Regulatory Impact Statement

Phase Two of the Resource Management Reforms

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry for the Environment. It provides an analysis of options to address a number of issues in the context of Phase 2 of the reform of the Resource Management Act. Cabinet has agreed that the objectives for reform are to:

- provide greater central government direction on resource management
- improve economic efficiency of implementation without compromising underlying environmental integrity
- avoid duplication of processes under the RMA and other statutes
- achieve efficient and improved participation of Maori in resource management processes.

In the context of this overarching reform a limited set of proposals are discussed in this RIS to address process issues relating to the Resource Management Act 1991 (RMA) that collectively impose costs on councils, business and the wider economy; and involve delays and uncertainty for resource consent applicants.

Specifically options are proposed to:
- implement the Government's pre-election policy commitment to introduce a six month time limit on the processing of resource consents for medium-sized projects (as this is a stated Government commitment, options focus on how it can best be given effect)
- create an alternative decision-making process for 'major' projects
- provide for improved data for national environmental reporting
- improve the clarity and accessibility of the RMA through some technical amendments.

The issues above are a small subset of a wider range of matters that have been identified as part of a larger resource management reform process. They have been selected as discrete matters that do not require further detailed policy development, and can be implemented relatively quickly in 2012, to provide some early benefits to stakeholders. They do not preclude more comprehensive system-wide improvements to the resource management system being made subsequently in accordance with the Government's intention to undertake more widespread reform.

Given the nature of the issues covered in this policy process, accurate quantification of the size of problems, and the size of impacts has not been feasible across all options analysis. It is difficult to quantify the scale of cost reduction resulting from the proposals in this paper as they impact on a broad spectrum of the business community and a mix of direct and associated holding costs. The magnitude of costs and/or benefits has in some cases therefore been assumed on the basis of the views of stake-holders; and long-

standing experience in the operation of the RMA and its observed impacts on the progress of consents and infrastructure development.

A multi-criteria analysis (MCA) was adopted, consistent with the Ministry's now standard approach. Policy objectives (all considered to be equally important, and so equally weighted) were translated into options assessment criteria (also equally weighted), with care taken to ensure no overlap between criteria. Where possible, impacts (costs and benefits) have been quantified, and this information had fed into the MCA. Areas where qualification has not been feasible are highlighted throughout the RIS. Risks associated with options have also been considered. The MCA approach is, by definition, a logical framework within which to make subjective decisions on how options perform against policy objectives. The RIS contains multiple issues and options, and care has been taken to apply subjective performance scores in a consistent manner across the issues.

Different consultation processes have been undertaken for the issues of six month consenting and improved data for environmental reporting.. Consultation has generally been targeted at key stakeholders and is considered to be adequate both in terms of identifying concerns and testing options. Proposals regarding an alternative process for decision-making on major projects originate from work on streamlining the consent process in 2009. No subsequent consultation has been undertaken, including with the Environment Court in relation to capacity to implement proposed changes.

We do not expect the proposals in this RIS to impose additional costs on business. The recommendations are intended to reduce cost impacts of the resource management system by streamlining and improving certainty over timeframes and processes. The RMA inherently and necessarily involves some trade-offs between property rights and wider community interests. The proposals in this RIS are not expected to further impact on private property rights, impair market competition or incentives on business to innovate, or override fundamental common law principles.

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Date: 13-9-12.

Part I – Overview

Background to the resource management reforms

In late 2008, the Government initiated a two-phase programme of reform of the resource management system in New Zealand. This programme was part of a medium-term economic agenda aimed at lifting New Zealand's long-term growth rate and reducing the vulnerability of the economy [CAB Min (09) 24/7 refers].

Phase one of the programme resulted in the Resource Management (Simplifying and Streamlining) Amendment Act 2009. This delivered a range of operational changes to the Resource Management Act (RMA), including reform of the aquaculture regime; a new penalties regime to incentivise local authorities to process resource consents on time; establishing the Environmental Protection Authority (EPA) business unit within the Ministry to process nationally significant proposals; and changes to address trade-competition based litigation.

Phase two has focused on improved institutional arrangements, improving some key processes, and on achieving better interaction between the RMA and other statutes. Cabinet agreed that the primary objective for phase two is to achieve least cost delivery of good environmental outcomes.

Some phase two reforms have already been delivered. These include the establishment of the EPA as an independent Crown agent; and a national policy statement on freshwater management that provides national direction on water allocation and quality.

The outstanding components of the reform of the resource management system, including some more recent government commitments which now form part of the overall package, are proposed to be delivered through two Bills – one in 2012 and another in 2013. Matters dealing largely with consenting and the alignment of legislation will be progressed through the 2012 Bill. More strategic, system-wide improvements to the resource management system require further time for development. These will be progressed through the proposed 2013 Bill to ensure appropriate alignment across the resource management system and with connected reforms such as water, local government, and transport.

Scope of this RIS

This RIS supports the first of two Cabinet papers seeking policy decisions on a number of issues proposed for inclusion in the 2012 Bill. The scope of this RIS and associated Cabinet paper covers options considered to:

- implement the Government's pre-election policy commitment to introduce a six month time limit on the processing of resource consents for medium-sized projects [1]
- create an alternative decision-making process for 'major' projects
- provide for improved data for national environmental reporting.

These issues are a small subset of a wider range of matters that have been identified as part of a larger resource management reform process. They have been selected as discrete

[1] The suggested definition of a medium sized project is one whose resource consent applications are notified or limited notified

matters, that do not require further detailed policy development, and can be implemented relatively quickly in 2012, to provide some early benefits to stakeholders. They do not preclude more comprehensive system-wide improvements to the resource management system being made in 2013, Issues i and ii both deal with proposals to streamline the consent process, while issue iii addresses the robustness of information to support decision-making.

The 2012 Bill is also to include some technical amendments to the RMA to provide greater process efficiencies, correct drafting omissions, provide clarification, or better reflect the policy intent of provisions. These technical matters are aimed at improving the clarity and workability of the RMA and do not involve substantive changes to policy and accordingly do not require a RIS. However, in order to provide a more complete overview of the proposed improvements to the RMA outline information on these has been appended to this RIS.

Detailed analysis of these specific issues is set out in Part II of this RIS. This RIS covers the first of two separate sets of proposals for inclusion in the 2012 Bill and further outstanding issues will be addressed in a separate Cabinet paper and RIS. Matters to be addressed in the proposed 2013 Bill are not discussed in this RIS, and will be the subject of later advice to Ministers.

Overarching status quo and problem definition

Status quo

The RMA is New Zealand's principal statute for managing natural and physical resources. It is a major component of a broader planning and resource management system, which involves a number of other statutes, including the Public Works Act 1981, Building Act 2004, Conservation Act 1987, Historic Places Act 1983, Forests Act 1949, Civil Defence and Emergency Management Act 2002. The system involves trade-offs and balances between economic development and sustainable resource management and allocation; and between the property rights of individuals and companies, and the interests of wider society.

Costs and benefits of status quo

The status quo provides a comprehensive framework for resource management decision-making, with a clear statutory purpose and defined roles and responsibilities for decision-makers. The RMA has been in place since 1991, providing broad stability and ongoing experience in relation to the planning framework and associated processes at the national, regional and local level. The interpretation of the RMA's purpose is well-grounded in case law.

There are, however, costs associated with the status quo. These include:

- **Costs arising from the resource consent process**, that impact on councils, communities, individuals and business, for example as a result of delays in processing consents, uncertainty over timeframes for decision-making, and associated impacts on costs and investment decisions for applicants.
- **Costs on the wider economy**, which flow from the above wider cost impacts on the economy can be seen in terms of, e.g. delays in the establishment of new facilities, the development of efficient cities, and investment in new economic activity foregone. Costs also arise in respect of current environmental reporting where there is a lack of credible data to support decision making at both the local and national level.

Cumulatively these impacts can be significant, across the economy, society and the environment. If the status quo is retained, the above costs and uncertainties will continue, with associated negative impacts as outlined above. The above is a high level summary only: more specific discussion on the costs and other impacts of the individual issues covered by this RIS are set out in the section below.

High level problem definition

The RMA is pervasive legislation which has far-reaching effects on planning and decision-making at all levels of society and the economy. It should be recognised that the resource management system and associated decision-making is inherently complex, given the need to balance a range of potentially competing interests, rights and objectives (e.g. sustainable resource management, environmental issues, and economic development; public versus private interest and property rights).

As noted above, systemic delays, and uncertainty over timeframes for resource consent impact on investment decisions and increase costs to councils, applicants, and ultimately to society.

Since the RMA was passed in 1991 it has been subject to increasing pressures. Demands placed on resources are greater; there is a heightened recognition of the inter-relationship between sound resource management, environmental management and economic development; and an effective and well-integrated planning system is essential to the development of infrastructure, to the availability of affordable housing, and to the overall performance of cities as a contributor to economic and social well-being. The complexity of decision-making, and the potentially negative economic and environmental outcomes means that there is a compelling need to ensure that the resource management system is well integrated and efficient system.

Aspects of the RMA, as identified in this RIS, constrain the Act from effectively responding to these high level-demands.

Objectives and assessment criteria

Cabinet agreed that the primary objective for reform of the resource management system is to achieve least cost delivery of good environmental outcomes including:

- providing greater central government direction on resource management
- improving economic efficiency of implementation without compromising underlying environmental integrity
- avoiding duplication of processes under the RMA and other statutes
- achieving efficient and improved participation of Māori in resource management processes.[2]

The Ministry for the Environment has developed the following additional regulatory review objective:

- ensuring that principles of good regulatory practice are met.

[2] CAB Min (09) 13/2 refers

To assess the effectiveness of the options against the status quo, the Ministry for the Environment has developed assessment criteria for each of the objectives (see Table 1).

Table 1: Objectives and derived assessment criteria

Objective	Assessment criteria The extent to which the option:
Provide greater central government direction on resource management	clearly allocates roles between central and local government, utilising the comparative advantages of each level of government to effect efficient resource planning
	increases national consistency of resource management tools processes and decision-making
	provides clear direction for end users that minimises uncertainty, including interpretation and implementation
Improve economic efficiency of implementation without compromising underlying environmental integrity	contributes to environmental integrity in a material way
	maximises economic efficiency of the implementation of resource management tools, processes and decision (practice or regulatory efficiency)
	minimises the adversarial/litigious nature of resource management planning and decision making, where there is evidence that this leads to negative outcomes
	minimises transaction costs for all involved in resource management planning and consenting processes
	provides decision-making processes that enable emerging issues and regional changes to be dealt with at least cost
	minimises the time taken to finalise resource management planning and consenting decisions
	ensures it is easy for the community and stakeholders to be meaningfully engaged in resource management processes
Avoid duplication of processes under the RMA and other statutes	streamlines resource management planning and consenting processes (new or existing) under the RMA and other statutes
	improves alignment and/or a minimises the number of plans and planning processes under the RMA and other statutes
Achieve efficient and improved participation of Māori in resource management processes	positively affects the participation or consideration of Māori in resource management matters through more effective, fit-for-purpose, fair mechanisms
	improves clarity of the various roles of Maori in the resource management system
Ensure that principles of good regulatory practice are met	is clear, can be readily understood by those to whom it is directed, and facilitates compliance
	is proportional to the scale of the issue or problem being addressed
	provides an appropriate balance of rights and obligations between the affected parties
	provides appropriate rights of appeal to parties affected by regulatory decisions

	does not create unintended consequences or perverse incentives
	can be readily and cost-effectively implemented and, where necessary, enforced

Approach to analysis

For consistency, the objectives and assessment criteria have been used for the analysis of all the policy options identified and are equally weighted. An impact analysis was undertaken for each option, for which the costs and benefits of each option were identified and measured – qualitatively or if possible, quantitatively. The incidence of impacts was also considered. Using the information on impacts, the net impact of each option was identified (the benefits less the costs), and then assessed against the status quo.

Using the impacts information, each policy option was then assessed against the objectives. To do this each policy option has been scored against each assessment criterion, by considering how the option performs compared to the status quo. Ticks (✓✓✓, ✓✓, ✓) mean the policy option was better at achieving a particular criterion than the status quo; crosses means it was worse (**x,xx,xxx**); and a (**~**) that there was no improvement over the status quo. Where criteria are not applicable to assessment of a specific option, the weightings have been equally re-adjusted between the remaining criteria.

In the interests of brevity, this RIS presents the assessment against the objectives rather than the full criteria. This is presented in the assessment of options against objectives tables in the sections below.

Consultation

The options relating to six months consenting and amendments to s360 in this RIS have been the subject of targeted consultation, involving businesses, councils, community groups and relevant government departments, as outlined in the specific issue sections below. Consultation has varied depending on the issue concerned, to provide for informed comment and practical experience of the issues and the resource management system.

The proposals in this RIS relating to six months consenting and amendments to s360 have been consulted on with the Ministry of Primary Industries, the Department of Internal Affairs, the Ministry of Business, Innovation and Employment, Te Puni Kōkiri, the Department of Conservation, the Department of Prime Minister and Cabinet, Treasury, the Ministry of Transport, the Ministry of Culture and Heritage, the Ministry of Civil Defence and Emergency Management, the Ministry of Justice, the Ministry of Health, the Ministry of Women's Affairs, the Ministry of Social Development, the Ministry of Education, the Canterbury Earthquake Recovery Authority, Land Information New Zealand, the New Zealand Historic Places Trust, the New Zealand Transport Agency, and the Environmental Protection Authority. The Department of Corrections was informed.

Conclusions and recommendations

The options discussed in the body of this RIS (see Part II) are those considered best meet the objectives and criteria for addressing this phase of resource management reform.

The detail of recommended options is set out in the issue-specific sections of Part II. In summary, it is recommended that:

- the RMA be amended to provide a more streamlined consent process (6 months timeframe) for medium-sized projects (to be defined as notified or limited notified applications)
- the RMA be amended to make the direct referral process more readily available in relation to proposals deemed as 'major' projects
- section 360 of the RMA be amended to enable the Minister to require (via regulations) local authorities to monitor the environment according to specified priorities and methodologies: such regulations would, however, only be made if local authorities did not, voluntarily progress improvements to data collection
- a number of technical amendments be made to the RMA to improve processes and the overall workability of the RMA.

Implementation

It is proposed that the recommendations above be implemented through a Resource Management Amendment Bill, to be introduced in late 2012. The 2012 Legislation Programme provides for such a Bill (Priority 4).

Councils will be primarily responsible for the direct implementation of process changes relating to the consent process and data collection, following enactment of the proposed legislative amendments. The Bill will include appropriate transitional arrangements to enable councils and other affected parties to prepare for and manage changes in processes.

A communications and information strategy will be developed to ensure that stakeholders are fully informed of proposed amendments, requirements and timing.

Further implementation details specific to each of the recommended options are discussed in the relevant topic sections in Part II of this RIS.

Monitoring, evaluation and review

An overarching monitoring and evaluation framework will be developed to enable to high level performance of the suite of reforms associated with this RIS to be evaluated. The issue-specific sections of this RIS (Part II) also set out more specific detail of monitoring and evaluation for individual regulatory proposals. These will also inform the development of the overarching monitoring and evaluation framework.

Part II – Regulatory impact analysis of specific issues

A. Six month consenting for medium sized projects

Context

- The Government announced in the Speech from the Throne (December 2011) that: "*legislation will be introduced to set a six-month time limit for the consenting of medium-sized projects, and to improve the Resource Management Act as part of the second phase of reforms.*"
- Ministerial direction was obtained to define "medium-sized projects" as those which require notified and limited notified resource consents.
- Uncertainty and holding costs associated with unpredictable delays to the consent process and the absence of an absolute timeframe for the processing of notified and limited notified resource consent applications have been previously identified as problems for applicants.
- Consultation confirmed that these problems exist and may be appropriately addressed through legislative change.

Status quo and problem definition

Status quo

Overview of the current notified and limited notified resource consent process

Under the RMA resource consents are required whenever a person proposes to undertake an activity or development that does not comply with the rules of regional, district or unitary plans, with national environmental standards, or with the RMA itself.

The process of assessing and making decisions on resource consent applications has three possible paths: notified, limited notified and non-notified. The processing pathway is determined by the extent to which the environment and other parties will be affected by the proposed activity.[3] Projects that have effects on the general public or specific parties, but do not qualify as being nationally significant, will be processed by councils as notified or limited notified resource consent applications. The main feature of notified and limited notified application processes is that the public or affected parties (respectively) can make submissions on the application and their submissions be heard at a consent hearing.

Consent applications that typically are notified or limited notified include those for the development of new supermarkets, large subdivisions, apartments, medical centres or infrastructure. Although these types of applications are relatively small in number, collectively

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[3] Application pathways:

Notified: environmental effects tend to be most significant; affected parties are notified directly and any person is invited to make a submission though a public notice. In 2010/2011, 1,333 (3.7%) of resource consents were notified. Includes a small number of applications annually for nationally significant projects, processed by the Environmental Protection Authority (EPA) on a 9 month pathway introduced in 2009.

Limited notified: where effects on the environment tend to be minor or moderate; only affected parties who have not already given their written permission are notified and can make a submission. In 2010/2011, 836 (2.3%) of resource consents were notified this way

Non-notified: where effects on the environment are minor or less than minor and no party is given notice or invited to make a submission. In 2010/2011, 33,862 (94%) of resource consent applications were processed in this way. (source: *Ministry for the Environment (2011) Resource Management Act Survey of Local Authorities 2010/2011*)

they represent hundreds of millions of dollars of investment in infrastructure and other capital each year.

Current statutory timeframes

The current process for reaching decisions on notified and limited notified resource consent applications has no absolute time limit prescribed by the RMA. Rather, the process is subject to a statutory timeframe wherein counting of statutory days can stop and re-start for a number of reasons (for example, when the council requests further information from the applicant). Statutory timeframes are used currently to measure councils' performance for the whole consent process and for its individual steps, but they do not record the overall elapsed time that an application has taken to be processed from lodgement to a decision.

Milestone timeframes exist for some (but not all) individual steps of the notified and limited notified resource consent processes, while some process steps have no timeframes associated with them.[4]

Problem definition

The absence of an absolute timeframe for decisions on notified and limited notified resource consent applications results in unnecessary uncertainty for consent applicants and fails to set a deadline by which decisions must be made. This has led to a lack of confidence in the system and a perception that such applications are not processed in a timely fashion, which impacts on the economic viability of medium-sized projects.

Absence of timeframes in the consent

There is no overall timeframe for the processing of a consent measured as total elapsed time so applicants find it difficult to forecast, at the time of applying for the consent, the date by which the process will be complete and a decision issued. It also means that sometimes the consent process may include significant delays and take many months longer to complete than a cursory examination of statutory timeframes would indicate.

Current consent authority performance with respect to timeframes

The 2010/2011 Resource Management Survey of Local Authorities reported that 95% of all resource consents were processed inside statutory timeframes, with approximately 87% of limited notified and notified resource consent applications processed within statutory timeframes. However, in the absence of an overall timeframe benchmark for limited notified and notified applications, the survey was only able to measure compliance with the aggregate of individual component statutory timeframes, not the overall time taken.

In April 2012 the Ministry for the Environment examined 204 notified resource consents from 14 local authorities. Analysis of these data found that the average number of days to process those consents through to a decision was 280 days (or 188 working days), with the median time being 159 days (or 111 working days). Approximately 40% of the resource consents studied took more than six months (approximately 130 working days) to process through to a decision.

[4] For example those contained in RMA sections 88B to 88F, which relate to various technical aspects of consent processing, while there is no timeframe at all for hearings under sections 100 to 103A.

In the absence of central government intervention, improvement of the status quo relies on local authorities and applicants voluntarily improving their consent processing and application practice to achieve greater efficiencies. Although such efficiencies may be possible, we do not believe that this avenue provides sufficient certainty and transparency to applicants around the overall timeframes for limited notified and notified resource consent applications. Retention of the status quo would represent a lost opportunity to make improvements to the current processes associated with consenting timeframes.

Issues previously identified with the status quo

For applicants, problems associated with an uncertain and indefinite consent processing timeframe are especially marked where the wider project involves complex project planning and significant financial investment – for example, developments of new supermarkets, large subdivisions, apartments, medical centres or infrastructure delays impose holding costs[5] (interest payments on loans for example); can mean capital and equipment is tied up unproductively; and can also result in lost opportunities to gain a competitive advantage. Consent applications for such projects often go through a notified or limited notified process.

The RMA contains a series of individual component timeframes which limited notified and notified applications must adhere to. Some of these timeframes are excluded from the calculation of an overall timeframe for processing, including hearing-related processes such as pre-hearing meetings, mediation and the hearing time itself. The ad hoc nature of the statutory timeframes for limited notified and notified applications means applicants have no formal benchmark by which they can judge how long a consent should take to process from lodgement to decision.

Problems identified through consultation

The Ministry undertook targeted consultation during 2012 with central government departments, local authorities, consent applicants, resource management lawyers and commissioners. Discussions focused on problems and opportunities that exist with the current resource consent process, and design details for a new consent process that would deliver quality decisions on notified and limited notified consents within six months.

These discussions identified a number of problems with the current process:

- The current absence of an absolute timeframe for decision-making on resource consents adds uncertainty to the process
- The problems associated with uncertainty are especially marked where the projects involve complex project planning and significant financial investment
- The required content of a resource consent application is often unclear to applicants
- Local authorities have difficulty in articulating the required content of consent applications
- The RMA's initial check for completeness of applications is weak, so inadequate applications (prepared on the basis of unclear requirements) are often formally received for processing by local authorities but subsequently held up for long periods while further information is requested by the local authority and provided by the applicant

[5] In 2007 LECG Consultants prepared a report looking into the costs of obtaining a resource consent and found that of those surveyed only a quarter could identify and quantify costs arising from delays. However holding costs based on the concept of opportunity cost suggest that a hypothetical project with a capital value of $10 million could incur costs of $2,200 per day of delay based on bank lending rates.

- Local authorities do not currently have sufficient time to make decisions on the notification of applications and physically notify them in newspapers and other media (the current statutory timeframe from lodgement to notification is 10 working days)
- Applicants' written evidence is most often supplied at the hearing itself and can sometimes deviate substantially from the content of the original application: this means that submitters, local authority staff and commissioners have little time to consider this new information before responding
- Consent hearings and adjournments, which are not subject to any statutory timeframe currently, are of uncertain duration and can involve significant delay.

During consultation, solutions to these problems were raised and many are incorporated into the options described below.

Regulatory impact analysis

Scope of the analysis

This RIS is limited in scope by the Government's commitment to implement a six month timeframe for the processing of resource consents for medium sized projects. Other possible timeframes are out of scope and have not been assessed.

Definition of 'medium sized'

Suggested definition

The suggested definition of a medium sized project is one whose resource consent applications are notified or limited notified. Consent applications that typically are notified or limited notified include those for the development of new supermarkets, large subdivisions, apartments, medical centres or infrastructure. The definition therefore includes the types of applications where certainty over timeframes is most needed - essentially, those where the scale of the project means that unpredictable delays have significant financial implications because of interest payments, holding costs and unrealised profit. For councils and applicants, the tests for notification and limited notification are clear and we consider them to be good proxies for the scale of a project. Therefore, the framework for deciding that a consent is 'medium' already exists in the RMA.

Discounted definitions

Alternative ways to define 'medium' that were discounted include:

- Linking the definition to the class of the activity (controlled, restricted discretionary, discretionary or non-complying)
- Defining according to a measurement of the scale of the activity (e.g. the physical extent of the activity such as floor area)
- Defining according to the complexity of planning matters involved.
- Value of the applicant's investment
- The economic and spatial significance of the activity (medium consents could be determined as those which have economic, social or environmental significance beyond the immediate neighbourhood where the development will take place).

These options were rejected as they would require additional legislative tests to be inserted into the RMA, thus adding complexity, and they are necessarily good proxies for a project being of 'medium' size or otherwise.

Policy options

Three policy options were identified and are assessed below. These are:

1. Comprehensive Legislative Reform (Table 2)
2. Limited Legislative Reform (Table 3)
3. Non Legislative Reform (Best Practice) (Table 4)

Analysis

Scope of analysis

The table below summarises the impacts of each feasible option, who bears these impacts and the likely magnitude of them. The analysis is limited in scope in the following manner:

Matters included: the analysis includes impacts identified through officials' knowledge of the consent process and through qualitative information gathered during consultation. This means the analysis is largely focused upon the expected impacts of each option upon those stakeholders – applicants, councils and submitters.

Matters not included: Ministerial direction to undertake targeted consultation and the time and resource constraints meant the analysis did not include a cost-benefit analysis, a cultural impact assessment, fiscal or economic analysis, environmental assessment or compliance analysis.

Magnitudes of impacts listed in the table were based upon critical but subjective reasoning.

Option 1: Comprehensive Legislative Reform

In this option, a 'medium sized project' is defined as one whose resource consent applications are limited notified or notified. To provide an overall six month timeframe for processing such consents, seven main areas have been identified for amendments to the existing process, as follows:

a) The introduction of the basic mechanics for consent processing within six months (described further in Option 2)
b) A new provision for an application to be suspended or placed on hold at the applicant's request for a maximum of 130 working days
c) Clarification and strengthening of information requirements at the initial stage of the consent process
d) In addition to the provisions for further information outlined in Option 2 below, the introduction of a three day grace period whereby applicants have three working days to respond to a request under section 92 before the processing clock stops
e) Requirement for compulsory provision of evidence before hearings for the local authority, applicants and submitters
f) Specific amendments providing a faster 100 working day process for applications that are subject to the limited notification process and additionally compressing the timeframe by allowing processing to proceed immediately once all submissions have been received

g) Provisions of the Resource Management (Discount on Administrative Charges) Regulations 2010 to apply in the normal manner (i.e. 1% discount per working day over the statutory timeframe).

Table 2: Summary impact assessment for Option 1 (Comprehensive Legislative Reform)

Impact	Incidence	Magnitude
COSTS		
Potential ongoing costs of recruitment, retraining and up-skilling current staff on new provisions. This will diminish over time.	Local authority	Low
Potential increased costs to local authorities through discounts on administrative costs to applicants should local authorities be unable to meet the six month time limit. Approximately 40% of consents are currently processed in more than six months, so there is likely to be an increase in discounts issued to applicants by local authorities.	Local authority	Medium
One-off costs for the development and publication of new guidance material, implementation workshops, and amendment of existing guidance material and associated programmes.	Central government / local authorities	Medium
Ongoing increased up-front cost of preparing an application due to strengthened information requirements.	Applicants	Medium
Strengthening information requirements at the lodgement stage of the process may dissuade applicants from lodging applications, resulting in increased opportunity costs.	All	Medium
BENEFITS		
General resource consent processing and process		
Provides greater certainty on process timeframes.	Submitters / applicants	Medium
Provision of complete and comprehensive applications will help reduce delays in subsequent processing.	Submitters / local authorities / applicants	High
Inclusion of hearings in the overall timeframe will reduce delays and lengthy adjournments, providing a quicker hearing process.	Submitters / local authorities / applicants	High
Potentially shorter timeframe as the 20 day submission period can collapse and close where submissions have been received from all relevant parties prior to the submission period closing.	Submitters / local authorities / applicants	Low
Right of applicant to suspend applications allows greater control over process.	Applicants	Low
Six month maximum period for application suspension has two benefits: • Prevents applicants tying up allocable resources by lodging applications for their use but subsequently placing applications on hold for long periods. • It provides certainty for communities where, for example, controversial developments are proposed and have protracted application periods.	Submitters / local authorities / applicants	Medium
Applicants have certainty over when and how the council can stop the processing clock.	Applicants	Medium

Reduction in time of the process reduces emotional toll and cost to participants.	Submitters	High
Increasing the timeframe for an application to be notified from 10 to 20 working days appropriately responds to feedback from consultation.	Applicants	Low
Changes to information requirements for resource consents		
Makes clear the information that must be provided in an application.	Local authority / applicants	Low
Reduced costs of providing further information following a section 92 request from the council. This reduction in cost will be ongoing.	Applicants	Medium
Provides councils with more defined tools to make good decisions on the acceptance of applications.	Local authority / applicants	Low
Greater alignment between information required at lodgement and matters considered by decision-makers on applications means less additional information will be required during the process thus avoiding delays.	Local authority / applicants	Medium
Compulsory pre-circulation of evidence for all hearings		
Potential reduction in costs for engaging experts to appear at hearings as matters to be discussed can be	Applicants	Low
Participants benefit from having seen written evidence before the hearing commences.	Local authority / submitters	High
Commissioners can run a quicker hearing focussing on remaining points of contention. This will reduce costs associated with expert witnesses' presence at hearings.	Submitters / local authorities / applicants	Medium
RISKS		
General resource consent processing and process		
The 'six month' timeframe may be perceived as misleading as it is not an absolute six months. The proposed model provides for councils to stop the processing clock when making a request for further information after the three day grace period or when directing that further consents are required.	Central government / applicants	Medium
Perception that meeting timeframe is more important than making the right decision and ensuring a fair process.	All	Low
Perception that there is a loss in flexibility of the hearing process.	Submitters / local authorities / applicants	Low
Perverse incentive to take six months to reach a decision on an application that may have been able to be processed in less than six months.	Applicants / submitters	Low
Councils' requests for further information become onerous as it is the only opportunity to ask for further information and stop the processing clock.	Applicants	Low
A six month maximum time limit for applications to be put on hold may disadvantage applicants when there are valid reasons why an application cannot be progressed within these timeframes.	Applicants	Low
Legislative change may be insufficiently effective.	All	Low

Changes to information requirements for resource consents		
There may be a perception that the proposed information requirements are too onerous on applicants especially for lay applicants.	Central government / applicants / applicants	High
Stipulation of requirements for resource consent applications makes it more difficult for councils to adopt an applicant-friendly or flexible approach sometimes required to assist in lay persons making applications for resource consent.	Local authorities	Low
Compulsory pre-circulation of evidence for all hearings		
Compulsory pre-circulation of evidence is a change to existing practice and may be resisted.	Submitters / local authorities / applicants	Low
NET IMPACT: This option is considered to provide the most tangible benefit when compared with the status quo primarily as it addresses the core existing problems of the status quo. Critically the option splits medium sized consents and provides two distinct timeframes for limited notified and notified applications. A set of wider reforms assist in the implementation of the new timeframes and provide further clarity and streamlining of process.		

Option 2: Limited Legislative Reform

Under this option, a 'medium sized project' is defined as one whose resource consent applications are notified or limited notified. A new six month (130 working day) time limit for these applications is introduced to the RMA comprising:

a) A 20 working day period allowing for notification decisions to be made and for the application to be notified if necessary: this period would be the only time during which the local authority may request further information and suspend processing until a response is received;
b) A 20 working day submissions period
c) A 75 working day period in which parties would consider the application and submissions, if necessary hold pre-hearing meetings, prepare and circulate evidence and conduct the hearing
d) The hearing would be closed by working day 115 in order to provide 15 working days for the commissioner(s) to write and issue their decision by day 130
e) That the provisions of the Resource Management (Discount on Administrative Charges) Regulations 2010 will apply in the normal manner (i.e. 1% discount per working day over the statutory timeframe).

Table 3: Summary impact assessment for Option 2 (Limited Legislative Reform)

Impact	Incidence	Magnitude
COSTS		
Potential ongoing costs of recruitment, retraining and up-skilling current staff on new provisions. This will diminish over time.	Local authorities	Low
Potential increased costs to local authorities through discounts on administrative costs to applicants should local authorities be unable to meet the six month time limit. Approximately 40% of consents are currently processed in more than six months, so there is likely to be an increase in discounts issued to applicants by local authorities.	Local authorities	Medium
One-off costs for the development and publication of new guidance material, implementation workshops, and amendment of existing guidance material and associated programmes.	Central government / local authorities	Medium
BENEFITS		
Provides for greater certainty of process timeframes.	Submitters / applicants	Medium
Inclusion of hearings in the overall timeframe will reduce delays and lengthy adjournments, providing a quicker hearing process.	Submitters / local authorities / applicants	Low
Applicants have certainty over when and how the council can stop the processing clock.	Applicants	Medium
Reduction in time of the process reduces emotional toll and cost to participants.	Submitters	Med
Increasing the timeframe for an application to be notified from 10 to 20 working days appropriately responds to feedback from consultation.	Applicants	Low
RISKS		
The 'six month' timeframe may be perceived as misleading as it is not an absolute six months. The proposed model provides for councils to stop the processing clock when making a request for further information after the three day grace period or when directing that further consents are required.	Central government / Applicants	Medium
Perception that meeting timeframe is more important than making the right decision and ensuring a fair process.	All	Low
Perception that there is a loss in flexibility of the hearing process.	Submitters / Local authorities / Applicants	Low
Perverse incentive to take six months to reach a decision on an application that may have been able to be processed in less than six months.	Applicants / Submitters	Low
Councils' requests for further information become onerous as it is the only opportunity to ask for further information and stop the processing clock.	Applicants	Low
NET IMPACT: This option only goes part way to addressing the core problems of the status quo. Whilst it provides certainty of time the option does not include many of the wider process reforms to assist in the implementation of the timeframes and provide more meaningful correction of the		

process. Whilst this option does deliver net benefit it is clearly below those provided by Option 1.

Option 3: Non-legislative Reform (Best Practice)

In this option, a 'medium sized project' is defined as one whose resource consent applications are limited notified or notified. Guidance is developed by the Ministry to improve practice around the processing of limited notified and notified resource consent applications. This could include a template for processing such consents outlining how local authorities may most efficiently address information requirements and environmental effects associated with common medium sized proposals. Ministry officials may also facilitate regional forums of consent processing staff where best practice is shared and solutions are found to emerging practice issues.

Table 4: Summary impact assessment for Option 3 (Non-legislative Reform)

Impact	Incidence	Magnitude
COSTS		
One-off and ongoing costs for the development and publication of new guidance material, implementation workshops, and amendment of existing guidance material and associated programmes.	Central government	Medium
BENEFITS		
Articulates best practice timeframes for processing of notified and limited notified consent applications and encourages compliance through awareness.	Applicants / local authorities	Low
Harnesses the tools available within existing process to ensure efficiency gains are made where possible	All	Low
Can be used as a platform to foster better collaboration and general relations between local government and central government.	Central government / local authorities	Low
Places emphasis on consent authorities to collaborate more and to share information on best practice and techniques.	Local authorities	Low
Flexible and adaptive method of understanding and responding to emerging practice issues.	Local authorities / central government	Low
Readily and easily implemented through established mechanisms.	Local authorities / central government	Low
RISKS		
Fails to address core problem of uncertainty for overall timeframes for medium sized consents.	All	High
Consent authorities continue to development best practice which serves their own interests. Information sharing is fragmented and ad hoc.	All	Medium
No guarantee of participation or commitment to changing current practices of consent authorities or applicants.	All	Medium
NET IMPACT: Net benefits are expected to be limited in the absence of mandatory change to consenting practices.		

Assessment of options against objectives of RMII

Using the approach to analysis described in the section above, the table below identifies how each option delivers on the objectives.

Table 5: Assessment of options against objectives – six month consenting for medium sized projects

Assessment against objectives					
Greater central government direction on resource management	**Economic efficiency of implementation and environmental integrity**	**Avoid duplication of processes under the RMA and other statutes**	**Efficient and improved participation of Māori in resource management**	**Ensure that principles of good regulatory practice are met**	**Overall weighted score**
Option 1) Comprehensive Legislative Reform					
✓✓ Notable improvement for consistency of process and tools at a national level and certainty for end users.	✓ Notable improvement in time taken to reach resource consent decisions, ease of understanding and participation for community and stakeholders.	✓ Changes are isolated in their context to the RMA only. There is no mandate under this stream of work to look at wider statutes.	✓ Overall marginal improvement particularly in providing fit for purpose mechanisms which positively affect participation of Maori in resource management matters.	✓ Notable gains in clarity and user understanding, proportionality to scale of issue being addressed and balance of rights and obligations between the affected parties. Process marginally worse in terms of cost-effective implementation	[illegible]
Option 2) Limited Legislative Reform					
✓ Fewer gains across all 3 assessment criteria when compared to option 1 above.	~ Process worse in areas of practice and regulatory efficiency and transaction costs. Process marginally better in terms of time taken for reaching decisions.	✓ Marginal benefits when compared with option 1. However still streamlines and adds clarity of process through overall 130 day benchmark timeframe.	~ Equal to the status quo.	~ Gains in clarity of process are cancelled out by worse performance in the area of costs and implementation.	[illegible]

Option 3) Non Legislative Reform (Best Practice)					
~	~	~	~	~	
Gains as Central government develops and distributes best practice tools to local government level.	Useful gains when considering a decision-making process which responds to emerging or regional issues that are able to be dealt with at least cost.	Equal to the status quo.	Equal to the status quo.	Significantly worse than status quo when considering proportionality of response to problem. Marginal benefit when considering costs and implementation.	

Key: ✓✓✓ indicates substantially better than status quo; ✓✓ better than status quo; ✓ slightly better than status quo; ~ no change compared to status quo; **x** slightly worse than status quo; **xx** worse than status quo; **xxx** substantially worse than status quo.

Consultation

Time constraints meant consultation was targeted at central government departments and councils, consent applicants, resource management lawyers and commissioners. These stakeholders were considered to have extensive knowledge of and practical experience with the resource consent process.

The following parties were consulted during June 2012 through a consultation document and meetings: Department of Conservation,Te Puni Kokiri, Department of Internal Affairs, Ministry of Primary Industries, Environmental Protection Authority, New Zealand Transport Agency; Wellington City Council, Greater Wellington Regional Council, Hutt City Council, Local Government New Zealand, Environment Canterbury, Auckland Council, New Zealand Property Council, Atkins Holm Majurey Lawyers, Far North District Council, Whangarei District Council, Boffa Miskell, Urban Perspectives Limited, Manawatu District Council, Cooper Rapley Law, Tasman District Council, MWH, Fonterra, Incite, Porirua City Council, Sweetman Planning Services.

The following government departments and agencies were invited to comment but did not respond: Department of Prime Minister and Cabinet, Ministry of Economic Development, Historic Places Trust, Ministry of Transport, Ministry of Culture and Heritage, The Treasury, Department of Building and Housing, Land Information New Zealand.

Note that key findings identified through consultation are outlined above in the Problem Definition section. The consultation was targeted and detailed, focussing on specific design details for a six month consenting model. This means the options presented here were produced with the assistance of those consulted, and with their broad agreement that a six month consenting system could be successfully implemented. Their suggestions are incorporated throughout the options presented.

Conclusions and recommendations

The impact analysis contained in the table above demonstrates that *Option 1: Comprehensive Legislative Reform* will deliver the most tangible benefits to those parties involved in limited notified and notified resource consent applications at least cost. The complementary amendments to accompany the introduction of an overall six month time limit will clarify and strengthen the initial stage of the consenting process, give greater control of timeframes to the applicant, strengthen and streamline decision making with pre-circulation of evidence and provide a faster process for limited notified applications.

Under Option 1 various segments of the resource consent process will be changed whilst others will remain as they are currently set in the RMA. The degree of change to each key part of the consent process is described below:

- **Pre-application meetings:** Increased strength of the section 88 check is likely to encourage more pre-application meetings between applicants and councils, and encourage engagement between applicants and potentially affected parties before applications are lodged
- **Section 88 check and receipt of applications:** Strengthened provisions will provide increased clarity for applicants and councils over requirements for applications and criteria for acceptance – resulting in applications being more comprehensive at lodgement.
- **Requests for further information:** Councils will be able to ask for further information at any time, as currently provided for in the RMA. However, the processing 'clock' will only stop once while the applicant responds, and only before notification. A three-day grace period would allow the clock to continue before stopping, thus avoiding delays where the applicant can provide the information quickly. Existing provisions in section104 (Consideration of applications) will allow decision-makers to consider the adequacy of any information provided by the applicant following council requests.
- **Notification decisions:** The time period for notification decisions would be extended from 10 to 20 working days.
- **Submission periods:** This will remain the same as currently set in the RMA, except where all submissions have been received in cases of limited notification. The collapsing of the submission period once all submissions have been received allows the process to continue earlier than in the current provisions.
- **Time period between close of submissions and hearings:** Dates for the close of submissions and hearings could be determined early in the process according to the fixed timeframe of 130 working days, providing certainty for all parties.
- **Circulation of evidence:** Mandatory circulation would mean all parties see each other's evidence before the hearing, reducing incidence of 'ambushing' and providing for a fair process.
- **Hearings:** Hearings would be included in the timeframe (unlike currently), this providing accountability for commissioners and certainty for participants.
- **Issuing of decisions:** The 15 day period from the close of the hearing to the decision would remain unchanged.

We do not recommend *Option 2: Limited Legislative Reform.* In isolation, these amendments would not successfully bring about a six month process complemented by good decision-making. We consider that these provisions alone would not provide applicants or local authorities with the necessary tools to successfully implement a six month consenting process.

Nor do we recommend *Option 3: Non-legislative Reform (Best Practice)* as this will not result in the necessary certainty over timeframes and clarity in process. We consider that this option does not appropriately address existing problems in the process.

Implementation

Legislative change

Option 1 would be implemented through a bill. It is expected that the provisions of the amended RMA would be enacted according to normal timeframes and process. A period of transition between enactment and commencement of the provisions is yet to be discussed.

Notified and limited notified resource consent applications lodged prior to the commencement of the legislative amendments will continue to be processed under the existing timeframes. Those lodged after commencement will be processed under the new timeframes: 130 working days for notified applications and 100 working days for limited notified applications.

Mitigation of Risks

The table below outlines the key implementation risks and methods of mitigation.

Table 6: Key risks and mitigation measures

Risk	Mitigation
Amendments may be complex and difficult to implement.	Simplicity of design and thorough, careful drafting of provisions.
Would require training of local authority staff to ensure the legislative amendments are understood and able to be implemented in practice.	Training supported by Ministry-led guidance material, seminars and workshops aimed at informing local authority staff, consultants and commissioners.
Would require information to be made available to applicants and potential submitters on the legislative amendments.	Provision of information supported by Ministry-led guidance material.

Enforcement Strategy

The 130 and 100 working day timeframes for notified and limited notified applications, respectively, will be enforced by amending to the Resource Management (Discount on Administrative Charges) Regulations 2010. This will mean applicants will receive a discount of 1 per cent for each day an application is processed over the statutory timeframes, up to a limit of 50 working days. This is in line with existing enforcement of the 20 working day timeframe for processing non-notified resource consent applications.

Monitoring, evaluation and review

Following passage of the Bill, the Ministry for the Environment will commence monitoring the effect and implementation of the Act, investigate performance and take actions to remedy

poor implementation in accordance with the functions and powers of the Minister for the Environment currently set out in the RMA.

The Ministry for the Environment conducts bi-annual surveys of local authority performance, including compliance with statutory timeframes. The next survey covers the period 1 July 2012 to 30 June 2013. The following bi-annual survey, covering the 2014-2015 period will enable a comprehensive review of the effect of these amendments one year to 18 months after enactment and quantitative evaluation against past trends.

B. Process for "major projects"

Status quo and problem definition

Several pathways exist for the processing of notified resource consents and notices of requirement including (i) decision making by councils, (ii) decision making by the Environment Court on applications that are directly referred to the Court (and bypass the council process), and (iii) decision making on nationally significant proposals through a board of enquiry or the Environment Court. The direct referral process and provisions for nationally significant proposals can be used for streamlined decision-making on the largest types of projects and controversial issues, but these pathways do not necessarily benefit major projects that are still economically important.

Direct referrals

Currently, major projects (which are not of national significance) can go through a direct referral process and avoid the need for a council hearing, but this relies of the agreement of the council to relinquish its decision making powers on the application. Councils have broad discretion under the current provisions of section 87E, and there are no criteria for the council's decision for approving or declining the request for direct referral. If an applicant is refused the request, they can object and seek a council review of its decision under section 357 but cannot appeal the decision to the Environment Court, and so have relatively limited course for relief from a council's application to decline their request.

Problem definition – barriers to streamlined decision making on major projects

Although direct referral process is known to be in use, major projects that might have great economic significance at a regional or district scale (but are not nationally significant) rely on the council's agreement to the direct referral to the Court. There is a perceived barrier to applicants entering these processes due to the need for council's agreement. Given the benefits to both the regional economy and community of major projects that are of regionally significance, there is opportunity for more such proposals to undergo a streamlined process. This would be through the Environment Court and would (i) produce a robust decision in a timely manner, that (ii) could only be appealed to the High Court on points of law.

Regulatory impact analysis

Policy options

We have considered two potential interventions that we consider would provide for alternative mechanisms for "major projects", which are outlined below. All options are statutory, but would be supported by non-statutory guidance for applicants, submitters, courts and councils.

***Option 1:* Provide call-in (EPA) process for major projects**

This option involves adding regionally significant criteria to the RMA to allow regionally significant projects to follow the process for nationally significant proposals (section 142). This option would involve the following process:

1. Applicant lodges application and a request for direct referral with the EPA

2. Request and application are assessed against "major project criteria"
3. EPA makes recommendation to Minister (as to whether the proposal meets/does not meet criteria)
4. Minister refers the proposal to a Board of Inquiry or Environment Court
5. Decision made
6. Appeals can only be made to High Court on points of law

Option 2: **Provide for alternative decision pathway for direct referrals (Minister decides)**

This option provides an alternative pathway for the Minister to determine whether a potentially "major project" should be directly referred under the direct referral process. Under this option, the Minister determines whether major projects go through the direct referral process, using an agency (likely EPA or MfE) as a gateway. This option would involve the following process:

1. Applicant lodges their application and a request for direct referral with the relevant council, and the application is formally received
2. Applicant lodges a request for direct referral with the relevant government agency (likely EPA or MfE) and provides a copy of the application documents
2. Request for direct referral and the application are assessed by the agency against "major project criteria"
3. Agency makes recommendation to Minister (as to whether the proposal meets/does not meet criteria)
4. Minister decides whether to refer the application through the direct referral process
5. Application sent to council for notification/submissions
6. Council planning report prepared, applicant lodges application with Court
7. Decision made
8. Appeals can only be made to High Court on points of law

Table 1: Options

Option	Key Features
1. Provide call-in (EPA) process for major projects	Amendment of RMA to introduce "Major Project Criteria", enabling the Minister to call-in a proposal to follow the EPA process if the proposal meets the criteria. In making his/her decision, the Minister may have regard to whether the application: • involves significant investment (e.g., a capital expenditure of up to $10 million) • is of significance to the region or district • is complex and technical and would benefit from cross-examination in the Court or Board of Inquiry process
2. Provide for alternative decision pathway for direct referrals (Minister decides)	Amendment of RMA to introduce "Major Project Criteria" (as per Option 1) and the provision for an alternative decision pathway (in addition to existing council decision pathway) for decisions on direct referrals. The application would be lodged with a government agency (likely either EPA or MfE), which would make a recommendation to the Minister, informed by the criteria. If directly referred, the application would follow the standard direct referral route.

Summary impact assessment

Table 2: Summary impact assessment

Impact	Incidence	Magnitude

1) Provide call-in (EPA) process for regionally significant proposals		
COSTS		
Cost of development and roll-out of guidance	central government	Low
Cost of EPA process to applicant	Applicant	Likely to be significantly higher than standard council process
Over-rides council's decision-making function and removes decision-making process from the community it most affects	council, stakeholders, general public	High
Will require increased resourcing of EPA, as currently not resourced to deal with regional matters	EPA	High
BENEFITS		
Increased certainty for applicant	Applicant	Medium
May increase timeliness	applicant, stakeholders	Medium
RISKS		
The EPA process may discourage submitters from participating in the process, thereby undermining community ability to participate in decision-making that affects the local community	stakeholders, submitters	Medium
NET IMPACT: Uncertain impact. Cost of EPA process may dissuade applicants from opting for this pathway.		
2) Provide for alternative decision pathway for direct referrals (Minister decides)		
Costs		
Cost of development and roll-out of guidance	central government	Low
Over-rides council's decision-making function and removes decision-making process from the community it most affects	council, stakeholders, general public	High
Will require extra resourcing/capacity for government agency tasked with advising Minister on direct referral decisions	central government	Medium to high
BENEFITS		
Increased certainty for applicants for "major projects"	stakeholders	Medium
RISKS		
Risk of perception of overriding joint management Treaty agreements over Waikato River (Te Arawa, Raukawa, Waikato-Tainui, Tuwharetoa)	central government, councils, iwi	Medium to high
The insertion of criteria (in particular investment criteria) may reduce the number of applications eligible for direct referral	Applicant	Medium likelihood, but can be mitigated to some extent by making the investment threshold an optional rather than mandatory criterion
May be more costly process for applicant, because council hearing process is omitted, which acts to narrow issues to only the contentious and complex ones, on which parties are unable to reach agreement. By going	Applicant	High likelihood

Impact	Incidence	Magnitude
directly to the Environment Court, the applicant must provide evidence (at the standard required by courts) across all issues, not only the ones that are likely to be appealed.		
May not result in improved time efficiency if there are substantial delays in a case being heard by the Environment Court	applicants, submitters, other stakeholders	Medium likelihood, but this risk is likely to increase in magnitude the more direct referral applications increase.
May lead to a surge in direct referral applications to the Environment Court, leading to resourcing issues, and subsequent delays, thereby not achieving the objective of greater efficiency and timeliness of decision-making.	Courts, applicants, councils, stakeholders, public	Medium - high
An increase in the incidence of direct referrals may decrease public/stakeholder (including Maori/iwi) participation in the process	Stakeholders, public	Medium
NET IMPACT: Likely to be a net benefit compared to the status quo (more opportunity for applicants for "major projects" to choose streamlined route)		

Table 3: Assessment of options against objectives

Assessment against objectives					
Greater central government direction on resource management	**Economic efficiency of implementation and environmental integrity**	**Avoid duplication of processes under the RMA and other statutes**	**Efficient and improved participation of Māori in resource management**	**Ensure that principles of good regulatory practice are met**	**Overall weighted score**
Option 1) Provide call-in (EPA) process for regionally significant proposals					
✓	✓	✓	~	x	
Option 2) Provide for alternative decision pathway for direct referrals (Minister decides)					
✓	✓	✓	x	x	

Key: ✓✓✓ indicates substantially better than status quo; ✓✓ better than status quo; ✓ slightly better than status quo; ~ no change compared to status quo; **x** slightly worse than status quo; **xx** worse than status quo; XXX, substantially worse than status quo.

Consultation

There has been no departmental, stakeholder or public consultation on the proposals outlined in this RIS. Most critically, there has been no consultation with the Courts to ensure that there is adequate capacity to deal with an increase in direct referrals. Inadequate Court capacity is a risk that would potentially mean that the proposal would not achieve its objective (a more timely, streamlined process for regionally significant proposals). Without consultation, it is difficult to provide robust advice on costs, benefits and risks of the two options.

Conclusions and recommendations

Both options provide a streamlined pathway for projects that are major but not nationally significant. Option 2 is the recommended option as this will be more cost-effective for applicants than Option 1. It also allows for council involvement (through the planning report and submissions process) and better ensures that local participation is upheld. However, it does carry with it a number of risks, such as being perceived as overriding joint management Treaty agreements, increasing direct referral applications to the extent that the Environment Court is not able to process them in a timely manner (and therefore not achieving the objective of the proposal). In addition, an increased role for a government agency (either the EPA or MfE) will mean that these agencies will require extra resourcing to fulfill this additional function.

Implementation

In the case of both Option 1 and 2, it is recommended that guidance is proactively rolled out to councils and other stakeholders through Ministry-led workshops.

Monitoring, evaluation and review

Data on use of the EPA process or direct referrals can be gathered through a custom-designed council survey, or incorporated into regular RMA monitoring and compliance reviews.

C. Environment reporting

Status quo and problem definition

A large proportion of environmental monitoring is undertaken by local government. Data is collected by local government to support council decision-making. Currently councils collect data independently of each other and use their own methodologies. There are no national requirements in terms of methodology or standards.

Good local government decision-making relies on good environmental monitoring and data collection. Questions have been raised about the quality of information informing council decisions.

A number of both local government and Ministry-led initiatives are underway to improve the quality of environment data that informs the Ministry's reports. While the voluntary nature of these measures allows local government control over the extent of change and also the costs of those changes, it may also mean that quality improvement is slow and uncertain. Monitoring by local government is largely constrained by cost and capacity.

Under section 27(3) of the RMA the Minister for the Environment can require Councils to provide information that:

- is about the Council's exercise of any of its functions, powers, or duties under the RMA
- is held by the Council
- may be reasonably required by the Minister.

This limits the Minister's powers to requiring the release of the information already held by the council. The Minister cannot request councils to collect information or specify how information should be collected under s27(3).

Local government environmental monitoring data, along with data from other agencies and Crown Research Institutes, is provided to the Ministry for the Environment for national reporting purposes. National reporting is currently undertaken as a series of 'report cards' for 22 national-level environment indicators. The Ministry's forward work programme focuses on the 'report card' approach to ensure quality data is available in a timely manner.

The quality and independence of the Ministry's reporting is assured by following the guidance of Statistics New Zealand's Official Statistics System. The Ministry's protocols include rigorous peer review by individuals selected on the basis of their knowledge of their subject matter and ability to conduct the review in an unbiased manner (amongst other criteria). A number of both local government and Ministry led initiatives are underway to improve the quality of environment data that informs the Ministry's reports, including:

- the National Environmental Monitoring and Reporting Project
- the development of national environment monitoring standards and qualifications
- the Land and Water public web portal:
- the expansion of Statistics New Zealand's Environment Tier 1 Statistics.

The status quo has led to a lack of credible data to support decision making at both the local and national level.

Regulatory impact analysis

Policy options

The table below identifies the key features of the practical options (regulatory and non-regulatory) that will wholly or partly achieve the objectives.

Table 10: Option identification – environment reporting

Option	Key features
1) Communication of data quality strategy	A communications strategy, outlining current Ministry for the Environment data quality practices, would improve perceptions of credibility of current environment reporting for minimal cost.
2) Amend section 360 of the RMA and implement regulations	Amendment of section 360 of the RMA would enable the Minister for the Environment to direct, via regulations, local authorities to monitor the environment according to specified priorities and methodologies. This option was the preferred option in a discussion document released in August 2011 (*Measuring up: Environmental Reporting – A Discussion Document*)
3) Amend section 360 of the RMA but do not implement regulations immediately	Delaying the implementation of the regulations would give local government a chance to increase data quality voluntarily, but would also allow a quick and relatively simple process for regulating if those voluntary measures failed to produce satisfactory results.
4) Purchase additional reporting data from local government	Under this option, the Ministry would pay local governments to collect data that is required for national reporting, to the extent that it is not currently being collected by councils for their own monitoring purposes.
5) Collect data nationally	This option would create a national data collection programme. This would most suitably be undertaken by the EPA, but the Ministry could also be considered for this function.
6) Create a National Environment Standard (NES) for environmental monitoring	This option would create an NES for environmental monitoring. No legislative change is required. The NES could determine a required set of indicators that should be monitored and specify how they must be monitored. Local government must comply with the provisions of the NES. NES provisions are high level and do not specifically allow for priorities and methodologies for council monitoring. There is therefore some uncertainty about the ability of an NES to address this issue. If effective, this option would have a similar effect as amending section 360 of the RMA.

The table below summarises the impacts of each feasible option, who bears these impacts and the likely magnitude of them.

Table 2: Summary impact assessment – environment reporting

Option	Impact	Incidence	Magnitude
3) Communication of data quality strategy	**COSTS**		
	Costs of implementing the communications strategy.	Central government (MfE)	Low
	BENEFITS		
	Credibility of data is increased through better understanding of existing quality control practices.	Central government (MfE)	Medium
	RISKS		
	The communications do not significantly improve understanding about data quality.	Central government (MfE)	Medium
	NET IMPACT: No net benefit over the status quo		
4) Amend section 360 of the RMA and implement regulations	**COSTS**		
	Cost of implementing new reporting requirements.	Local authorities	Expected to be high (although variable by council). Unable to be quantified until the regulations have been further defined.
	Costs of developing and supporting new regulations.	Central government (MfE)	Medium
	BENEFITS		
	Creates a consistent national dataset.	Data users	High
	Supports better decision-making by local government.	Local authorities	Medium
	Quality improvements realised quickly.	Data users	Medium
	RISKS		
	Costs prohibit councils from fully implementing the new reporting requirements.	Local authorities	Medium
	The nationally required data does not meet the needs of local decision-makers.	Local authorities	Medium
	NET IMPACT: Improvement over the status quo, as increases national consistency and supports better decision-making.		

Option	Impact	Affected party	Level
5) Amend section 360 of the RMA but do not implement regulations immediately	**COSTS**		
	Costs of amending the legislation.	Central government (MfE)	Low
	Once regulations amended, costs as per option 2 above.		
	BENEFITS		
	Creates an incentive for councils to progress the existing voluntary measures for data quality improvement.	Data users	Medium
	Enables regulation of best practice that results from voluntary data improvement measures.	Central government (MfE)	Low
	Allows quick action should voluntary data improvement measures fail to produce sufficient quality improvement.	Central government (MfE)	Medium
	Incremental data improvements support better local government decision making over time.	Local authorities	Medium
	Incremental data improvements create a more consistent national dataset over time.	Data users	Medium
	RISKS		
	Perception that the government is not taking the environment reporting seriously if the regulations are not immediately implemented.	Central government	Medium
	Councils do not improve data quality through voluntary initiatives.	Data users	Medium
	NET IMPACT: Improvement over status quo, as data quality and decision-making are improved without having to impose significant costs on councils unless voluntary actions are unsuccessful.		
6) Purchase additional reporting data from local government	**COSTS**		
	Cost of additional data collection.	Central government	High
	BENEFITS		
	Creates a nationally consistent dataset.	Data users	High
	Quality data available to support decision-making.	Local authorities	Medium
	RISKS		
	Disincentive for councils to collect data to support local decision making unless paid to do so by central government.	Central government	Medium
	NET IMPACT: Worse than status quo as it imposes a high cost on central government for data collection and creates a disincentive for councils to monitor for local decision-making unless funded by Government.		

Option	Impact	Affected party	Magnitude
7) Collect all data nationally	**COSTS**		
	Cost of data collection.	Central government	High
	Potential for duplication of data collection at national and local levels.	Central government and local authorities	High
	BENEFITS		
	Creates a nationally consistent dataset.	Data users	High
	Quality data available to support decision making.	Local authorities	Medium
	RISKS		
	Disincentive for councils to collect additional data to support local decision making.	Local authorities	Medium
	Nationally collected data does not meet the needs of local decision-makers.	Local authorities	Medium
	NET IMPACT: Worse than status quo		
8) Create an NES for environmental monitoring	**COSTS**		
	Cost of developing and implementing NES.	Central government (MfE)	Medium
	Cost of implementing NES.	Local authorities	Expected to be high (although variable by council). Unable to be quantified until the monitoring requirements have been further defined.
	BENEFITS		
	Creates a nationally consistent dataset.	Data users	High
	Quality data available to support decision making.	Local authorities	Medium
	RISKS		
	Costs prohibit councils from fully implementing the new reporting requirements.	Local authorities	Medium
	The nationally required data does not meet the needs of local decision-makers.	Local authorities	Medium
	NET IMPACT: No net benefit over status quo.		

Using the approach to analysis described in the section above, the table below identifies how each option delivers on the objectives.

Table 3: Assessment of options against objectives – environment reporting

Assessment against objectives					
Greater central government direction on resource management	**Economic efficiency of implementation and environmental integrity**	**Avoid duplication of processes under the RMA and other statutes**	**Efficient and improved participation of Māori in resource management**	**Ensure that principles of good regulatory practice are met**	**Overall weighted score**
Option 1) Communication of data quality strategy					
~	~	**N/A**	**N/A**	~	
Option 2) Amend section 360 of the RMA and implement regulations					
✓✓ Increases national consistency of environment data. Central government direction not be maximising comparative advantage.	x Improves quality of local resource management decisions through high quality data. Monitoring will not be as flexible to deal with local and emerging issues. Allocation of costs to local government not optimal	**N/A**	**N/A**	x Absolute compliance of local government may be limited by cost.	
Option 3) Amend section 360 of the RMA but do not implement regulations immediately					
✓ Increases national consistency of environment data.	~	**N/A**	**N/A**	~	

Option 4) Purchase additional reporting data from local government					
✓ Increases national consistency of environment data. Central government direction not be maximising comparative advantage.	x Improves quality of local resource management decisions through high quality data. Monitoring will not be as flexible to deal with local and emerging issues	N/A	N/A	x Creates a disincentive for councils to collect data to support local decision making unless paid to do so by central government	
Option 5) Collect all data nationally					
✓✓ Increases national consistency of environment data. Central government monitoring not be maximising comparative advantage	x Improves quality of local resource management decisions through high quality data. Monitoring will not be as flexible to deal with local and emerging issues.	N/A	N/A	x Creates a disincentive for councils to collect data to support local decision making unless paid to do so by central government.	
	Potential duplication of data collection				
Option 6) Create an NES for environmental monitoring					
✓✓ Increases national consistency of environment data. Central government direction not be maximising comparative advantage.	x Improves quality of local resource management decisions through high quality data. Monitoring will not be as flexible to deal with local and emerging issues. Allocation of costs to local government not optimal.	N/A	N/A	x Absolute compliance of local government may be limited by cost.	

Key: ✓✓✓ indicates substantially better than status quo; ✓✓ better than status quo; ✓ slightly better than status quo; ~ no change compared to status quo; **x** slightly worse than status quo; **xx** worse than status quo; **xxx** substantially worse than status quo.

Consultation

The Government's initial proposal for improvements to the environment reporting framework was the subject of *Measuring up: Environmental Reporting – A Discussion Document*, approved by Cabinet for release by the previous Minister for the Environment in August 2011 [CAB Min (11) 30/8 refers]. The Government's proposal to expand the regulation-making powers under section 360 of the RMA was supported by 28 of the 35 submitters who expressed a clear preference on this section of the proposal. However, concerns raised included:

- the costs of this change and the impact on council resourcing
- that national reporting requirements may mean local issues are no longer monitored or reported on.

These concerns have been taken into account in the evaluation of the options.

Conclusions and recommendations

The Ministry recommends amending section 360 of the RMA to allow the Minister for the Environment to regulate for local authorities to monitor the environment according to specified priorities and methodologies. Regulations would not, however, be made immediately. This option will provide improvements in data quality without imposing prohibitive costs on local government. It will allow local government to pursue the voluntary changes that are already underway, but with the knowledge that the Minister for the Environment has the ability to introduce regulations if sufficient progress is not made.

The significant costs imposed on local government make the other two options which offer improvement over the status quo (amend section 360 of the RMA and regulate immediately; develop an NES) less desirable, even though their potential impact on data quality is likely to be larger and more timely.

Implementation

The preferred option can be implemented by amending section 360 of the RMA to allow the Minister for the Environment to direct, via regulations, local authorities to monitor the environment according to specified priorities and methodologies. Regulations would not be drafted immediately.

A communications strategy would be needed to support implementation to ensure that local government is aware of the change and the Minister's expectation regarding data quality improvements.

Monitoring, evaluation and review

In order to measure the effectiveness of the proposed policy, we recommend monitoring the progress of voluntary measures for improved data quality. The first review cycle could take place in 5 years. The monitoring, evaluation and review of this policy will be further developed after decisions are made.

Appendix

Technical matters

The following are technical matters aimed at improving the clarity and workability of the RMA. They do not involve substantive changes to policy and accordingly do not require a RIS. They have been included here in order to provide a more complete overview of proposed improvements to the RMA.

Blanket tree protection: Align interpretation with original policy intent

Status Quo	Problem	Original policy intent	Preferred option	Other options considered	Impacts	Recommendation
Blanket tree protection rules in urban areas that were intended to have been prohibited from plans following the 2009 RMA amendments are still in force. Blanket tree protection rules require landowners to apply for a resource consent for pruning or removing trees regardless of the condition or value of the tree, imposing unnecessary costs.	A declaration from the Environment Court (sought by several local authorities) found that "a group of trees" can be defined in a number of ways. This can include all trees of one or more named species in a defined area or zone, or all trees in a class with defined characteristics in a defined area or zone. This means that some of what had been considered as blanket tree protection rules have remained legitimately in district plans and have not been revoked, which defeated the intent of the 2009 amendment. Local authorities, with only a few exceptions, are following the direction of the Environment Court decision	To reduce the number of consent applications that need to be made for minor matters by removing the ability for local authorities to impose "blanket protection rules" in urban areas.	Amend section 76(4A) to clarify the prohibition of blanket tree protection rules and to require those local authorities that wish to protect groups of trees to identify these precisely by location and either survey defined area, surveyed landscape unit ecological or botanical grouping, or other appropriately identified criteria	Status quo - the Environment Court interpretation of a group of trees will remain in place unless it is overturned by a High Court decision. The effect is that the blanket tree protection rules will remain in place in urban areas such as Auckland, and landowners and others will continue to face unnecessary resource consent requirements and costs. The Property Council of New Zealand has applied to the Environment Court for new declarations on tree protection rules affecting Auckland. We consider that the outcome of these proceedings will not change the status quo, as it is most likely	This amendment reinstates the policy intent of the 2009 RMA amendments that were expected to reduce the number of resource consent applications required for minor tree trimming or removal by more than 4,000. Figures obtained from Auckland Council suggest that in the current economic climate the reduction may be around half this figure if applied to the 2011/2012 year.	Proceed with preferred option

				that the Court will apply the same interpretation of 'group of trees' as was used in 2011 declaration, and the new declaration does not apply to existing blanket protection rules in plans outside of Auckland.		

Environment Court to have regard to principles of cost effectiveness and timeliness

Status Quo	Problem	Original policy intent	Preferred option	Other options considered	Impacts	Recommendation
The principles underlying Environment Court procedure, as set out in s.269, do not contain explicit reference to cost-effectiveness.	The Environment Court is not required to consider the principle of cost-effective resolution of matters in its procedures. Delays can be experienced at the Environment Court. The Environment Court has suggested amending s.269 to make explicit reference to the principle of cost-effectiveness in Environment Court procedure.	S.269(2) specifies that Environment Court procedure may be conducted without procedural formality where this is consistent with fairness and efficiency.	Require the Environment Court to consider a cost-effective and timely approach to the resolution of matters in dispute. This will assist stronger case management and should assist in reducing delays at the Environment Court.	Status quo	Requiring the Environment Court to conduct its procedures in a cost-effective and timely manner may assist in the Environment Court working through case load more efficiently.	Proceed with preferred option

Environment Court: Timeframe to apply for reconsideration of Registrar's decision to waive fees

Status Quo	Problem	Original policy intent	Preferred option	Other options considered	Impacts	Recommendation
The Registrar of the Environment Court may waive fees prescribed under regulations made under s.281A. A person affected by the Registrar's decision can seek reconsideration of the decision by an Environment Judge within 5 working days of the Registrar's determination.	The 5 working day period to seek a reconsideration of the Registrar's decision is considered very tight.	To enable people who have applied for a waiver of fees under s.281A to apply for the Registrar's decision to be reconsidered by an Environment Judge.	Increase the period in which reconsideration of the Environment Court Registrar's decision on s.281A applications can be sought, from 5 to 10 working days.	Status quo. Increase period to 20 working days in line with the period provided in other Courts	A person who wants to seek a review of the Registrar's determination of an application for a waiver will have a longer period to ask for the Environment Judge to reconsider the decision. This will reduce the risk of affected people missing out on the opportunity for review of the Registrar's decision. 10 working days provides a more reasonable timeframe but will not risk delays to the hearing.	Proceed with preferred option

Enforcement orders: Timeframe for persons to request to be heard by the Environment Court

Status Quo	Problem	Original policy intent	Preferred option	Other options considered	Impacts	Recommendation
s314 provides that the applicant for an enforcement order and any person against whom the order is sought, has the right to be heard by the Environment Court.	Form 44 of the Resource Management (Forms, Fees and Procedure) Regulations 2003 provides that if the person wants to be heard, they must let the Environment Court know as soon as possible. The unspecified timeframe has meant that the Environment Court then has to spend time establishing if the person, against whom the order is sought, wishes to be heard.	The general policy intent is that specific timeframes can provide for processes to run in an efficient manner.	Specify a reasonable timeframe in the RMA which the person, against whom an enforcement order is sought, advise the Environment Court that they want to be heard, and whether they oppose the application for the order. 15 working days would seem an appropriate timeframe as this is used in other parts of the Act as the period in which to advise Environment Court that someone wishes to be heard (e.g. s.274).	Retain the status quo: the Environment Court would continue to spend time trying to establish whether someone wants to participate in enforcement order related proceedings.	The proposed change would provide greater certainty to the Environment Court and reduce its costs.	Proceed with preferred option.

Timeframe for persons becoming party to Environment Court proceedings to give notice to other parties

Status Quo	Problem	Original policy intent	Preferred option	Other options considered	Impacts	Recommendation
s.274(2) of the RMA allows certain persons to become a party to proceedings by giving notice to the Environment Court within 15 working days. Currently parties are also required to give notice to the other parties to the proceedings in the same 15 working day time period. However, they may not know at that point, who all the parties are, to whom they are required to give notice.	The current 15 day timeframe for notifying all other parties raises a procedural problem. By the time the Environment Court is able to let everyone know who all the other parties are, the 15 days may have elapsed. Even with early engagement with the Court prior to lodgement, in order to determine who parties are required to give notice to, additional parties may give notice to the Environment Court.	The policy intent in 2009 was to shorten the period for giving notice from 30 to 15 working days, while still requiring all parties to the proceedings to be informed of who the other parties are.	Amend s.274 to give parties an additional 5 working day period, after the 15 working day period has elapsed, to give notice to all other parties. This change would bring the service requirements for parties under s.274 in line with the requirements for appellants under s.121 in relation to the procedures for resource consents.	Retain the status quo.	Efficiency gains for the Environment Court having time to identify and advise parties on whom notice is required to be served.	Proceed with preferred option

Direct referral process: Lodgement timeframe and role of Environment Court

Status Quo	Problem	Original policy intent	Preferred option	Other options considered	Impacts	Recommendation
If an applicant wants an application determined by the Environment Court rather than the council, they have 10 working days to lodge a notice of motion with the Court (under s87G(2), 198E(2) and s198K(1)) from the date they receive the local authority's planning report.	Currently if the notice of motion is not lodged within 10 days, the risk is that the application would fall back to the council for processing. This would mean the applicant would miss out on the direct referral pathway because of a minor breach of the timeframe.	To enable applicants to lodge applications for direct referral with the Environment Court within a reasonable timeframe.	Amend s.87G(2) to increase the timeframe for lodging a notice of motion for an application to the Environment Court for direct referral from 10 working days to 15 working days from receipt of the planning report.	Retain the status quo, which would mean that some direct referral applications may not be able to be considered by the Environment Court if the timeframes for lodging them with the Court have been breached. Amend s.281 to enable the Environment Court to consider applications for waivers for direct referral processes as part of its general waiver powers.	The preferred option enables the policy intent of direct referral to be better achieved, as it ensures that applicants will not miss out on having an application directly referred because the 10 day timeframe for lodging the notice of motion with the Environment Court is too tight. A 15 working day period provides more time for applicants and is more certain for applicants and councils than a general waiver power.	Proceed with preferred option
The notice of motion is the mechanism by which the matter is referred to the Environment Court	By using the notice of motion, there is a question about whether the Environment Court has the discretion to refuse to hear a direct referral application.	There was no intention that the Environment Court would have discretion to refuse to consider and decide a direct referral application.	Clarify that the Environment Court does not have discretion under section 87G (2) on whether to hear an application for direct referral.	Retain the status quo	Remove any doubt about the role of the Environment Court under section 87G(2)	Proceed with the preferred option

Direct referral process: Local authority participation, cost recovery, and report contents

Status Quo	Problem	Original policy intent	Preferred option	Other options	Impacts	Recommendation
The direct referral process requires planning input from the local authority to assist the Environment Court with its decision-making. S.274 gives the council discretion as to whether or not to become party to proceedings, which makes the council's role in Environment Court hearings unclear.	There is confusion as to the role of local authorities in direct referral hearings. Councils are required to provide their s.87F(4) report in the hearing, but are not required to be present at the hearing to answer questions arising from that report to assist the Court in making its decision.	The direct referral process requires planning input from the local authority, in the form of a report on the application prepared under s.87F, to assist with the Environment Court's decision making.	Clarify that the local authority must participate in its regulatory capacity in the Environment Court hearing, to assist and provide any planning advice that the Environment Court may require, and enable councils to recover costs for their role and participation in providing consent related advice to Environment Court in the direct referral process.	Status quo	This amendment would clarify that a council is required to participate in its regulatory capacity in the Environment Court hearing (presenting and answering questions arising from the planning report), and that the council may recover its costs for taking part in this process in its regulatory capacity.	Proceed with preferred option
The contents of the council's s.87F(4) report are not mandatory and there is no reference to the inclusion of a summary of submissions.	The s.87F(4) report is a key document and there should be certainty for the Environment Court, the applicant, the council and submitters about what this report must contain. It would be helpful for the report to include the summary of submissions	The policy intent was for the local authority report to be considered by the Environment Court, but the content was left discretionary	The Environment Court relies on the s.87F(4) report and its contents should be mandatory to improve certainty for all parties. Including a summary of submissions would bring it in line with s. 42A reports and reassure submitters that their views would be formally considered.	Status quo	Improve certainty for the Environment Court, applicants, councils and submitters about what information will be provided to the Environment Court.	Proceed with preferred option

Nationally significant proposals: Applications to extend 9-month timeframe to be made by EPA only

Status Quo	Problem	Original policy intent	Preferred option	Other options considered	Impacts	Recommendation
s.149S, in relation to proposals of national significance, allows the Minister to grant an extension to the time in which a board of inquiry must produce its final report. However, no process is set out, or clarification provided on who can apply to the Minister for such an extension.	The lack of detail provided in s.149S on the process and who can apply, can lead to confusion on the part of applicants, the board of inquiry and the Environmental Protection Authority (EPA). Applications for extension to date have had to be dealt with in an ad-hoc manner.	While it appears that the ability to extend the timeframes was modeled on s.37, it is clear that extensions of timeframe are a serious matter requiring the Minister's approval .	Clarify that only the EPA (on behalf of the board of inquiry) can request that the Minister use his/her powers under s.149S to extend the timeframes, during the course of the inquiry.	Retain the status quo.	Provides clarity to applicants, the board of inquiry and the EPA on the process for applying for extensions to the timeframes.	Proceed with preferred option

Nationally significant proposals: Include ability for Minister for the Environment to correct errors

Status Quo	Problem	Original policy intent	Preferred option	Other options considered	Impacts	Recommendation
Under the current provisions relating to Nationally Significant Proposals (NPSs), any changes that need to be made following the adoption of an NPS can only be made by following a full board of inquiry or alternative consultation process set out in s.46A(1)(b).	There is no ability to correct errors in an NPS without going through a board of inquiry or submission process.	The ability to correct errors was omitted for NPSs.	Include the ability for the Minister to correct errors in NPSs, consistent with the process set out in s.44(3) for national environmental standards.	Retain the status quo.	Including a mechanism to correct errors in an NPS (consistent with processes currently available for national environmental standards under s.44(3)) will reduce unnecessary processes, costs and time delays.	Proceed with preferred option

Nationally significant proposals: Board of inquiry to remain established until end of appeals process

Status Quo	Problem	Original policy intent	Preferred option	Other options considered	Impacts	Recommendation
A board of inquiry, appointed by the Minister under section 149J for matters of national significance, has a role until it has produced its final report is prepared under section 149R.	If an appeal is lodged with the High Court, the High Court may direct a board of inquiry to provide information and /or reports to address matters arising out of the appeal. If the board no longer exists, the board cannot respond to any High Court direction.	Clarification on when a board of inquiry is disestablished was omitted from the 2009 amendments.	Clarify that a board of inquiry continues to exist until all functions required of the board in relation to the decision it produces under section 149R, including functions in relation to any appeals or judicial reviews, have been completed.	Retain the status quo.	The proposed change would improve certainty around the board's role and avoid having to reinstate a board of inquiry if an appeal is lodged with the High Court.	Proceed with preferred option.

Nationally significant proposals: Board of inquiry to make corrections to its own decisions

Status Quo	Problem	Original policy intent	Preferred option	Other options considered	Impacts	Recommendation
There is no explicit provision in the Act that, where a matter has been decided by a board of inquiry, it is the role of the board to make minor corrections to these decisions.	A consent authority (council) has powers under s.133A to make minor corrections to resource consent decisions it has made. However, there is no equivalent section where a board of inquiry has made a decision under Part 6AA.	That the decision-making process on matters referred to a board of inquiry under Part 6AA be completed by the board of inquiry.	Clarify that a board of inquiry has the power to correct its own decision on a matter.	Status quo	The proposed change would improve certainty that it is the role of the board of inquiry to make minor corrections to its own decisions.	Proceed with preferred option

Nationally significant proposals: Cost recovery powers for Minister of Conservation

Status Quo	Problem	Original policy intent	Preferred option	Other options considered	Impacts	Recommendation
The Minister of Conservation is unable to delegate his or her cost recovery powers to the EPA, under Part 6AA.	The Minister of Conservation is responsible for proposals of national significance that fall wholly or partly into the coastal marine area. The EPA manages the processing of those applications but cannot currently recover costs on behalf of the Minister of Conservation. The EPA is set up to undertake cost recovery and it makes sense for it to manage this process for all applications lodged with the EPA.	The intention was that the EPA could costs recover the costs of processing applications on behalf of the Minister. It was an oversight that reference to the Minister did not include the Minister of Conservation where that Minister was the relevant Minister under Part 6AA.	Enable the Minister of Conservation to delegate to the EPA his or her powers of cost recovery, under Part 6AA.	Retain the status quo	The amendment will enable more effective cost recovery for applications received by the EPA that fall within the coastal marine area.	Proceed with the preferred option.

Extension of eligibility for RMA emergency powers to "lifeline utilities"

Status Quo	Problem	Original policy intent	Preferred option	Other options considered	Impacts	Recommendation
"Lifeline utilities" as defined in the Civil Defence Emergency Management Act 2002, that are not also network utility operators, are unable to access the emergency provisions provided under s.330 of the RMA. This section currently enables only network utility operators to undertake actions to prevent the loss of life, to prevent serious damage to property or to prevent an adverse effect on the environment in an emergency without the need to gain resource consent in advance.	Current provisions mean that life, property, and the environment are at risk when an emergency (where a "state of emergency" has not been declared) involves infrastructure belonging to entities that are not identified as network utility operators under the RMA.	N/A	Amend s.330 to extend eligibility for emergency powers to all lifeline utilities under the Civil Defence Emergency Management Act 2002 (including ports, electricity generators, gas suppliers and petroleum wholesalers).	Status quo	In an emergency situation, all "lifeline utilities" will be able to undertake emergency works without first gaining a resource consent, and without needing a state of emergency to have already been declared. The appropriate authorities must be informed of the action within seven days, and a retrospective resource consent applied for within 20 working days where there ongoing effect or activities. There is a risk that this option would impact on environmental integrity and the rights of affected persons in emergency situations; however, probability of this is expected to be low because use of the provisions is restricted to emergencies.	Proceed with preferred option