

Regulatory impact statement: Regulations to support Fire and Emergency New Zealand

Agency Disclosure Statement

This regulatory impact statement (RIS) has been prepared by the Department of Internal Affairs. It provides an analysis of the options to develop regulations under the Fire and Emergency New Zealand Bill (the Bill) for two areas: fire permitting and levy information requirements.

The Bill is expected to be enacted in the first half of 2017. The Bill establishes FENZ (Fire and Emergency New Zealand) from 1 July 2017. FENZ will amalgamate together urban and rural fire services into a unified fire services organisation.

This RIS has been prepared on the basis that the Fire and Emergency New Zealand Bill 2016 (the FENZ Bill), currently before Parliament, is enacted in substantially its current form.

Fire Permitting

Fire permits are a mechanism for allowing certain fires to be lit in circumstances when fires in open air are generally not allowed. Fire permits are currently issued in rural fire districts by Rural Fire Authorities (RFAs), including Enlarged Rural Fire Districts (ERFDs). In urban areas, territorial authorities often have fire bylaws controlling fire in open air through the issuing of fire permits, or other measures.

Assuming the Bill is enacted, FENZ will have fire control powers for fire in open air in both rural and urban areas. Any fire in the open air will be subject to these powers, which include declaring fire seasons, issuing fire permits, and restricting or prohibiting certain activities.¹

In rural areas, it is expected that FENZ will exercise fire control powers, including granting permits, from 1 July 2017. In urban areas, however, FENZ is not intending to exercise fire control powers until territorial authorities' existing fire bylaws are amended or revoked. This means current plans for 1 July 2017 do not extend to FENZ granting permits in urban areas. However, FENZ will consider putting appropriate fire control measures in place, if there is an urgent need to respond to fire risk conditions in an urban area without existing measures.

Limits on permitting options considered

All the options presented in this RIS assume permitting will continue. The Bill's references to permitting support this approach and reflect Cabinet's decision to keep existing legislative provisions, unless no longer needed or are needed in regulations or operational policy.²

¹ See for example clauses 49, 50, and 53 to 55 of the Bill.

²CAB-15-MIN-0207.

Our consideration of options was also limited by the scale of change as a result of FENZ's establishment, the timeframes and capacity for implementation, and the need for stakeholders to be able to continue applying for permits. This meant, for example, that we did not consider approaches to permitting which differed significantly from the current regime in rural areas. We have also assumed that regulations will need to provide for permitting in urban areas. This is to help the smooth transition of fire control functions from territorial authorities to FENZ.

Limits on impacts analysis for permitting

Our impact analysis assumes that the number of fire permits issued will remain similar to current levels after 1 July 2017. There is no centralised record of the number of permits issued, or permit applications considered, in rural fire districts by RFAs or ERFD staff. However, there are an estimated total of around 38,000 permits issued in rural fire districts per year nationwide.³ In urban areas, only some territorial authorities issue permits, and we do not have an estimate of the number of permits they grant per year.

Levy information requirements

Limits on impacts analysis for levy information requirements

It is not possible to precisely compare the varying compliance costs for insurers of providing insurance details for clients over different thresholds. Compliance costs will vary widely between insurers, as many insurance companies own multiple subsidiaries, operating different technological platforms and databases.

We have assumed that lowering the threshold over which information must be provided will generally increase compliance costs for levy payers (in most cases, 'levy payers' are insurers and brokers). In particular, we assume that lowering the threshold to a point where all residential insurance policies are captured will have a qualitatively different impact on compliance costs than if the threshold captures only non-residential policies. We also assume that proposed levy rates for 2017/18 will be approved by Cabinet. This would see residential policyholders pay \$106 per annum in levy, and the overwhelming majority of policyholders would therefore pay over a \$100 threshold.

Steve Waldegrave
General Manager, Policy

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³ This total of 38,000 is derived from a figure of approximately 24,000 (collated from Principal Rural Fire Officers' responses to a survey in late 2016), plus estimated permits issued by those that did not respond to the survey. However, there is uncertainty, as the number that individual RFAs/ERFDs grant varies from under 100 to more than 10,000 annually.

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Executive summary

1. This regulatory impact statement (RIS) accompanies the Cabinet paper 'Regulations to support Fire and Emergency New Zealand'.
2. This RIS is in two main parts and presents separate analyses relating to key areas for regulations to support the Fire and Emergency New Zealand (FENZ) Bill (the Bill): fire permitting and levy forms.
3. The Bill, once passed, will repeal the Fire Service Act 1975 and the Forest and Rural Fires Act 1977, along with the majority of their supporting regulations. As a result new regulations are required to enable certain current processes such as fire permitting to continue.
4. We expect the Bill to pass in the first half of 2017, for the establishment of Fire and Emergency New Zealand (FENZ) on 1 July 2017.

Part one - Fire permitting

5. Fire permitting reduces the risk of unintended harm to property and people from individuals lighting fires when unsafe to do so, or the risk of businesses (particularly in the rural sector) operating less efficiently by being too cautious and only lighting fires when it is almost certainly safe.
6. The proposed regulations will allow the grant of permits to light fires in open air, when otherwise prohibited by the Bill. Specifically, during prohibited or restricted fire seasons, or when prohibitions are in effect due to fire risk conditions that may endanger people or property. As permitting represents an exemption from the Bill (albeit a low level one), it is important to have some details and certain criteria set out in regulations.
7. Three options for fire permitting are presented in this RIS, and are assessed against four criteria to determine which option best addresses the problem.
8. The problem is how to best regulate for effective permitting, given the Bill recognises permitting as a tool to control fire in open air. Our preferred option is for regulations to include requirements for:
 - information from applicants;
 - conditions on permits;
 - an additional criterion for FENZ granting permits; and
 - provision for FENZ suspending, cancelling, and renewing permits.

Part two - Levy information requirements

9. FENZ will have responsibility for delivering essential fire and emergency services across all of New Zealand. The vast majority of its revenue will be raised from a levy on insurance. FENZ will be responsible for recommending levy rates which will ensure it is adequately funded to perform its functions and duties. In order to accurately model levy rates and revenue, and to ensure the correct amount of levy is being paid, FENZ will need information about the insured value of assets subject to the levy.

10. The current regulations provide for information returns to be completed by levy payers. These are not in themselves sufficient to ensure that FENZ will have necessary information to recommend accurate levy rates, or to identify potential levy avoidance activity. Additional information on insurance policies attracting levy of over \$1000 is provided on a voluntary basis by insurance companies.
11. Without further regulation, FENZ will have to rely on the voluntary agreements with private insurance companies to collect the information it needs to ensure it is adequately funded.
12. We consider there is sufficient risk that detailed information on insurance contracts may not always be provided to FENZ by insurers to justify the making of regulations to require information to be provided.
13. The consequences of FENZ failing to collect the information it needs could be very serious. Recommending and setting levy rates based on inadequate estimates of the insured value of property subject to the levy could potentially have a very significant impact on FENZ (if levy is under-collected) or insured policyholders (if levy is over-collected).
14. Four options for collecting information necessary for FENZ to identify potential avoidance and accurately model levy rates are considered in this RIS. They are assessed against the underlying principles of the levy regime, set out in clause 69 of the FENZ Bill.
15. Our preferred option will formalise the current voluntary arrangements in regulations, to ensure FENZ has good information on non-residential property subject to the levy, while avoiding placing undue compliance costs on insurers and other levy payers who will be required to provide insurance information.

Part one - Fire Permitting

Status quo and problem definition

16. Fire permits are currently issued for lighting fire in open air (that is, outside). Permits enable people to use fire in limited circumstances (for example at a particular location), when the general rule is not to allow fires in an area. Fire permits are issued in two contexts: rural and urban.
17. In rural fire districts, Rural Fire Authorities (RFAs)⁴ including Enlarged Rural Fire Districts (ERFDs)⁵ issue fire permits under the Forest and Rural Fires Act 1977 (FRF Act). Permits are particularly important in rural areas to provide for the use of fire as a land management tool (for example in clearing land). The Forest and Rural Fires Regulations 2005 (FRF Regulations) prescribe forms for issuing permits under the FRF Act. They require that permits state the permit holder's name, location of fire, and other information. Conditions that permits must state are also specified and an ability to impose special conditions, if any.
18. In urban areas, most territorial authorities have urban fire bylaws in place. Some bylaws regulate fire in open air through permitting systems; others regulate it through rules or other measures.
19. The Bill changes the status quo from 1 July 2017. FENZ will have fire control powers for fire in open air everywhere – in rural areas, and in urban areas. Exercise of some powers will mean that a person may not light a fire in open air, unless FENZ grants a permit under regulations.⁶
20. Under the Bill, permits granted under regulations can allow fires to be lit in open air:
 - when prohibitions are in effect due to fire risk conditions that will or are likely to endanger persons or property (see clause 50 of the Bill); and
 - during a restricted or prohibited fire season (see clauses 54 and 55 of the Bill).
21. In rural areas, FENZ will issue fire permits from 1 July 2017. RFAs and ERFDs' functions would merge into FENZ, and these entities would no longer issue fire permits.
22. In urban areas, the Bill provides transitional arrangements relating to permitting. Territorial authorities' fire bylaws will continue, until amended or revoked, unless they are inconsistent with the FENZ Bill or underlying regulations.⁷
23. In urban areas, FENZ is not intending to exercise fire control powers until territorial authorities' fire bylaws are amended or revoked. This means FENZ's current planning for 1 July 2017 does not extend to granting permits in urban areas. However, we understand FENZ will consider putting appropriate fire control measures in place, if there is an urgent need to respond to fire risk conditions in an urban area without existing measures.

⁴ Depending on the area, a territorial authority, the Minister of Conservation, or the Minister of Defence can be an RFA.

⁵ ERFDs are mergers of smaller RFAs. ERFDs are governed by a rural fire district committee as the RFA.

⁶ See clauses 49, 50, and 53-55 of the FENZ Bill. However this is only some powers; other fire control powers restrict or prohibit activities in an area, rather than fire in open air.

⁷ Clause 160, which inserts clause 152B into the Local Government Act 2002.

24. The problem addressed in this RIS is how to best regulate for effective permitting for 1 July 2017. As noted in the Agency Disclosure Statement, for the purposes of this RIS we have assumed that permitting will continue, consistent with the Bill's recognition of permitting as a tool to control fire in open air.
25. Cabinet's decision to develop new legislation that retains provisions from existing legislation unless no longer needed supports our way of framing of the problem. It is also supported by stakeholders' need to continue applying for permits (to clear land with fire when not in an open season, for example), and the capacity for implementation (given the scale of change in shifting to a unified fire services organisation).
26. The Bill's provision for permitting as a way to control fire in open air effectively acknowledges that permitting is important for reducing the chance that individuals light fires when unsafe to do so (risking unintended harm to property and people). It also reduces the risk of businesses operating less efficiently by being too cautious and only lighting fires when it is almost certainly safe.

Objectives

27. We developed four objectives for fire permitting. We use these objectives to assess the options for how to best regulate for effective permitting for 1 July 2017, given the Bill recognises permitting as a tool to control fire in open air. These are:
 - ***Enables more effective functioning of FENZ***– by contributing to FENZ's role in promoting fire safety under clause 11 of the Bill, and also its broader operation as a unified fire services organisation;
 - ***Allows flexibility*** – by enabling individual circumstances to be considered and recognising the "local" nature of fire (e.g. different fire environments in different locations);
 - ***Is achievable and future focussed***– for the sector, given many stakeholders are familiar with current rural fire permitting approaches, but recognising there will be a new organisation operating under new legislation from 1 July 2017. There is a balance between achievability for 1 July 2017, and the future focus (to ensure permitting in both rural and urban areas are encompassed); and
 - ***Improves certainty and transparency***– so it is clearer why a decision to grant a permit is made, which fits with modern approaches to decision-making by public bodies.

Options and impact analysis

Permitting options

28. In Table 1 (at Appendix A), we describe three options, which all involve regulating for fire permitting. The three options range from highly prescriptive, to highly discretionary:
 - ***Option 1*** – is highly prescriptive. Regulations will prescribe the specific information required from permit applicants (e.g. name and address, location of fire). They would also prescribe the wording of conditions imposed on permits.

- *Option 2 (preferred)* – contains some prescriptive elements, and some discretionary elements. The prescriptive elements include the specification of some standard permit conditions, while the ability to impose other conditions FENZ considers reasonably necessary is a discretionary element. Other prescriptive elements include the ability to suspend permits in limited circumstances.
 - *Option 3* – is highly discretionary in two ways. Firstly, it regulates types of matters that FENZ must consider (e.g. when deciding whether to grant a permit, and when deciding permit conditions). Regulating what must be considered leaves the more precise output to FENZ (i.e. the wording of permit conditions). It is also highly discretionary by enabling FENZ to require the information it considers “reasonably necessary” from applicants, rather than specifying pieces of required information.
29. Table 2 (at Appendix A) evaluates the three permitting options against the policy objectives set out in paragraph 27 above.
 30. Table 3 (at Appendix A) describes the impact of each permitting option on key stakeholder groups.
 31. All options are consistent with clause 151 of the Bill, under which regulations may be made for FENZ’s grant of permits to allow for the lighting of fires in open air that would otherwise be prohibited. Regulations may provide for the application for permits, and the grant, renewal, variation, cancellation, surrender and expiry of permits, as well as for permit conditions.
 32. The clause 151 regulation making power also sets parameters. It recognises that FENZ can only grant a permit when prohibitions are in effect if FENZ considers the permit necessary to prevent, reduce, or overcome any hazard to life or because of any other serious emergency. This is also one of the two situations in which FENZ can grant a permit during a prohibited fire season (as proposed in Supplementary Order Paper 262); the other is where weather or other conditions have temporarily reduced the fire hazard so as to make it apparently safe to light a fire.
 33. As noted in the Agency Disclosure Statement, all the options presented in this RIS assume permitting will continue. No non-permitting options were considered. The FENZ Bill’s references to permitting support this approach and reflect Cabinet’s decision to keep existing legislative provisions, unless no longer needed or are needed in regulations or operational policy. Further, options involving no permitting would also fail to address earlier mentioned concerns (e.g. individuals lighting fires when unsafe to do so, risking unintended harm to property and people, as well as the risk of businesses operating less efficiently by being too cautious and only lighting fires when it is almost certainly safe).

Consultation

Government

34. The following agencies were consulted in the development of this RIS: the Treasury, the State Services Commission, New Zealand Police, the Departments of Conservation and Corrections, National Ambulance Sector Office, New Zealand Defence Force, Accident Compensation Corporation, Housing New Zealand Corporation, WorkSafe New Zealand, Maritime New Zealand, Ministry for Primary Industries, Ministry for the Environment, Ministries of Culture and Heritage, Defence, Health, Business, Innovation and Employment, Transport, Education, Justice, Civil Defence and Emergency Management, and Inland Revenue. The Department of Prime Minister and Cabinet was informed.
35. The following Crown entities were also consulted: New Zealand Fire Service Commission which includes the FENZ Transition Project.

Targeted stakeholder consultation

36. We targeted affected or interested parties for consultation on the problem, possible options for permitting, and impacts. Targeted consultation, rather than public consultation, was appropriate for two reasons. Firstly, fire permitting is a relatively narrow aspect of the wider fire sector reforms (e.g. compared to structure and governance changes). Secondly, the Department of Internal Affairs (the Department) is broadly familiar with fire sector stakeholders (given their continued engagement throughout the fire services review process).
37. Targeted consultation closed on 26 January 2017. Sixteen written responses were received. The written responses contributed to the consideration and refinement of permitting options summarised in this document. We drew from the responses a number of themes or points of emphasis including "safety", "risk", "local conditions/circumstances", and the need for appropriate knowledge/judgement/discretion.
38. Specifically, the emphasis on judgement (as well as discretion and flexibility) has influenced the reframing of Options 2 and 3 that provide for decision-making criteria to be set out in regulation. We have clarified that these options only cover regulation of baseline criterion/criteria, on top of any requirements in the FENZ Bill (e.g. see cl 151(6)). They are not exhaustive. Any remaining parameters on decision-making would sit outside regulations, and be left up to FENZ operational policy and/or the discretion of the person determining the permit application.
39. The refinement of Option 2 was also influenced by the targeted consultation themes of "safety" and "risk". Specifically, Option 2 was reframed to include limited provision for suspending and cancelling permits.
40. Elements of the three options were also revised after targeted consultation to ensure the three options were more easily distinguishable.

Recommendation

Option 2

41. Option 2 best meets the objectives, to address the problem of how best to regulate for effective permitting for 1 July 2017.
42. Option 2 provides an appropriate balance between consistency with current rural fire processes, ensuring achievability, and being flexible enough to work in the future for permitting in urban areas. It also provides safeguards by setting a criterion on decision-making. FENZ is impacted by resourcing and administering fire permitting nationally.

Implementation plan

43. Overall, the implementation plan is for FENZ to carry out fire permitting from 1 July 2017 in areas currently controlled by RFAs/ERFDs. While fire permitting already occurs in these areas under the FRF Act and FRF Regulations, FENZ would carry out permitting under regulations under the FENZ enactment, with policies and procedures in support.
44. In urban areas, FENZ is not currently planning to implement fire permitting from 1 July 2017. Unless inconsistent with FENZ legislation or regulations, TAs would continue with any existing permitting (or other fire in open air controls) in urban areas under bylaws, until amended or revoked. Where a TA does not have fire in open air controls in place in an urban area, FENZ will consider putting in place appropriate fire control measures if there is an urgent need to respond to fire risk conditions.
45. Broadly speaking, the policy intent is to unify the roles and functions of fire services in FENZ, and to facilitate the transfer of responsibilities from TAs to FENZ. In line with the FENZ Bill, the following transitional arrangements would apply from 1 July 2017:
 - permits issued under the FRF Act would continue to apply post 1 July 2017, if they are still within their validity periods;
 - territorial authorities' bylaws in urban areas for fire permits (or imposing other existing controls) would continue. However, the bylaws must not be inconsistent with the FENZ Bill or underlying regulations. Inconsistent bylaws need to be amended or revoked. This means FENZ and territorial authorities will need to work closely to ensure a smooth transition of responsibility.
46. The tight timeframes are a risk to implementation, given FENZ's responsibilities from 1 July 2017 onwards. There is also a risk that it is unclear who has what responsibilities in an area. This can be partly mitigated through communication.
47. Overall, mitigation of risks is occurring through the implementation preparation already underway:
 - the FENZ Transition Team gathered available current state information from Principal Rural Fire Officers in late 2016, so that the team understands the current state in rural areas;
 - the FENZ Transition Team's design work is underway, with preparation for fire permitting policies and procedures for 1 July 2017 that reflect the FENZ Bill and underlying permitting regulations; and
 - prior to 1 July 2017, the intention is to develop and promote communications material on fire permitting, targeted to the sector.

Monitoring, evaluation, and review

48. As a Crown agent, FENZ will be subject to the reporting requirements of the Crown Entities Act 2004. Since the permitting process will be considered “business as usual” for FENZ, it is anticipated that performance measure(s) will be established and form part of the regular Ministerial reporting and accountability cycle.
49. Subject to resourcing, a formal post-implementation review of the new organisation should also be conducted within two years of the changes, including (for example) an assessment of the implementation of the changes under the new legislative regime (including regulations).

Part two – Levy information requirements

Status quo and problem definition

50. The FENZ Bill provides that FENZ, New Zealand's new unified national fire organisation, will be funded through a levy on insurance (as its predecessor organisation, the New Zealand Fire Service, is currently). The levy payable by a policyholder is calculated on the basis of their insurance cover. In most cases, the insurer collects the levy payment when it invoices the policyholder for the insurance premium. The insurer then pays the levy to the fire service on behalf of the policyholder.
51. The vast majority of FENZ's revenue will be raised through the levy. FENZ will be responsible for recommending levy rates which will ensure it is adequately funded to perform its functions and duties. In order to accurately model levy rates and revenue, and to ensure the correct amount of levy is being paid, FENZ will need information about the insured value of assets subject to the levy.
52. Currently, the New Zealand Fire Service (NZFS) collects information relating to levy payments in two ways:
 - By requiring levy payers (as described above, in most cases the 'levy payer' is an insurer or broker) to provide summary information on levy payments in forms prescribed in regulation.⁸
 - Through the voluntary provision of more detailed information by insurance companies.
53. In the absence of further regulation, regulations containing the levy forms will remain in force after the establishment of FENZ on 1 July 2017.⁹ Those forms do not however provide NZFS with any information at the level of individual insurance contracts, for example the value of the property insured in a particular contract. Rather, the insurer is required only to provide an aggregate total of levy paid for each category of insurance (commercial material damage, domestic building, and so on).
54. Provision of more detailed information at the level of insurance contracts will be critical to the operation of FENZ to enable it to:
 - *Model future levy rates more accurately* – to recommend levy rates at a level that will collect sufficient revenue to meet its projected costs (and not more), FENZ must understand the asset base to which the levy applies. In particular, it needs information on the insured value of assets at policyholder level, to predict how much levy will be collected per asset. The current aggregate total does not provide this. This information is extremely important during the period of reform, when the modelling calculations are particularly complex and must take account of changes to the basis on which levy is calculated, the potential removal of levy exemptions, and the introduction of a differential levy rate for residential property.

⁸ The Fire Service Regulations 2003 prescribe the forms for information returns to be completed by various parties in paying the fire levy pursuant the Fire Service Act 1975.

⁹ While most provisions in the FENZ Bill commence on 1 July 2017, changes to the levy regime will not commence until 1 July 2018 at the earliest. Provisions of the repealed Fire Service Act 1975 that relate to the calculation and collection of the levy are saved for the transitional period, until the commencement of the Bill's levy provisions.

- *Identify potential levy avoidance activity* – visibility of levy payments at the level of individual policyholders will allow FENZ to identify patterns which may indicate potential avoidance, for example when there is a sudden and otherwise unexplained change in levy return for a particular policy. In these circumstances, FENZ may choose to investigate.
55. Insurance companies currently provide some detailed information on a voluntary basis for policyholders who pay levy over \$1000. There has been no interruption in the supply of voluntary data during the last three years, though there have been delays.
 56. Nevertheless, in the absence of regulations requiring the provision of detailed information, NZFS considers there is significant risk that the supply of information could be jeopardised.
 57. Further, the consequences of FENZ failing to collect the information it needs could be very serious. FENZ would be unable to accurately model projected levy revenue and the Minister would not have a robust basis for making the calculations needed to underpin his or her recommendation for future levy rates under clause 105 of the Bill. If future levy rates are not set accurately, FENZ could significantly under-or over-collect levy, at the risk of compromising its operations in the first instance, or imposing an unnecessary financial cost on policyholders in the second (if levy rates are set too high, policyholders collectively will be ‘overpaying’ for the cost of FENZ’s services, until such time as levy rates can be reviewed and corrected through regulation, based on better information).
 58. The problem being addressed in this RIS is how best to ensure FENZ is able to collect the information it needs to identify potential levy avoidance and to model future levy revenue to inform the accurate setting of levy rates. To achieve this, FENZ requires basic information about individual insurance policies included within an insurer’s monthly payment, such as:
 - the type of policy (commercial property, residential property, motor vehicle, and so on), to assess which rate of levy is payable and whether any cap applies;
 - the insured value of the assets covered by the policy (the indemnity value or the ‘amount insured’ as set out clause 71 of the FENZ Bill), to assess whether the correct amount of levy has been paid;
 - the period of cover (the start and end date of the policy), to assess whether the correct amount of levy has been paid;
 - the date on which the policy was entered into, to ensure the levy has been paid on time;
 - the name of the insured policyholder, to review levy payments year on year; and
 - the amount of levy paid.

Objectives

59. Cabinet agreed in April 2016 that FENZ should be funded by a levy on insurance for material damage perils and that the levy, and the costs and assumptions underlying it, would be reviewed at least every three years [EGI-16-MIN-0064 refers].

60. The principles underlying the levy regime are set out in the FENZ Bill. Clause 69 states that the purpose of Part 3 of the Bill is to provide for a levy that is¹⁰:
- A *stable* source of funding to support FENZ in the performance of functions and duties and exercise of powers under the FENZ legislation.
 - *Universal*, so that FENZ's costs are generally shared among all who benefit from the potential to use FENZ's services.
 - *Equitable*, so that policyholders should generally pay a levy at a level commensurate with their use of, or benefit from the potential to use, FENZ's services and with the risks associated with the activities that policyholders carry out (but without strict apportionment according to use, benefit, or risk having to be observed).
 - *Predictable*, so that policyholders and levy payers are able to predict the amounts that they will need to pay and FENZ is able to predict how much levy income it will receive.
 - *Flexible*, so that the levy can adapt to changes in the use, benefit, or risk associated with those who benefit from the potential to use FENZ's services; variations in FENZ's costs; and changes to the expectations of the Crown and the strategic needs of FENZ.
61. The most relevant of these to the consideration of options in this RIS are stability, equity, and predictability:
- FENZ requires accurate and comprehensive information on levy payments to ensure it has sufficient funding to perform its functions and duties.
 - Information returns are required to ensure that FENZ is better able to identify potential avoidance activity, which enhances the equity of the regime.
 - Gathering information on insurance contracts in the 2017/18 years will provide FENZ with a robust basis on which to predict levy revenue in later years. This will allow it to model the 2018/19 levy rates as accurately as possible. Accurate rate setting helps ensure the overall equity of the regime.
62. In addition, the levy regime must be cost effective to administer for FENZ, levy payers, and policyholders.

Options and impact analysis

63. Four options were considered in the development of this policy:
- Option 1: the status quo would continue, and FENZ would continue to rely on aggregated summary information, with more detailed information provided by insurers on a voluntary basis (the status quo).
 - Option 2: the status quo would continue, but FENZ would conduct audits of all insurance companies on an annual basis.

¹⁰ Clause 69 will not be in force during 2017/18. Nevertheless, we consider these principles offer an appropriate policy framework for considering options.

- Option 3: (preferred option) regulations would require insurers to provide more detailed policy-level information (as described below) to FENZ for every policy assessable for levy of over \$1000.
 - Option 4: regulations would require insurers to provide more detailed policy-level information (as described below) to FENZ for every policy assessable for levy of over \$100.
64. In addition to saving existing forms prescribed in the 2003 regulations, the Bill provides for the making of regulations that specify any information, including information that may enable or assist in the determination of the rates or amounts of levy payable after the end of the transitional period that a levy payer must provide to FENZ.¹¹
65. The information required in options 3 and 4 in relation to each contract of insurance, would be:
- the policy type,
 - the indemnity value of the property,
 - the amount insured of the property,¹²
 - the policy start and end date,
 - the policy invoice date,
 - the insured's name, and
 - the levy paid.
66. While recognising that any requirement to provide information will carry a compliance cost for the provider, it is difficult to precisely compare the impacts of these options. We have assumed that if the threshold is set at \$100, this will capture all residential policyholders.¹³ This would require levy payers to provide information relating to hundreds of thousands of house insurance contracts. We assume this will have a qualitatively different impact in terms of compliance costs for levy payers, than if the threshold is set at \$1000, capturing only non-residential policies.
67. Our analysis of these options against the key principles of the levy regime is set out in Table 4 below.

¹¹ Clause 26(2)(g)

¹² As set out in clause 71 of the FENZ Bill.

¹³ The 2017/18 levy rates will be set following consideration by Cabinet in late March 2017. Here we assume that the rates recommended by NZFS will be approved, which would see residential policyholders pay \$106 per annum in levy.

Consultation

Government

68. The following agencies were consulted in the development of this RIS: the Treasury, the State Services Commission, New Zealand Police, the Departments of Conservation, Corrections, National Ambulance Sector Office, New Zealand Defence Force, Accident Compensation Corporation, Housing New Zealand Corporation, WorkSafe New Zealand, Maritime New Zealand, Ministry for the Environment, Ministry for Primary Industries, and Ministries of Culture and Heritage, Defence, Health, Business, Innovation and Employment, Transport, Education, Justice, Civil Defence and Emergency Management, and Inland Revenue. The Department of Prime Minister and Cabinet was informed.
69. The following Crown entities were also consulted: New Zealand Fire Service Commission which includes the FENZ Transition Project.

Public consultation

70. Public consultation was undertaken by the Department in July and August 2016 on information requirements for levy payers. A total of 54 submissions were received from individuals, local government, rural fire and other organisations which included airlines, animal welfare, churches, commercial property, railway, energy, food and water suppliers, farmers, insurers, mining, forest industry, and public museums and art galleries. The discussion document described options 1 to 4 above. Option 4 was the preferred option.
71. Key themes from the feedback received were:
 - That more detailed information could be valuable in providing data for future policy development.
 - That appropriate safeguards must be put in place to ensure the confidentiality of client-level information is protected, or that the names of insureds should not be collected. FENZ must provide a secure online portal for providing this information.
 - That requiring information at too low a level (for every policy over \$100 in levy) would not be cost effective, and would significantly increase costs for insurers. These costs would be passed on to the clients through premiums.
 - Some submitters did not see how the collection of additional policy information would assist FENZ in managing or forecasting funding streams.
 - That requiring information would be onerous and administratively expensive for policyholders to manage.
 - Support for option 3, which essentially legislates for the status quo.
 - That setting the threshold at \$250 or \$500 would reduce compliance costs, compared to \$100.
72. Submissions on the issue of compliance costs included:
 - "The provision of more data will significantly increase costs for insurers."
 - "[The] proposed regulation will add significant and permanent compliance costs for the industry"

- “The current model of providing information for clients paying a levy over \$1,000 already places a significant burden on insurers, and extending this to all policies requiring levy payments greater than \$100 will create an overbearing burden.”
 - “This would be both onerous and administratively expensive to manage, and therefore increase overall costs to the insurer which policyholders would ultimately have to pay.”
73. As a result of feedback received, the Department’s preferred option is now option 3 above, requiring information on policies over a threshold of \$1000. This strikes a balance between ensuring FENZ has the information it needs, and avoiding placing undue compliance costs on insurers and other levy payers required to provide the information.

Recommendation

Option 3 (regulations for levy payments above \$1000)

74. We recommend option 3, as it strikes a balance between ensuring FENZ has the information it needs, and avoiding placing undue compliance costs on insurers and other levy payers required to provide the information.
75. Setting the threshold at \$1000 will mean that information on most non-residential insurance contracts will be captured. However, FENZ will not collect any information on insurance contracts for residential property, residential contents, and motor vehicles which together account for approximately 42% of levy revenue.¹⁴
76. This will compromise FENZ’s ability to accurately set levy rates. Nevertheless, it may be able to gather data on residential insurance through other means, for example through ad hoc information requests of insurers, aligned with the three yearly levy setting cycle.
77. In terms of the policy objectives set out above, we consider that option 3 will deliver a stable source of funding and support an equitable levy regime, by enabling FENZ to model and recommend levy rates which will collect sufficient revenue to meet its costs. We acknowledge that a threshold of \$1000 represents a compromise in terms of predictability (because FENZ will not have sight of residential insurance), but this is justified in terms of maintaining the cost effectiveness of administration of the regime (by avoiding placing an unreasonable compliance cost on insurers). We note that the statutory information requirements can be supplemented by additional ad hoc requests by FENZ for information from insurers on residential policies.
78. We consider that option 1 is not viable as the risk that FENZ would not have sufficient information to administer the levy regime and accurately model future levy rates would be too great. NZFS have advised that while the voluntary arrangement has operated fairly well in recent years, there have been significant delays in some cases. It considers that without regulation, there is a real risk that a delay or interruption in the provision of information could compromise FENZ’s revenue and operations during the transition period.
79. We do not recommend option 2 as the cost of implementation would not be feasible.

¹⁴ Based on 2015/16 figures.

80. We consider that option 4 (regulations for levy payments above \$100) would place an unreasonable compliance cost on insurers, who would be required to provide information on hundreds of thousands of residential insurance contracts.

Implementation plan

81. Regulations will be made and changes communicated to the insurance sector and other stakeholders. Implementation may be supported if necessary through the provision of non-statutory guidance by FENZ.
82. Insurers (as levy payers) will complete relevant forms and returns and provide to FENZ at the time they make a levy payment. The Bill provides for the additional information returns proposed under option 4 to be supplied in a form specified by FENZ or in any other manner approved by FENZ.¹⁵ Information could be provided on a spreadsheet, for example.
83. All information provided by levy payers under these regulations will be subject to confidentiality requirements in clauses 88 and 89 of the Bill.¹⁶

Monitoring, evaluation and review

84. Following the 2017/18 financial year, an entirely new set of regulations for levy information returns will be required for 2018/19 and beyond, when substantive changes to the levy regime commence. New regulations will be made, following public and inter-agency consultation.
85. The consultation and regulation making process for the new set of regulations will provide an opportunity for public comment and review, and to incorporate any feedback on the 2017/18 forms.
86. Information returns regulations may be reviewed in future as necessary, as part of the regular levy regular cycle set out in the Bill (clause 106).

¹⁵ Schedule 1, Clause 26(4) of the Bill

¹⁶ Provided for in Schedule 1, Clause 31 of the Bill, which commences on the date of Royal assent.

Appendix A: Options Analysis Tables

Table 1 – Description of permitting options

87. Table 1 provides detailed descriptions of the three options for permitting regulations.

	Option 1 – Greater prescription through regulation	Option 2 (preferred) – balance of prescription and discretion	Option 3 – regulations allow more discretion for FENZ
Summary description of option	Regulating information to grant fire permits (e.g. specific information required from applicants, and compliance information FENZ provides when granting permits, like specific permit conditions).	Regulating so FENZ can require reasonably necessary information from applicants; regulating a single decision-making criterion for FENZ's use of power to grant permits; and regulating specified conditions with FENZ to set other conditions it considers reasonably necessary. Cancellations and suspensions also regulated, along with renewals.	Regulating so FENZ can require reasonably necessary information from applicants; regulating decision-making criteria for FENZ's use of power to grant permits; and regulating types of matters for FENZ to consider when determining permit conditions.
Element of option	Option 1 – Greater prescription through regulation	Option 2 (preferred) – balance of prescription and discretion	Option 3 – regulations allow more discretion for FENZ
Info from applicant	Prescribe info required from applicants (e.g. applicant's name and address, location of fire, fuel types to be burned, and other specified information) FENZ has no discretion to require additional info	Some prescription of info required from applicants FENZ has discretion to require additional info it considers reasonably necessary	No prescription of info required from applicants FENZ has discretion to require info it considers reasonably necessary
Conditions on permit	Prescribe standard condition on permit (e.g. no lighting a fire if conditions are such that fire is likely to spread beyond the limits of the land or other property for which the permit's granted) FENZ has no discretion to impose other/additional conditions	Prescribe standard condition on permit (e.g. no lighting a fire if conditions are such that fire is likely to spread beyond the limits of the land or other property for which the permit's granted) FENZ has discretion to impose other conditions FENZ considers reasonably necessary	No prescription of standard condition on permit Specify inclusive list of matters for FENZ to consider when determining what conditions to impose on permit (e.g. consider fire environmental factors, such as weather, topography and fuels)
Criteria for decision whether or not to grant permit	No additional criterion required to that provided in the Bill	In addition to criteria in the Bill, prescribe additional, non-exhaustive criterion e.g. before granting a permit, FENZ must have regard to the "fire risk conditions" (defined in clause 6 of the Bill). It is a non-exhaustive criterion, as other criteria could still be provided for through FENZ operational policy and/or left to the discretion of the person determining the permit application	In addition to criteria in the Bill, prescribe additional, non-exhaustive criteria e.g. same criterion as under Option 2, plus a criterion for FENZ to have regard to the applicant's experience with lighting and controlling fires. They are non-exhaustive criteria, as other criteria could still be provided for through FENZ operational policy and/or left to the discretion of the person determining the permit application.
Suspension of permit	No provision for suspending	Provision for FENZ to suspend permit(s) in limited circumstances (e.g. for the duration in which FENZ considers that "fire risk conditions" exist or are likely to exist in the area)	No provision for suspending
Cancellation of permit	No provision for cancelling	Provision for FENZ to cancel permit(s) in limited circumstances (e.g. safety related circumstances, such as where a person demonstrates they are not competent to fulfil the permit conditions and conduct the burn safely, or where a person outright breaches the permit conditions)	No provision for cancelling
Renewal of permit	No provision for renewing	Provision for FENZ to renew permits in accordance with criterion as for grant of permits e.g. before renewing a permit, FENZ must have regard to the "fire risk conditions" (defined in clause 6 of the Bill)	No provision for renewing

Table 2 – Options analysis

89. Table 2 evaluates the three permitting options against the policy objectives set out in paragraph 27 above.

Objectives	Option 1 – Greater prescription through regulation	Option 2 (preferred) – balance of prescription and discretion	Option 3 - regulations allow more discretion for FENZ
Enables more effective functioning of FENZ – by contributing to FENZ’s role in promoting fire safety, and by contributing to its broader operation as a unified fire services organisation	Score: moderate The ability to interact with permit applicants, and consider fire permit applications would contribute to FENZ’s role in promoting fire safety.	Score: positive The ability to interact with permit applicants, and consider fire permit applications would contribute to FENZ’s role in promoting fire safety. FENZ’s role in promoting fire safety is contributed to by the ability to cancel and suspend permits (in limited circumstances, which are largely safety focussed). An additional (but non-exhaustive) criterion for decision-making that requires regard to fire risk conditions is also safety focussed, and contributes to this objective.	Score: moderate The ability to interact with permit applicants, and consider fire permit applications would contribute to FENZ’s role in promoting fire safety. Various additional (but non-exhaustive) criteria for decision-making could be safety focussed, and contribute to this objective.
Allows flexibility – by enabling individual circumstances to be considered and recognising the “local” nature of fire	Score: moderate Would require certain information from applicants and may be inflexible if FENZ requires different information. Having various specified conditions, and an inability to impose other permit conditions, might provide insufficient flexibility for individual circumstances and “local” nature of fire.	Score: positive Provides flexibility to FENZ by allowing it to require reasonable information from the applicant in assessing the permit application, and not limiting FENZ to bio-details. Provides flexibility to FENZ to impose other permit conditions (e.g. conditions relevant to local and individual circumstances), on top of specified conditions. Additional criterion on decision-making provides a baseline, while still providing flexibility around other matters decision-makers consider when deciding whether or not to grant a permit (e.g. other matters like individual and local circumstances).	Score: moderate Provides flexibility to FENZ by allowing it to require reasonable information from the applicant in assessing the permit application, and not limiting FENZ to bio-details. Little flexibility with list of matters specified for considering the types of conditions to impose, but still providing flexibility around specific permit conditions imposed. Additional criteria on decision-making might become too restrictive, limiting the extent of the decision-maker’s discretion and ability to flexibly consider individual circumstances in deciding whether or not to grant a permit.
Is achievable and future focussed – for the sector	Score: moderate Achievable due to similarities with regulatory permitting framework applying in rural fire districts. The rural fire permitting basis of this option means it’s unlikely to be future focussed enough to easily accommodate permitting in urban areas, if later implemented.	Score: positive Achievable due to similarities with regulatory permitting framework applying in rural fire districts. Limited specification (e.g. of conditions) means Option 2 is future focussed by providing for an ability to impose other conditions, and with a sufficiently broad criterion on decision-making that could accommodate permitting in urban areas, if later implemented.	Score: moderate Less achievable due to significant change in approach from the regulatory permitting framework applying in rural fire districts (e.g. unlike rural fire permitting, Option 3 doesn’t specify each individual condition or piece of information required. Instead, it specifies types of matters to take into account/consider). Future focussed, as matters to take into account/consider are broad enough to accommodate permitting in urban areas, if later implemented.
Improves certainty and transparency	Score: moderate Limited improvement to certainty and transparency in the decision making process, as no provision for decision-making criterion or criteria (beyond matters identified in cl 151(6)(a) and (b)).	Score: positive Would improve certainty and transparency in decision-making process, as one additional criterion (on top of matters identified in cl 151(6) would indicate to applicants the baseline requirements to be taken into account.	Score: positive Would improve certainty and transparency in decision-making process, by indicating to applicants the baseline requirements or granting permits, through various criteria for decision-making (on top of matters identified in cl 151(6)).
Overall rating	Moderate. This option moderately meets the objectives for fire permitting	Positive. This option positively meets the objectives for fire permitting	Moderate. This option, overall, moderately meets the objectives for fire permitting

Table 3 – Impact analysis

90. Table 3 describes the impact of each permitting option on key stakeholder groups.

Impact of options	Option 1 – Greater prescription through regulation	Option 2 (preferred) - balance of prescription and discretion	Option 3 - regulations allow more discretion for FENZ
On FENZ	FENZ - would have the cost of resourcing (including training) and administering fire permitting nationally. This cost would be met from the levy. The estimate of 38,000 permits issued in rural fire districts per year indicates the scale of this impact on FENZ. But the impact is also likely to be positive over time, with efficiencies from the shift to one organisation doing permitting.	FENZ – same impact comment as under Option 1.	FENZ – same impact comment as under Option 1. Plus, potential for greater training costs, due to Option 3 taking a different approach from the current, more prescribed rural fire permitting approach.
On the public and businesses	Public and businesses - can apply for permits during prohibited or restricted fire seasons, or when prohibitions are in effect due to fire risk conditions that will or are likely to endanger persons or property. However, there is a “cost” in having to provide information, and go through the process of obtaining a fire permit. Public and businesses - Having prescribed information would provide certainty and consistency for applicants in what they need to provide for the fire permit application.	Public and businesses – same impact comment as under Option 1 Public and business - applicants might have less certainty from the regulations about what they need to provide for the fire permit application, as FENZ can require what it considers “reasonably necessary”. A decision-making criterion would provide applicants with baseline indications of what requirements must be satisfied or taken into account for FENZ to decide to grant a permit.	Public and businesses- same impact comment as under Option 1. Public and businesses - applicants might have less certainty from the regulations over what they need to provide for the fire permit application, as FENZ can require what it considers “reasonably necessary”. A greater number of decision-making criteria would provide applicants with greater baseline indications of what requirements must be satisfied or taken into account for FENZ to decide to grant a permit.
On local government	Local government - TAs that are RFAs and currently grant fire permits under the FRF Act and FRF Regulations would no longer do so. This reduces the administrative burden and is a positive impact. Local government – once TAs’ urban fire bylaws are amended/revoked with fire controls transitioning to FENZ, TAs would no longer issue fire permits or use other mechanisms to control fire in open air.	Local government – TAs as RFAs: same impact comment as under Option 1. Local government – TAs’ urban fire bylaws: same impact comment as under Option 1.	Local government – TAs as RFAs: same impact comment as under Option 1. Local government – TAs’ urban fire bylaws: same impact comment as under Option 1.

Table 4: Options analysis for levy information returns for 2017/18

91. This table assesses options for levy information returns against policy criteria.

Criteria (See paras 35 & 36)	Option 1: Status quo	Option 2: Status quo plus auditing programme	Option 3: regulations for levy payments above \$1000 (preferred)	Option 4: regulations for levy payments above \$100
Stability	Score: moderate As long as the voluntary arrangement holds, FENZ will have access to sufficient information to inform the levy setting process. However any interruption impinges on the ability to set an appropriate levy rate.	Score: positive Certainty of information supports FENZ's three yearly levy review cycle.	Score: positive Certainty of information supports FENZ's three yearly levy review cycle.	Score: positive Certainty of information supports FENZ's three yearly levy review cycle.
Equity	Score: moderate Collecting more comprehensive and reliable information on insurance contracts will enable the levy to be set more accurately, enhancing equity between policyholders. Weakest option due to risk of non-provision of information. While information is currently provided, the voluntary provision of information could be stressed by anti-avoidance investigations.	Score: positive Collecting more comprehensive and reliable information on insurance contracts will enable the levy to be set more accurately, enhancing equity between policyholders. Strong option. An annual auditing regime would provide FENZ with a strong overview of insurance arrangements and trends.	Score: positive Collecting more comprehensive and reliable information on insurance contracts will enable the levy to be set more accurately, enhancing equity between policyholders. Moderately strong option, though less information would be provided than under option 4. The certain and timely provision of insurance information would allow FENZ to be more focussed and strategic in the use of inspection and anti-avoidance powers. All levy payers (insurers) would be required to provide the same information.	Score: positive Collecting more comprehensive and reliable information on insurance contracts will enable the levy to be set more accurately, enhancing equity between policyholders. Strong option. The certain and timely provision of insurance information would allow FENZ to be more focussed and strategic in the use of inspection and anti-avoidance powers. All levy payers (insurers) would be required to provide the same information.
Predictability	Score: moderate The insurance sector has insisted that there is little danger of current information not being provided in future. However, historically at least one company has suggested withdrawing from the current arrangement.	Score: positive Annual auditing of levy payers would improve the certainty of revenue flows.	Score: moderate Information requirements would provide FENZ with improved certainty of levy income. Infringements fees for non-compliance potentially ensure better quality and consistency of information provision. If information on insurance policies is restricted to levy payments of more than \$1000 (only 30-40% of total levy receipts), then FENZ may have difficulty predicting levy in the near term. In particular, FENZ will not capture information on insurance contracts for residential property, residential contents, and motor vehicles which together account for approximately 42% of levy revenue (based on 2015/16 figures).	Score: positive Current information requirements (supported by the new infringements and penalties regime) would improve the fire service certainty of levy. Infringement fees for non-compliance potentially ensure better quality and consistency of information provision. Requiring provision of information on any levy payments greater than \$100 would capture virtually all levy receipts (with the exception of residential contents and motor vehicles), allowing FENZ to better estimate levy receipts.
Cost-effectiveness	Score: moderate Current costs are managed effectively by the insurance sector. However, if information provided voluntarily ceases, levy payers and FENZ may face increased costs due to the greater need to audit and investigate.	Score: negative The costs of implementing an expanded annual auditing scheme would be expensive for both FENZ and the insurance sector. It would also be highly intrusive for the insurance sector. As a result this option is unfeasible.	Score: positive Providing information imposes a compliance cost on levy payers including insurers. However, as insurance companies already provide this data on a voluntary basis, the provision of information should be manageable.	Score: negative Providing information imposes a compliance cost on levy payers including insurers. This option would capture virtually all policies, including for residential property. This is likely to increase the compliance burden for levy payers including insurers as compared to option 3.
Overall rating	Moderate	Negative	Positive	Negative