inquiry: proposals of national significance
- special tribunals: water conservation orders
- freshwater hearings panels: freshwater planning process (as proposed in the RM Bill).

Section 40 of the RMA outlines that applicants and submitters, who have stated they wish to be heard, have a right to be heard in a section 39 hearing.

“In-person” hearings could not be undertaken due to COVID-19 Alert Level restrictions. Some councils opted to use audio-visual links (AVL)² (e.g. Zoom) to undertake hearings during lockdown, on the basis that technology was available and parties were willing and able to participate. The only alternative would have been to defer hearings until lockdown restrictions were relaxed, which would have resulted in RMA processes being delayed, and potentially councils not meeting their statutory timeframes under the RMA.

However, there was legal uncertainty as to whether AVL could be used as the sole means of undertaking a section 39 hearing, in light of the existing requirement that these hearings must be held ‘in public’ under section 39 of the RMA.

¹ Section 39 does not include court hearings, including the Environment Court hearings under the RMA such as appeals, declarations or direct referrals. The courts are subject to the Courts (Remote Participation) Act 2010, which provides a separate framework for the use of remote access facilities.

² A form of remote access facility, as defined in section 39AA(1) of the RMA

On 2 May 2020 the Resource Management Law Association hosted a webinar³ which highlighted positive experiences and efficiencies gained by using this technology for RMA hearings during lockdown, and consider there to be benefit in this continuing with support from future guidance.

Temporary amendments made through COVID-19 Response (Further Management Measures) Legislation Act 2020 [CRLA]

The Government considered it appropriate for councils to continue to undertake their RMA functions as far as possible during Alert Level restrictions. Ceasing functions that could otherwise be undertaken would have led to process delays and not assisted with economic recovery in light of COVID-19.

The CRLA inserted new RMA sections, to ensure that processes were able to continue and hearings were able to be undertaken in light of Alert Level restrictions.

- New section 2AC allows documents under the RMA to be made available electronically (on the authority's internet site free of charge), as an alternative to making those documents available physically.
- New section 39AA provides certainty (where there was previously uncertainty), that hearings under section 39 of the RMA can be undertaken solely using remote access facilities (including AVL products such as Zoom).

The amendments included provisions to ensure natural justice was upheld and public participation and transparency provided for.

Problem

Both of these amendments are due to expire on 31 October 2021 (under sections 2AC(6) and 39AA(9) respectively), as the CRLA was not considered an appropriate vehicle to make permanent legislative changes. The explanatory note for the CRL Bill noted there would be subsequent consideration of whether these changes should be made permanent through a future RMA amendment.

Use of digital technology, including remote access facilities for meetings and hearings, and digital publication of documents (for example, for public consultation purposes) is becoming widespread as a result of COVID-19, and will likely become embedded into general RMA practice as the country moves through Alert Levels. This technology provides efficient options for authorities to engage and consult with the public in RMA processes, even under normal circumstances where social distancing requirements are not an issue.

Prior to the enactment of the CRLA, there was legal *uncertainty* as to whether the remote access facilities could be used for hearings under section 39 of the RMA. The intent of that amendment was to clarify that the use of that technology is legitimate (subject to the protections included in sections 39AA(4) and (5)). There is a risk that *not* making section 39AA permanent could be interpreted that the use of remote access facilities is no longer legitimate post-31 October 2021, whereas there was only uncertainty about its legitimacy before s39AA was included. This would be a perverse

³ RMLA webinar: Council hearings in a virtual world: <https://www.rmla.org.nz/2020/05/02/rmla-webinar-council-hearings-in-a-virtual-world/>

outcome, given the support to the use of this technology for RMA hearings regardless of Alert Level restrictions demonstrated by practitioners in the RMLA webinar.

Opportunity

The RM Bill contains a range of amendments aimed at reducing complexity, increasing certainty, and reinstating public participation opportunities. It also aims to improve freshwater management and outcomes (including introducing a new freshwater planning process). The Bill is set down for second reading at present and anticipated to be passed in mid-2020.

There is no other bill planned that would provide an opportunity to make these changes permanent in advance of the 31 October 2021 sunset clauses taking effect. More comprehensive changes that may eventuate following Government consideration of the Resource Management System Review Panel's upcoming recommendations will not be in place before 31 October 2021.

The current RM Bill is the only known opportunity to provide certainty that these technologies are able to be used on a permanent basis.

2.2 Who is affected and how?

The amendments provided opportunities for authorities to undertake hearings under section 39 of the RMA, and make documents available for inspection under various sections of the RMA, through efficient and effective use of digital technology that did not exist at the time the RMA was first enacted.

Those affected are primarily local authorities (and anyone delegated authority to act on their behalf, such as accredited hearing commissioners (panel members) and hearing administrators (council staff). It also includes specialist RMA hearing bodies (boards of inquiry, special tribunals and the freshwater hearings panels proposed in the RM Bill) and their administrative support staff (such as administrators at the Environmental Protection Authority). The Environment Court is not affected as it operates under a separate regime for remote access facilities in hearings.

All parties that have a right to be heard in a section 39 hearing would be affected if a hearing is run solely using remote access facilities. Section 39AA includes assurance that this can only occur if, and when, the authority considers it fair and appropriate to do so, and the necessary facilities are available.

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

	Objective	Description
A	Maintain certainty that RMA procedural practice is legitimate	The purpose of this objective is to ensure the delivery of RMA processes can be undertaken in a legally robust manner at all times and to minimise the risk of legal challenge.
B	Promote efficiency in the exercise of RMA functions	The purpose of this objective is to remove potential legislative barriers to efficient delivery of functions, in accordance with the procedural principle for decision-makers to <i>“use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised”</i> (under section 18A(a) of the RMA).
C	Provide for public participation	Participatory decision-making is a fundamental tenet of the RMA, and provided for in different ways through various processes throughout the Act. The purpose of this objective is to ensure opportunities for public participation are upheld and enhanced where possible.

Section 3: Options identification

3.1 What options have been considered?

Three options for each issue have been identified, and assessed below subject to the objectives identified above.

N.B. Options 1A and 2A could be categorised as the “status quo” (i.e. “do nothing”). However the options presented are assessed against what was the *previous status quo* prior to enactment of the CRLA. This is because (a) practice will have evolved and become embedded between now and 31 October 2021 (when the current provisions are due for repeal), and (b) the *repeal* of section 39AA may lead to different legislative interpretation than was the case before it was originally inserted (see assessment of Option 2B against objective A).

Option	Description	Assessment against objectives
1A	Let section 2AC of the RMA expire on 31 October 2021, to revert to mandating making certain documents available physically.	A. Negative. While there would be certainty that particular RMA documents could only be made available for inspection physically, however councils would not be able to comply with these requirements during a similar lockdown scenario that might occur post-31 October 2021, leaving them in an uncertain position in terms of compliance with their responsibilities and at risk of legal challenge. Councils may instead defer RMA procedural steps in order to comply with requirements in a future lockdown scenario, leading to process delays.
		B. Neutral. Councils are able to use digital technology as an option, but would still be required to make physical copies available despite that. Requiring documents to be physically available may not be the most efficient mechanism for ensuring they are able to be inspected, and impose cost on councils for little benefit. For example, some types of plans are very large if fully printed and are designed to be more user-friendly in an electronic format (e-plan).
		C. Neutral. Physical documents would be available for inspection when facilities are open. Councils would retain the ability to provide copies of documents digitally to those who ask for them (e.g. by email), including during times of lockdown.
1B	Amend the RMA to retain section 2AC to allow documents to be made available electronically or physically post-31 October 2021	A. Positive. Maintains certainty that documents can be provided digitally during any future lockdown when the ability to make documents available physically is restricted.
		B. Positive. Provides councils the option to make use of digital technology to save time/printing costs etc where appropriate.

		C. Positive. Allows the council to take a customer centric approach, by making documents available either physically or digitally if appropriate.
1C	Amend the RMA to mandate making documents available electronically only (rather than physically)	<p>A. Positive. Maintains certainty that documents can be provided at any time, as digital technology is available remotely (e.g. during times of lockdown).</p> <p>B. Positive. Makes use of digital technology to save time and printing costs associated with making documents available physically.</p> <p>C. Negative. Removes an option for members of the public to view documents physically in a council/library if they wish, which may be more a more suitable means to view documents for some people (e.g. those that do not have internet access or digital literacy but wish to submit on a resource consent application that affects them).</p>

Option	Description	Objective
2A	Let section 39AA of the RMA expire on 31 October 2021, to remove certainty that s39 hearings may be held solely using remote access facilities	<p>A. Negative. Repealing explicit authorisation removes certainty that the use of remote access facilities solely to undertake hearings is legitimate – in fact repealing this section creates more uncertainty than there was previously (before the section was introduced), as repeal may be interpreted as meaning the practice is illegitimate (where there was previously only uncertainty regarding its legitimacy).</p> <p>B. Negative. If remote access facilities are no longer able to be used for hearings, efficiencies gained from the optional use of that technology are lost.</p> <p>C. Neutral generally (but negative in times of lockdown). Hearings can still be undertaken in person, but will not be able to be held during times of lockdown if remote access facilities are not able to be used.</p>
2B	Amend the RMA to retain current section 39AA, option to undertake s39 hearings solely using remote access facilities, post-31 October 2021	<p>A. Positive. Section 39AA provides certainty that the technology can be used, subject to the relevant procedural requirements. Retaining this section will ensure that practice is able to continue.</p> <p>B. Positive. There are many efficiencies associated with optional use of remote access facilities. Council hearings would otherwise require people travelling from out of town to attend (for example accredited commissioners, lawyers, people living in remote locations etc.).</p>

		<p>C. Positive. Retains requirements that remote access facilities can only be used solely for council hearings if “fair and appropriate”, and requirements for hearings to be made public through livestreaming or uploading recording or transcript to the authority’s website. Many cases (outside of lockdown scenarios) will use a combination of in-person presentations and remote access facilities as appropriate.</p> <p>Improves participation opportunities for citizens who are ‘time-poor’ and/or live in remote locations (by giving them the option to appear using remote access facilities, rather than commuting to present in person, which may otherwise have been a barrier to them participating).</p>
2C	Amend the RMA so that all s39 hearings must be run using remote access facilities (i.e. remove ability to undertake hearings in person)	<p>A. Neutral. Maintains certainty that the use of remote access facilities for hearings is legitimate, but removes certainty about whether and how people can meet or attend a hearing in person.</p> <p>B. Neutral. Provides for efficiencies in the use of remote access facilities to undertake hearings. But in some distinct cases the authority might consider it more efficient for parties to meet physically in person (for example, workshoping / expert conferencing might better be done in a physical room together).</p> <p>C. Neutral. On one hand, removing an option for hearings to be held in person removes one mechanism for members of the public to appear before a hearings panel. On the other hand, public participation is provided for in hearings by all parties using remote access facilities equally and the right to be heard is still assured under section 40. Councils would need to provide remote access facilities for persons who have a right to be heard but don’t otherwise have access, in order to not exclude people.</p>

3.2 Which of these options is the proposed approach?

- Which is the best option? Why is it the best option?
- How will the proposed approach address the problem or opportunity identified?

Options 1B and 2B are considered the best options to respond to each issue, in that they provide:

- certainty that authorities can comply with the law (i.e. documents can be made available, and hearings held, during any future times of lockdown),
- efficiency in terms of enabling technology that can have significant time and cost savings to be used if appropriate and fair
- ensuring public participation is provided for, on the basis of existing natural justice checks (set out in sections 2AC and 39AA) and that options still exist for authorities to provide documents physically and hold hearings in person if appropriate (except during times of lockdown).

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties	Comment:	Impact
Additional costs of proposed approach, compared to taking no action		
<p>Regulators (authorities) – including council staff (2AC), hearing commissioners and administrative support staff (39AA)</p>	<p><u>Making section 2AC permanent</u></p> <p>The costs of authorities implementing the option to make documents available electronically, and advising the public of where they can be accessed (as an alternative to making them available physically) will be low. These costs are likely to be less than making them available physically (for example, district plans may require high quality colour printing to be useful physically). All councils have websites where they can upload these documents for inspection.</p> <p><u>Making section 39AA permanent</u></p> <p>There will be a small amount of work for an authority to determine whether to issue a determination under section 39AA. The amount will vary from case to case depending on different factors, such as the scale and complexity of the proposal and number of submitters (for example). We are developing guidance to assist authorities with making these determinations, which will be finalised well in advance of the 31 October deadline to which this proposal relates. This will assist with making determinations efficiently.</p> <p>However the work required to issue a determination would be greatly outweighed by the efficiencies gained by undertaking a hearing using remote access facilities, if used.</p> <p>The use of remote access facilities may incur some minor costs for authorities. These costs may include:</p> <ul style="list-style-type: none"> - paying for additional licenses if necessary (where significant numbers of attendees wish to present in an AVL proceeding) - costs for software to livestream, and/or record or transcribe hearing procedures. <p>If the hearing is for a proceeding that has an applicant (e.g. a resource consent application or designation), the authority may be able to recover those costs from the applicant under section 36 of the RMA, in the same manner that they might recover costs for hearing venue hire for hearings held in person (either as part of a fixed application fee or additional fees if these are deemed to be actual and reasonable costs).</p> <p>However, these costs are likely to be less than using a physical venue for a hearing (for example, if a public (council owned) venue is not available or lacks sufficient capacity). In any case, the use of remote access facilities will remain optional for the authority, with in-person hearings always able to be undertaken (other than during Alert Levels or similar restrictions preventing a physical hearing from being undertaken).</p>	<p>Low</p>

<p>Parties to RMA hearings (in respect of the proposal to make s39AA permanent) – including applicants and submitters, their witnesses and advocates etc.</p>	<p>Minor costs incurred by authorities to undertake s39 hearings using remote access facilities for resource consent applications may be recovered from applicants.</p> <p>Authorities will need to consider impacts on all parties to a section 39 hearing in determining whether the use of remote access facilities is “appropriate and fair” in that circumstances (under section 39AA(4)(a)). This is consistent wording used to the standard requirement that authorities undertaking hearings under section 39(1) of the RMA must “establish a procedure that is appropriate and fair in the circumstances”.</p> <p>If a party considers they have been treated unfairly, they have options to complain to the Ombudsman or seek judicial review of the determination.</p> <p>A direction cannot be given unless parties have necessary remote access facilities available (under section 39AA(4)(b)). If any parties to a hearing do not have access to necessary facilities (for example, computer hardware, webcam and/or internet connection/suitable bandwidth/data (if AVL is used)), then hearing facilitators may assist and find other solutions to make the necessary facilities available to them (for example, use of a computer with free internet at a council office or library).</p>	<p>Low</p>
<p>Other members of the public</p>	<p><u>Making section 2AC permanent</u></p> <p>The cost of members of the public accessing documents electronically from an Internet site will be low, as the document must be freely available. The only costs will be data/internet and having hardware available.</p> <p>A member of the public may still go to a council office or library to access a copy (if and when the facility is open), in which case the council staff may provide that person free access to a copy (either physical or digital), or allow them to purchase a physical copy to keep for reasonable cost (e.g. printing, postage if applicable). Provided the person has internet access and necessary hardware (e.g. computer, tablet etc.), the cost of accessing a document electronically would be less than the cost able to be recovered by purchasing a physical copy, or the cost of commuting to a council facility solely to view a copy.</p> <p><u>Making section 39AA permanent</u></p> <p>If a member of the public wishes to view live proceedings of a hearing (if livestreamed) or watch a recording or read a transcript (if uploaded), then they will need a means to do so (for example, a computer or tablet, with internet access). A council is not able to charge a person for access to these recordings. If a person doesn’t have access to a computer with internet access, they could view proceedings on a computer in a council office or library (except during times of lockdown when those facilities are inaccessible), which would be no more costly than observing an in-person hearing in a public gallery (for example, in a council office).</p>	<p>Low</p>
<p>Total Monetised Cost</p>		<p>Low</p>

Non-monetised costs		Low
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Expected benefits of proposed approach, compared to taking no action		
Government	Making these changes permanent will avoid future costs that would arise if future emergency legislation for these matters is required in response to any lockdown scenarios post-31 October 2021.	High
Regulators (authorities) - including council staff (2AC), hearing commissioners and administrative support staff (39AA)	<p><u>Making section 2AC permanent</u></p> <p>Making documents available electronically saves time and cost of requiring documents to be printed and stored physically at locations, but retains discretion for councils to do so if and when members of the public want to access documents physically at a council office or library. This will ensure there is always a practical option available for authorities to comply with requirements to make documents available, including during times of lockdown.</p> <p><u>Making section 39AA permanent</u></p> <p>There are many benefits in ensuring clarity that authorities have discretion to use remote access facilities in hearings, if appropriate, in terms of efficient hearing and testing of submissions and evidence, and maintenance of control of hearings. It could also allow hearing commissioners to call in from different parts of the country if appropriate (rather than needing to sit together as a physical panel). This can have significant cost savings for a council (and/or applicant if it is a resource consent hearing, for example). By 31 October 2021 authorities will be well practiced in the use of remote access facilities in hearings.</p>	High
Parties to RMA hearings (in respect of the proposal to make s39AA permanent) – including applicants and submitters, their witnesses and advocates etc.	<p>Clarifying that remote access facilities can be used can make hearings more accessible for people who otherwise wouldn't be able to attend due to other commitments (e.g. reduces time off work needed for lay submitters to participate), and the time/cost of travelling to attend a hearing can be saved by all parties (applicants, submitters, expert witnesses, hearing panel members etc.).</p> <p>Clarifying that remote access facilities can be used during times of lockdown, to continue RMA processes, will avoid holding costs that would otherwise arise for consent applicants if hearings needed to be deferred.</p> <p>Use of AVL might be new and disconcerting for some parties, however the same could be said for a lay submitter giving their submission in a physical council hearing for the first time. This can only be used when "fair and appropriate", and councils may provide a 'friend of submitter' and/or hearing administrator service to assist submitters.</p> <p>On the other hand, use of AVL (for example Zoom) for a hearing completely (by all parties and hearing panel members) could also be perceived as an "equalizer",</p>	High

	neutralising perceived power imbalances that might arise in a physical hearing setting (for example, that might be felt by lay submitters appearing alongside technical experts). This may assist with a creating a sense that section 39 hearings are suitably informal (as intended by existing mandate for hearings to “avoid unnecessary formality” under section 39(2)(a)).	
Members of the public	<p><u>Making section 2AC permanent</u></p> <p>Councils are able to email documents digitally to a person, or make them available on their website if they wish (regardless of other requirements to have physical documents available).</p> <p>Members of the public will still be able to visit council offices to access documents for inspection or purchase when those facilities are open if they wish. Councils are able to provide members of the public documents to inspect in a council office (either physically or digitally), or make available to purchase at reasonable cost. Councils should take a customer-centric approach to such requests (for example, council staff are able to assist members of the public with using a digital plan if it exists at a kiosk in a council office or library), or provide them with a physical copy if that is more suitable.</p> <p><u>Making section 39AA permanent</u></p> <p>Hearings run by remote access facility will still be publicly available, by livestreaming and/or having a recording or transcription uploaded onto the internet. Members of the public could access or watch a hearing proceeding from their home, rather than needing to sit in a physical public gallery at a council hearing. Increasing the ‘reach’ of hearings in this manner promotes transparency and enables wider public engagement in RMA processes.</p>	Medium
Total Monetised Benefit		Medium
Non-monetised benefits		High

4.2 What other impacts is this approach likely to have?

The existing requirements to recognise tikanga Māori where appropriate, and receive evidence written or spoken in Māori and Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016 (section 39(2)(b)) will still apply, whether or not remote access facilities are used in a hearing. The extent to which tikanga Māori can be recognised will be relevant in determining whether or not a direction under section 39AA to use remote access facilities is appropriate. Authorities should, as a matter of good practice, engage with parties to determine what is appropriate in that context.

Section 5: Stakeholder views

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

The explanatory note for the CRL Bill signalled that the Government would be considering making these changes permanent through a future RMA amendment. This was reiterated on our website following enactment of that Bill.

The temporary amendments made through the CRL Bill were considered by the Epidemic Response Committee, which included a submissions process. Two submissions were received by the Epidemic Response Committee, from the Auckland District Law Society and NZ Society of Local Government Managers (SOLGM), on the amendments to the RMA. Both of these were in support of the changes. In its submission, SOLGM stated, in respect of the RMA changes in the CRL Bill, *“these are both things we’d like to see made permanent at some future point.”*

In its report on the CRL Bill, the Epidemic Response Committee stated: *“We note that the measures proposed in this bill are short-term ones. They are designed to address some of the more near-term risks and anomalies arising from the COVID-19 response, and would lapse after a specified period. Various submitters commented to us, however, that many of the amendments proposed are sensible ones that should be retained permanently. We suggest that Ministers give thought to the merit of these suggestions, subject to a rigorous consideration of their permanence.”*

In the RMLA webinar, presenters expressed strong support for the use of AVL to undertake RMA hearings, and there was a support for the development of guidance to assist with its appropriate and effective use.

We are not aware of any opposition to enabling remote access facilities to be used in RMA hearings, or enabling documents to be made available using the internet.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

FAQs about the temporary amendments were published on the MfE website following enactment of the CRLA. We are scoping practice guidance on appropriate use of remote access facilities in council hearings, with support from interested groups (for example, the Resource Management Law Association). We intend to release interim guidance in mid-2020. Final guidance may take different forms (for example, inclusion in the Making Good Decisions RMA hearing commissioner accreditation programme).

The proposal will be implemented by way of supplementary order paper to the RM Bill. The use of these technologies by authorities and parties to RMA proceedings will be well established by 31 October 2021. We do not anticipate further guidance will be necessary to support implementation post-31 October 2021.

Section 7: Monitoring, evaluation and review

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

As part of its stewardship role, the Resource Management System Performance team at the Ministry for the Environment will monitor how practice in the use of remote access facilities emerges, both during and following COVID-19 Alert Level restrictions. The Ministry will stay abreast of any emerging practice through engagement with local government, and any new case law that might arise on the subject (for example, if declarations are sought and/or decisions are challenged by way of judicial review).

To ease the burden on local authorities in the post-COVID-19 environment, no additional questions will be asked in collecting data for the national monitoring system for the 2020/2021 financial year (beyond those asked in the 2019/2020 financial year). However the national monitoring system may be changed in future years (i.e. from 2021/2022 onwards) to capture data about the full or partial use of remote access facilities in RMA hearings, and electronic publication of documents (for example, council website internet traffic versus in-person requests to access documents).

7.2 When and how will the new arrangements be reviewed?

Members of the public that feel they have been treated unfairly have the option of writing to the Ministry or Minister, which will provide avenue for the Ministry to investigate any issues that might have arisen in a particular case. Affected parties also have the option of challenging authorities' decisions and actions by way of judicial review (for example, whether a direction given under section 39AA has been fair and appropriate in the circumstances).

A wider review of the Resource Management System is currently underway, with a Review Panel led by Hon Tony Randerson QC due to issue its report and recommendations for the future system by the end of May 2020. Subsequent policy decisions about the future of the resource management system will consider the use of modern technology in resource management practice, to ensure it is able to be used appropriately, while maintaining public access and participation.

Appendix: list of RMA requirements for documents to be made available at certain locations

RMA section	Summary of requirement	Location where the document is to be made available
s 41C(5B)	Directions and requests before or at hearings: A copy of further information or reports	Council office
s 42A(4)	Reports to local authorities	Council office
S 92(3A)	Further information or reports requested by authority	Council office
S 103B(5)	Requirement to provide report and other evidence before hearing	Council office
S 114(3)	Decisions on resource consents	Physically or electronically at council offices and public libraries
S 173(2)	Decisions of requiring authorities on notices of requirements	Physically or electronically at council offices and public libraries
Sch 1, cl 5(5)	Proposed policy statement or plan	Public libraries and other places considered appropriate
Sch 1, cl 5A(9)	Proposed change or variation that is limited notified	Public libraries, and other places considered appropriate
Sch 1, cl 11 (3)	Decisions on a proposed plan or policy statement (if the local authority serves or provides a copy of the public notice)	Physically or electronically at council offices and public libraries
Sch 1, cl 13(6)	Decisions of requiring authorities or heritage protection authorities (if a notice summarising a decision is served)	Physically or electronically at council offices and public libraries
Sch 1, cl 20 (5)	Operative policy statements and plans	Public libraries
Sch 1, cl 35(1)(a)	Access to material incorporated by reference	Council offices and make copies available for purchase at council offices
Sch 1, cl 90 (4)	Minister's decision on a proposed planning instrument and relevant reports prepared under cl 83(1)	Physically or electronically at council offices and public libraries
Sch 1AA, cl 5 (1)	Access to material incorporated by reference	MfE's offices