# Regulatory Impact Statement - Resource Legislation Amendment Bill 2015

## Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry for the Environment (the Ministry) to accompany the Cabinet paper 'Resource Legislation Amendment Bill'.

*Scope of RIS*

Many of the proposals within this reform package have previously been agreed by Cabinet through papers with supporting regulatory impact analysis (RIA) on 13 May 2013 [CAB Min (13) 15/8 refers] and on 4 June 2013 [CAB Min (13) 18/8 refers]. Since then, the package of reforms has been revised considerably, and the current RIS reflects the changes in policy content and direction. Proposals related to the Exclusive Economic Zone (EEZ) are set out in two separate RISs: 'Resource Legislation Amendment Bill 2015: EEZ Amendments', and 'Resource Legislation Amendment Bill 2015: Alignment of the Decision-making Processes for Nationally Significant Proposals and Notified Discretionary Marine Consents'.

*Analytical constraints*

Given the nature of the issues covered in the reform program, accurate quantification of the size of the problems and impacts has not been feasible across all policy options. It is also difficult to identify the exact impact from many of the proposals in this paper as they will affect tangata whenua, local government, stakeholders and communities to a varied degree and with a mix of direct and indirect costs and benefits. With these limitations, we have focused on the most viable option based on the information available. The available evidence, or best informed assumptions that have informed the policy development, have been identified throughout the RIS.

A key assumption of the analysis is that the changes to different parts of the system will reinforce each other. The different parts of the package therefore rely on each other to provide the right set of incentives for change.

*Implementation and monitoring*

The Ministry is aware that ongoing processes and monitoring will be required to achieve the expected benefits of the reform package while mitigating implementation costs. Implementation of the reforms will require Ministry support, particularly in the early stages following enactment of a Bill. An implementation plan is currently being developed and the Ministry will carry out targeted monitoring and evaluation of the reform program.

*Consultation*

Some of the proposals have been publically consulted on through feedback on the public documents 'Improving our resource management system' and 'Freshwater reform 2013 and beyond' in February and March 2013. There has not been any wider public consultation on new and amended proposals contained in this paper since 2013; however there will be further opportunity for public views to be heard on these proposals through the Select Committee process.

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**Ministry for the Environment**

**Please note that the following proposals (set out in this RIS) are not part of the Resource Legislation Amendment Bill 2015:**

- **New duties in Part 3 to minimise restrictions on land (Proposal 1.6)**
- **Enable alternative consent authorities to provide resource consenting services as an alternative to local councils (Proposal 3.7)**

# Contents

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## Summary of regulatory impact analysis

1. The first part of this paper provides a background to the current resource management reforms, a statement on the status quo and the overarching problems the reform package is trying to address, as well as an overview of purpose, high-level objectives and intermediate outcomes of the package.
2. The second part of this paper provides more detail on the various reform proposals, grouped into seven broad categories. It details the specific problems each proposal is trying to address (linked to the overarching problem definitions and objectives). It also provides a brief description of the proposals (including costs, benefits, and impacts for government, stakeholders and the wider community), and any alternative options considered.
3. The third part of this paper provides a high-level impact assessment, identifying which of the proposals (or clusters of proposals) will have the greatest impact in meeting the identified objectives. However, note that quantification of impacts with any precision is extremely difficult given the limited information, inter-related elements, and mix of high frequency low value and low frequency high-value impacts.
4. The fourth part of this paper provides a description of how these reforms differ from the 2013 proposed reforms and where consultation on the current reforms has not been possible. It also attaches Government agency comments on the proposals provided in the Cabinet papers.
5. Implementation, monitoring and review are discussed in the final part of the paper.
6. The proposals must be considered as a package. For example:
    - changes to improve national guidance will flow down to inform decisions on plans, consents and appeals
    - changes to plans will improve local decision-making and lead to fewer decisions being made at the individual consent level that impact the integrity of the plan
    - changes to the consenting system will speed up the process and reduce reliance on the appeals stage.

## Background

7. The Resource Management Act 1991 (RMA) is New Zealand's primary environmental statute, covering environmental protection, natural resource management and our urban planning regime. Since its inception, the RMA has been subject to several reviews and reforms. Recent changes include streamlining and simplifying the RMA in 2009, and a series of reforms focusing on institutional arrangements in 2013. Regulatory Impact Statements (RISs) for these previous reforms are available on the Ministry for the Environment's (MfE) website.[1]

8. The overarching purpose of the RMA is to promote the sustainable management of New Zealand's natural and physical resources.

9. Sustainable management means managing the use, development, and protection of natural and physical resources in a way that enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while:

   - sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;
   - safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
   - avoiding, remedying, or mitigating any adverse effects of activities on the environment.

10. To achieve its sustainable management purpose, the RMA assigns different roles and responsibilities to central and local government, requiring authorities and the Minister for the Environment. Central government has responsibility for administering the RMA, providing national direction and responding to national priorities relating to the management of the environment and environmental issues. Most of the everyday decision making under the RMA is devolved to territorial authorities (city and district councils) and regional councils.

11. The Government is now seeking to make further changes to improve the effectiveness of the RMA.

12. Additional work that has contributed to the wider resource management reforms includes:

    - independent advice from a series of Technical Advisory Groups[2]
    - public consultation on specific options for reforming urban and infrastructure elements of the resource management system through the discussion document, *Building Competitive Cities*, in October 2010
    - the Productivity Commission investigation of issues relating to housing affordability and regulatory performance in local government
    - establishing an efficiency taskforce and expert advisory group on local government, and consultation undertaken as part of the ten point reform programme for local government
    - the Land and Water Forum's (LAWF) three reports on freshwater management.[3]

13. A discussion document, *Improving our resource management system*, was released in February 2013 outlining problems and proposals for resource management reform. The Government's proposals for freshwater reform were included in a paper titled *Freshwater reforms 2013 and beyond* and were released in March 2013. Over 14,000 submissions were received on the resource management discussion document, and over 350 on the freshwater reform proposals. Further discussion on submissions is included in the consultation section of the RIS.

14. Government sought policy decisions on the reforms through two Cabinet papers in May and June 2013 [CAB Min (13) 15/8 and CAB Min (13) 18/8 refer]. However, the reforms were not progressed until after the 2014 General Election. Post-election, the Government has been considering the previous package of reforms with a view to introducing a Bill in 2015.

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[1] http://www.mfe.govt.nz/more/cabinet-papers-and-related-material-search/regulatory-impact-statements/ris-phase-two-resource

[2] Urban Technical Advisory Group. 2010. *Report of the Minister for the Environment's Urban Technical Advisory Group*. Wellington: Ministry for the Environment. Infrastructure Technical Advisory Group. 2010. *Report of the Minister for the Environment's Infrastructure Technical Advisory Group.* Wellington: Ministry for the Environment. Principles Technical Advisory Group. 2012. *Report of the Minister for the Environment's Resource Management Act 1991 Principles Technical Advisory Group*. Wellington: Ministry for the Environment.

[3] http://www.landandwater.org.nz/

## Status quo and overarching problem definition

15. There are three main overarching problems that are contributing to the overall inefficiencies and inequalities within the system:

    - there is a lack of alignment and integration of policies and processes across the system
    - resource management processes and practices are not proportional or adaptable
    - the system makes robust and durable decision-making difficult.

16. These problems frequently manifest themselves in resource management processes and practices that are inconsistent, complex and uncertain, ultimately leading to an increase in time and cost for system users.

17. The overarching problems are discussed in more detail below. A summary of problems and issues is also provided in **Table 1**.

*There is a lack of alignment and integration of policies and processes across the system.*

18. To achieve the sustainable management purpose of the RMA, the Act sets out hierarchy of planning instruments, from the purpose and principles in Part 2 of the Act, to national direction tools developed by central government, down through the various regional and district level planning documents prepared by councils.

19. National level objectives should "flow down" through the various planning levels from regional policy statements to district plans and finally to consenting decisions. Although there has been a significant amount of commentary on the perceived lack of national direction for strategic issues in the resource management system, there is also inconsistency in the way existing direction has been implemented in this hierarchy.

20. In contrast to its predecessor, the Town and Country Planning Act 1977, the RMA was designed to allow plan development and decision making to be undertaken at the level of the affected community. This was so that local biophysical conditions and community priorities could be reflected in plans. For this reason, variation in regional and district plan rules across the country is expected and necessary.

21. However, not all variation is desirable. Inconsistencies and differences between council plans create problems for cross-boundary applicants and submitters. Misalignments with other pieces of legislation in the natural resources sector create duplication or conflict between policies and processes which creates unnecessary problems for activities that require permissions under more than one Act.

22. For the purposes of these reforms, we consider that variation is undesirable when it:

    - results in inconsistent incorporation of matters where national consistency is considered desirable
    - imposes costs on users that are disproportionate to its benefits (if any)
    - contributes to inconsistency and confusion which could be easily fixed with standardisation or alignment
    - means that benefits of other process improvements cannot be fully achieved (eg, electronic notification).

*Resource management processes and practices are not proportional or adaptable*

23. The RMA as enacted combined around 70 different pieces of legislation into one statute. This considerable consolidation and simplification in the RM system has benefited system users.

24. While there is an obvious tension between the need for simplification and streamlining and the need for processes to be adaptable to different situations, many of the current problems with the RMA indicate that this balance has not yet been struck correctly.

25. In hindsight, it appears that policy makers underestimated the complexity of plan making under the RMA. In particular, how long it would take councils to produce plans, including the length of time it would take to complete public consultation. This affects the ability of plans to be flexible and responsive to new matters.

26. Additionally, many of the commonly heard complaints about the RMA from resource users relate to planning and consenting processes that are considered disproportionate to the activity in question and therefore very costly in terms of time and money.

27. While many applications and plans are large in scale and require the standard process, many examples have been identified where more tailored or streamlined processes would be more appropriate.

*The system makes robust and durable decision-making difficult*

28. In working towards the goal of sustainable management, there is an inherent need to weigh up competing interests. On a daily basis, decision-makers confront the fact that not all interests align perfectly and that trade-offs in values and priorities must be made.

29. One of the major principles on which the RMA is based – that communities are best placed to make decisions on the issues that affect them – does not envisage that there will be consensus on all important issues. It does, however, place vital importance on the plan making process as the appropriate venue for assessing and reconciling community objectives.

30. Twenty-four years since the enactment of the RMA, the Act creates limited incentives for decision-makers to proactively provide up front opportunities to further community objectives. In the name of maintaining all public avenues for participation in RMA processes, the focus has come to be more on the number of different available opportunities to comment or complain (dragging out the process beyond expected timeframes), and less concerned with the quality of input and whether it contributes to better decision-making.

31. In reality, many parties only engage with the RM system at the point of applying for a resource consent. The result of this is that the consenting side of the RMA, which is supposed to implement and reinforce the trade-offs decided on at the earlier plan making stage, is used to re-litigate these issues. Long-winded appeals, objections and litigation reduce certainty for resource users, undermine the planning process and contribute to risk averse decision-making.

32. The shortage of skilled and experienced decision-makers results in ongoing capability and capacity issues which also contribute to problems with the robustness and durability of decision-making at all levels under the RMA.

**Table 1: Summary of problems and issues**

| Overarching problem statements | Specific problems/issues | Manifestation | Impact |
|---|---|---|---|
| **There is a lack of alignment/integration of policies and processes across the system.** | There is duplication or conflict between policies/processes and differences in interpretation. | Inconsistency<br><br>Complexity<br><br>Uncertainty<br><br>Lack of clarity | Inefficiency (ie increase in time and cost)<br><br>Inequity/ Unfairness |
| **Resource management processes and practices are not proportional or adaptable.** | Many processes and practices are one-size-fits-all, inflexible and/or do not allow for consideration of new matters. | | |
| **The system makes robust and durable decision-making difficult.** | There is often a lack of or inappropriate engagement by resource users, and community values are often not taken into account.<br><br>Decisions are often appealed or re-litigated. Appeals and litigation reduce certainty, and risk of litigation makes decision makers risk averse. Capability and capacity of decision makers could also be strengthened and improved. | | |
| There are also some parts of the existing legislation that either require a technical fix or have unintended consequences that need to be addressed. | | | |

## Objectives of the RMA reforms

33. The overarching purpose of the Resource Legislation Amendment Bill (the Bill) is to create a resource management system that achieves the sustainable management of natural and physical resources in an efficient and equitable way.

34. Sitting underneath this overarching purpose are three main objectives. Specifically, the Bill seeks to achieve:

- better alignment and integration across the resource management system, so that:
    - duplication within the system is reduced and legislative frameworks are internally consistent;
    - the tools under the Resource Management Act 1991 (RMA) are fit for purpose; and
    - the RMA is implemented in a consistent way and the hierarchy of planning documents is better aligned.
- proportional and adaptable resource management processes, so that:
    - there is increased flexibility and adaptability of processes and decision-makers; and
    - processes and costs are able to be scaled, where necessary, to reflect specific circumstances.
- robust and durable resource management decisions, so that:
    - higher value participation and engagement in resource management processes is encouraged;
    - decision makers have the evidence, capability and capacity to make high quality decisions and accountabilities are clear; and
    - engagement is focussed on upfront planning decisions rather than that individual consent decisions.

35. In addition, there are a number of minor or technical fixes that are sought to some parts of existing legislation to either improve an existing process or to address an unintended consequence.

36. **Table 2** provides a summary of the resource management reform objectives, and the various proposals that seek to achieve these. These proposals will be described in more detail in a latter part of the RIS.

**Table 2: Summary of objectives**

| *Purpose* | **A resource management system that achieves sustainable management of natural and physical resources in an efficient and equitable way** | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| *Overarching Objectives* | **Better alignment and integration across the system** | | | **Proportional and adaptable resource management processes** | | **RMA decisions are robust and durable** | | | **Minor/technical fixes** |
| *Intermediate outcomes* | *Duplication within the system is reduced and the legislative framework is internally consistent* | *The tools under the RMA are fit for purpose* | *The RMA is implemented in a consistent way and the hierarchy of planning documents is better aligned* | *Processes and costs are able to be scaled, where necessary, to reflect the specific circumstances* | *There is increased flexibility and adaptability of processes and decision-makers* | *Higher value participation and engagement in RM processes by those affected is encouraged* | *Decision makers have the evidence, capability, and capacity to make high quality decisions and accountabilities are clear* | *Engagement is focussed on upfront planning decisions rather than individual consent decisions* | |
| *Reform proposals* | Provide for joint resource consent and recreation reserve exchange processes under the RMA and Reserves Act (P 5.1)<br><br>Align the notified concessions process under the Conservation Act with notified resource consent process under the RMA (P 5.2)<br><br>Simplify charging regimes for new developments by removing financial contributions (P 6.6)<br><br>Remove the ability for Heritage Protection Authorities that are bodies corporate to give notice of a heritage protection order over private land, and allow for Ministerial transfer of HPOs (P 6.7) | Streamlined and electronic public notification requirements and electronic servicing of documents (P 6.2)<br><br>Changes to NPSs and NESs (P 1.1) | Mandatory National Planning Template to reduce plan complexity and provide a home for national direction (P 1.3)<br><br>New regulation making power to provide national direction through regulation (P 1.2) | Consent exemption for minor rule breaches (P 3.1a)<br><br>Consent exemption for boundary infringements with neighbour's approval (P 3.1b)<br><br>10 day fast-track process for simple applications and a regulation making power to enable this (P 3.2)<br><br>Introduce regulation making powers providing the requirement for consent decisions to be issued with a fixed fee (P 3.5a)<br><br>Require fixed remuneration for hearing panels and consent decisions issued with a fixed fee (P 3.5b)<br><br>Changes to the plan making process to improve efficiency and provide clarity (P 2.1) | Provide councils with an option to request a Streamlined Planning Process for developing or amending a particular plan (P 2.2)<br><br>Improve Environment Court processes to support efficient and speedy resolution of appeals (P 4.2)<br><br>Enable the Environment Court to allow councils to acquire land (P 4.3)<br><br>Enable alternative consent authorities to provide resource consenting services as an alternative to local councils (P 3.7)<br><br>A suite of technical amendments to reduce Board of Inquiry cost and complexity (P 6.4)<br><br>Enable the EPA to support decision-making processes (P 6.5)<br><br>Enable objections to be heard by an independent commissioners (P 4.1) | No appeals to Environment Court for: boundary infringements and subdivisions (unless non-complying activities); and residential activities in a residential zone (P 3.4d)<br><br>Preclude public notification for: residential activities in a residential zone; and subdivisions applications anticipation by plans (P 3.4c)<br><br>Where subdivisions are not permitted, specify who can be considered an affected party (for limited notification purposes (P 3.4b)<br><br>Introduce regulation making powers providing nationwide: non-notification of simple proposals with limited effects; limited involvement of affected parties for certain activities (P 3.3d) | Enhanced council monitoring requirements (P 6.3)<br><br>Improve the management of risks from natural hazards under the RMA (P 1.4)<br><br>Improve management of risks from natural hazards for subdivision applications (P 3.8)<br><br>Strengthen the requirements on councils to improve housing and provide for development capacity (P 1.5)<br><br>Clarify the legal scope of consent conditions (P 3.6)<br><br>New duties in Part 3 to minimise restrictions on land (P 1.6)<br><br>New procedural requirements for decision-makers (P 6.1) | Enhance Māori participation by requiring councils to invite iwi to engage in voluntary iwi participation arrangements and enhancing consultation requirements (P 2.4)<br><br>Provide councils with an option to use a Collaborative Planning Process for preparing or changing a policy statement or plan (P 2.3)<br><br>Narrow submitters' input to the reasons for notification (P 3.3a)<br><br>Notification decisions will be made in reference to environmental effects and the policies and objectives of plans (P 3.3b)<br><br>Require submissions to be struck out in certain circumstances (P 3.3c)<br><br>Make subdivisions permitted unless restricted by plans (P 3.4a) | Minor changes to the Public Works Act to ensure fairer and more efficient land acquisition processes (P 7.1)<br><br>Provide for equal treatment of stock drinking water takes (P 7.2)<br><br>Provide regional councils with discretion to remove abandoned coastal structures (P 7.3)<br><br>Create a new regulation making power to require stock to be excluded from water bodies (P 7.4)<br><br>Amendment of section 69 and Schedule 3 – Water Quality Classes (P 7.5) |

## Overview of reform proposals

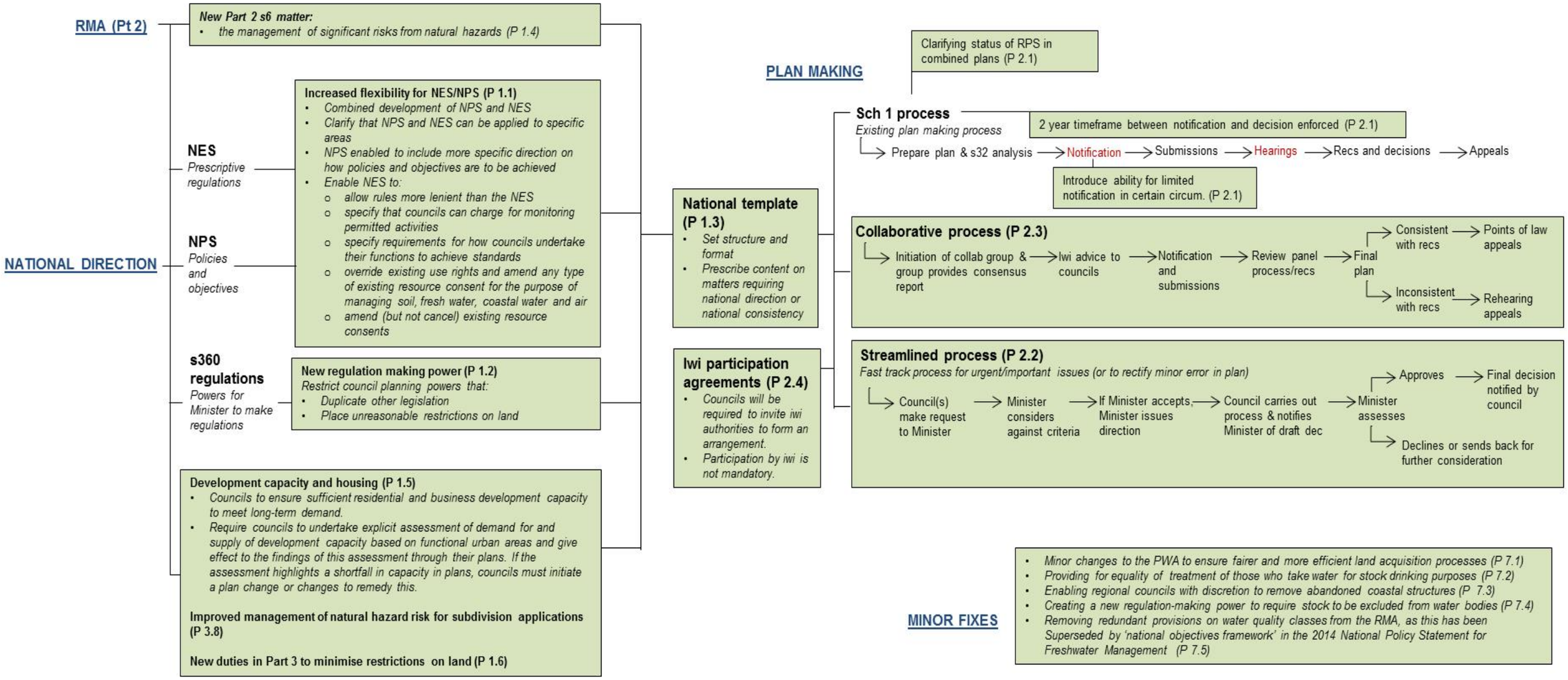
37. The current package of resource management reform proposals is very large and complex. It comprises over 40 individual proposals aimed at improving guidance and direction on matters of national importance, providing alternative planning options, and aligning or improving current resource management processes, particularly for consenting and appeals. These changes are designed to deliver substantive, system-wide improvements to the resource management system.

38. Figures A and B below provide an overview of proposed changes across the system (note however that it does not include the minor or technical fixes proposed).

39. Subsequent sections of the RIS provide more detail on each of the reform proposals, divided into seven broad categories:

    - National direction
    - Plan making
    - Consenting
    - Appeals and courts
    - Process alignment
    - Process improvement
    - Minor/technical fixes.

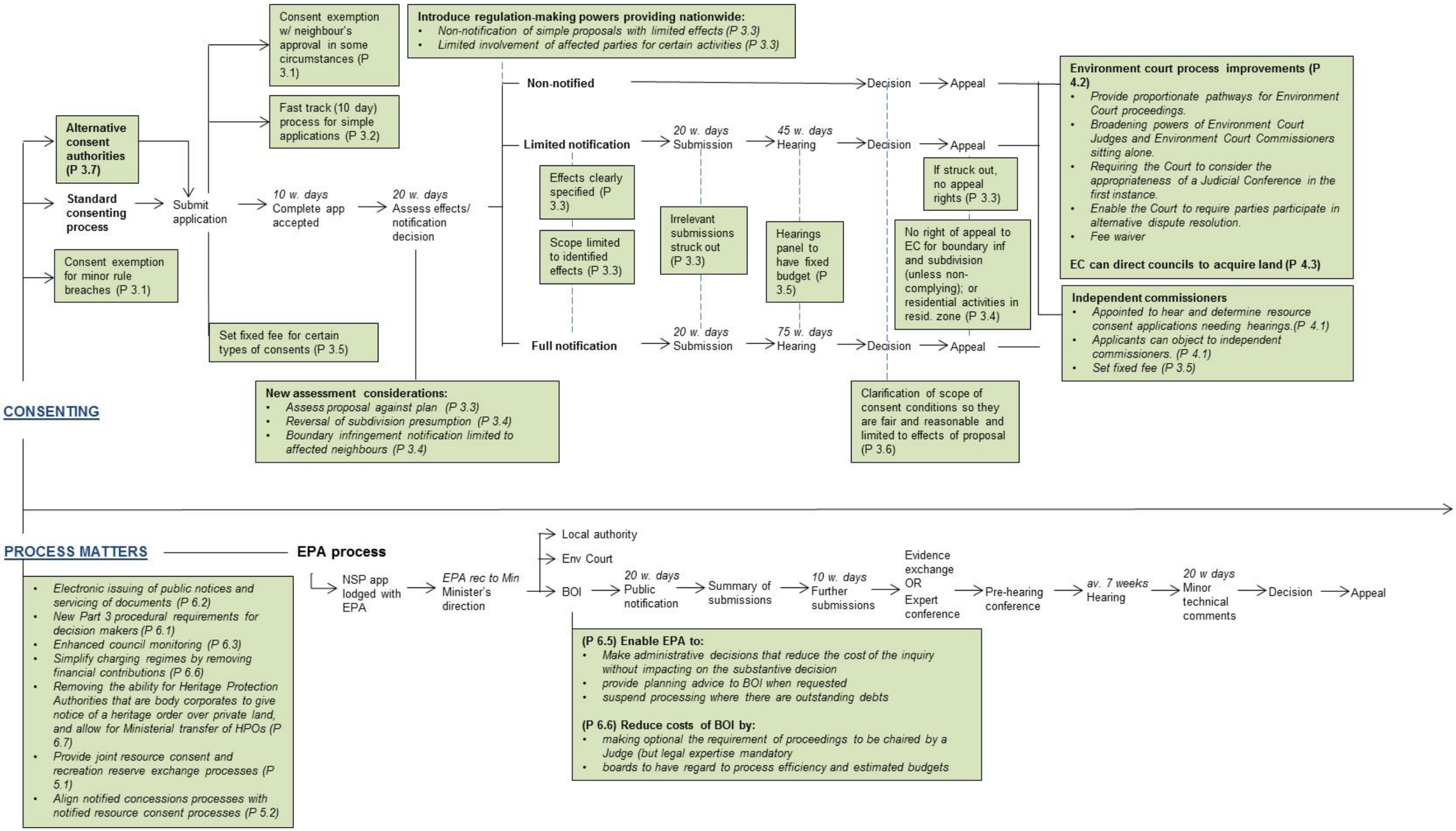
**Figure A: Overview of proposals**




MINOR FIXES

- *Minor changes to the PWA to ensure fairer and more efficient land acquisition processes (P 7.1)*
- *Providing for equality of treatment of those who take water for stock drinking purposes (P 7.2)*
- *Enabling regional councils with discretion to remove abandoned coastal structures (P 7.3)*
- *Creating a new regulation-making power to require stock to be excluded from water bodies (P 7.4)*
- *Removing redundant provisions on water quality classes from the RMA, as this has been Superseded by 'national objectives framework' in the 2014 National Policy Statement for Freshwater Management (P 7.5)*

**Figure B: Overview of proposals (continued)**



# 1 National Direction

**Introduction**

40. While the RMA is largely put into practice by local government (regional councils, unitary authorities, and city and district councils), central government can provide direction on specific national, regional or local issues, in a number of different ways.

41. Specific tools under the RMA to provide national direction include National Policy Statements (NPSs) and National Environmental Standards (NESs), which set standards, objectives and policies which apply at a national level.

42. In addition to these, changes to improve national consistency can be made by means of regulations, through the exercise of Ministerial intervention powers, the use of special legislation, or by amending statutory functions and powers of decision-makers under the RMA itself.

**List of proposals**

43. Reform proposals covered under the national direction section include:

- Changes to National Policy Statements (NPSs) and National Environmental Standards (NESs) (P 1.1)
- New regulation making powers to provide national direction through regulation (P 1.2)
- Mandatory National Planning Template to reduce plan complexity and provide a home for national direction (P 1.3)
- Improve the management of risks from natural hazards under the RMA (P 1.4)
- Strengthen the requirements on councils to improve housing and provide for development capacity (P 1.5)
- New duties in Part 3 to minimise restrictions on land (P 1.6).

### *1.1 Changes to National Policy Statements (NPSs) and National Environmental Standards (NESs)*

**Problem**

44. Existing NPS and NES instruments are costly and lengthy to develop. There is a lack of flexibility in when and how they can be used, which limits their ability to quickly and adaptively respond to specific issues. This limits their effectiveness.

45. Currently there are also constraints that limit central government's ability to respond to significant and emerging resource management issues unless it amends the Resource Management Act (RMA) on an ad hoc basis.

46. There is a need to ensure that there are effective, fit-for-purpose tools in the RMA to allow central government to give direction to councils on how to develop plans for a particular resource management issue.

**Proposal**

47. The proposal includes three minor changes to the processes for developing NPSs and NESs which will address some issues that have previously been identified as limiting development of instruments:

    - a combined development process for NPSs and NESs, through joint consultation, development and publication, to streamline the implementation of national direction
    - clarified scope for NPSs to give more specific direction about how objectives and policies should be implemented in plans
    - allowing NPSs and NESs to be developed in relation to a specific area to address a local resource management issue that has national significance.

48. The following changes to NESs aim to create more flexibility, which have been identified as lacking from previous NES development:

    - enabling council rules to be more lenient than the NES
    - allowing NESs to specify councils may charge to monitor activities permitted by an NES
    - enable NESs to specify requirements for councils.

49. A combined development process for NPSs and NESs will speed up development, improve integration and reduce costs (where instruments are being developed concurrently). The change will also allow the Minister for the Environment to choose to use a Board of Inquiry (BOI) process or a combined development process for both instruments. At present the BOI process is only available in developing an NPS.

50. Clarifying the scope of NPSs will enable NPSs (and the New Zealand Coastal Policy Statement) to include more specific direction for council plans. This will improve certainty about how these instruments can be used and allow more flexibility in their use.

51. Currently the RMA allows an NES to be developed in relation to a specific area or region to address a local resource management issue that has national significance. Allowing both NESs and NPSs to be developed for this purpose improves clarity about when national instruments (and notification and consultation with the public and iwi) can be targeted to a specific area.

52. Enabling leniency would support the policy intent of an NES designed to enable development (such as the Telecommunications NES). Allowing activity monitoring charging for permitted activities would support NESs classifying more activities as permitted with greater assurance of compliance monitoring. Enabling requirements to be set for councils would increase central government's ability to influence council actions for achieving environmental standards.

53. The proposals described are for enabling powers to be included in the national direction sections of the Act. There is no requirement that they be used. The costs will be case specific and must be assessed against benefits as part of the regulatory requirement for instrument development. In general cost savings can be anticipated through use of these powers. For example, developing a region specific NPS reduces the potential for an NPS to be developed

for the whole country simply to target a problem in a particular area, reducing unnecessary adoption of national direction.

54. The risk is that these powers are poorly implemented or used in ways that have not been anticipated. For example, a joint NPS/NES process could be used to improve speed and reduce costs, resulting in development of substandard instruments that could be improved with a slower, more deliberative process. However this is true of any process. Another example is the use of leniency in an NES in a way that decreases the ability of the standard to achieve the purpose of the Act. This risk should be mitigated by the various regulatory requirements of NPSs and NESs already required within the Act.

**Alternative options**

55. The proposals are for enabling powers only and we do not consider that other options are available to achieve the ends sought through the proposals. However, at the point where the Government considers the use of national direction there are options to achieve the Government's aims which do not involve RMA statutory instruments, and these must be considered during the scoping process for national direction. Some of these options are:

*Guidance to local government on issues of national importance*

56. One option would be for central government to issue guidance to local government on issues of national importance. This allows flexibility and updating of guidance without going through a regulatory process. This option retains local decision-making and provides ability for central government to respond to local requirements for specific outcomes. However, this option may have high costs, uncertain implementation and outcomes, does not guarantee consistency where this is a key benefit of national direction, and does not provide certainty to resource users and communities.

*Government engagement in plan-making to achieve consistency and facilitate uptake of national priorities*

57. This option retains local decision-making and provides ability for central government to respond to local requirements for specific outcomes. However, this option has high costs, uncertain implementation and outcomes, does not guarantee consistency where this is a key benefit of national direction, and does not provide certainty to resource users and communities.

**Conclusions**

58. This proposal will go some way in ensuring that the tools used to achieve alignment through the planning hierarchy are fit-for-purpose. This will contribute to the objective of better alignment and integration across the system.

### *1.2 New regulation making powers to provide national direction through regulation*

**Problem**

59. The broad discretion of the RMA enables councils to include planning rules in their plans that unreasonably restrict land uses and/or restrict land uses that are regulated by other means, creating duplication of costs which are disproportionate to the benefits.

60. The Ministry for the Environment has undertaken a limited scoping exercise to assess the extent of the problem. This included reviewing submissions to the Rules Reduction Taskforce, relevant reports, seeking anecdotal experiences from planning practitioners, and discussion with the Treasury. A range of examples of the types of provisions which could fulfil the criteria of unreasonableness or duplication were found, including planning rules that:

- regulate the width between palings on a fence
- impose requirements to insulate buildings above the level required by the Building Act
- require living spaces to be outward-facing to the street to improve streetscape
- regulate gas storage requirements over those required by HASNO
- have design requirements that require cobblestone paving.

61. The high costs imposed on resource users to ensure compliance with these types of rules are not commensurate to the *de minimus* adverse environmental effects (if any) that would result from non-compliance. Some of the unreasonable rules identified impose costs on users that are in the thousands or even tens of thousands of dollars. Given that there are more than a hundred RMA plans that are operative or proposed, there may be many more cases of unreasonable planning rules in existing plans. Councils may also set further unreasonable rules in the future.

**Proposal**

*New regulation making powers*

62. The proposal is to introduce a new regulation making power to:

a. prevent and remove council planning provisions that duplicate the functions, or have the effect of overriding, other legislation
b. prevent and remove council planning provisions that impose land use restrictions that are not reasonably necessary to achieve the purpose of the RMA
c. permit certain land use activities.

63. Proposal a) is intended to address rules in RMA plans that are essentially already governed by other legislation, while proposals b) and c) are intended to address overly restrictive or onerous RMA land use planning rules where the costs of those rules outweigh the benefits.

64. These new regulation making powers would enable the Minister to prevent councils from making, or require councils to remove duplicative and unreasonably restrictive RMA plan provisions.

65. The risk of this proposal is that the creation of a regulation making power to override RMA plan provisions would in essence be a ‘Henry VIII’ clause. Any regulations made under this proposal would essentially override the existing power local authorities have to include RMA plan provisions on particular topics.

66. This risk can be reduced by drafting the regulation making powers in the most limited way possible and providing adequate safeguards. The proposal includes the ability for the Minister to determine that the regulations only apply to a specific district or region. The exercise of the new regulation making power would be subject to a statutory consultation requirement and a section 32 evaluation.

67. In the case of b) and c) above the regulation making power is limited to land use rules. A sunset clause coinciding with the implementation of the National Planning Template (P 1.3) will apply. Regulations made under b) are further limited to only *residential* land use rules and the regulations themselves will expire when the National Planning Template is implemented.

68. The exercise of the regulation making power would be subject to the usual processes that apply to all secondary legislation, including regulatory impact analysis, Cabinet decision-making, regulations disallowance and judicial review.

*Changes to council functions to prevent duplication with HSNO Act*

69. In addition to introducing the new regulation making powers, the proposal will address a specific instance of duplication between the RMA and the Hazardous Substances and New Organisms Act 1996 (HSNO).

70. The proposal will amend sections 30 and 31 (and 65(1)(3)(c), Fourth Schedule clause 6(c) and 7(f)) to remove controlling hazardous substances as an explicit function of local authorities.

71. This will remove the main provision which imposes an explicit obligation on local authorities to regulate hazardous substances in RMA plans, which will reduce compliance costs for users of hazardous substances and reduce the regulatory burden on ratepayers.

72. There could be some cost to councils in reviewing and amending plans to remove or substantially reduce RMA controls on hazardous substances, however we anticipate this could be done over time as part of plan review processes.

73. Guidance will provide examples of where controls might still be warranted under the RMA and where controls are not necessary or appropriate.

**Alternative options**

For regulation making powers

*Non-statutory guidance and government engagement*

74. Guidance could be developed and provided to local authorities to establish how an activity or effect should or should not be regulated and provide best practice rules and consent conditions that could be implemented. Furthermore, central government could actively monitor operative plans and proposed plan changes and either engage with councils on their proposed plans and/or submit on their proposed plans to prevent unreasonable rules from being made and ensure that permissive rules for certain activities are made.

75. Non-statutory options would provide councils with clear expectations and support from central government on what should and shouldn't be regulated or how to best regulate an activity or an effect. This would allow councils to implement government expectations while retaining community decision-making power and ensuring local needs are met.

76. However, without legislative force, non-statutory options provide little certainty that duplicative processes and disproportionate regulations will be removed. These outcomes are dependent on voluntary actions by councils. Furthermore, central government engagement is highly resource intensive and would require significant additional resources to monitor plans in detail, engage intensively with councils on rules and make submissions on proposed plan changes which could result in appeals to the Environment Court.

*Amend National Environmental Standard provisions*

77. Under the RMA, an NES may permit an activity or restrict the making of a rule to matters specified in the NES. However, there is a legal risk that an NES that provides that certain environmental effects should not be regulated would be deemed *ultra vires*. To address this, the NES empowering provisions in the RMA could be amended to explicitly enable them to:

- state that certain activities and effects should not be regulated
- state that councils should not impose certain rules or consent conditions
- state that certain land use activities are to be permitted
- override existing conditions.

78. This option would give wide scope for restricting the regulation of activities and effects. It would allow the Minister to address a broad range of restrictive and duplicative rules and ensure certain land use activities were permitted.

79. There is a legal risk with this option as NESs are designed to set standardised rules for how an activity/effect should be regulated, and there may be legal difficulties using these instruments to prohibit certain rules or consent conditions. Although the NES provisions could be amended to make this a *vires* use of the power, it is not a comfortable fit within the broader purpose of NESs.

80. The NES provisions in the RMA would require an objective assessment before decisions can be made to incorporate matters into the NES. However, although the objective assessment goes some way in providing constraints on the regulatory override power, it would not adequately meet the LAC guidelines.

*Broad regulation making power (duplication and disproportionate)*

81. A broad regulation making power could provide the Minister with a wide scope for restricting the regulation of activities and effects and permitting certain land uses. The activities and effects subject to the regulation making powers would be identified based on the Minister's opinion without the safeguards of an objective evaluation, which would increase the rate at which restrictive rules could be struck down via judicial review.

82. This option is likely to be highly controversial given its unconstrained power that essentially overrides functions delegated to councils by the primary legislation with no limit on the scope or extent of the regulations. It is also likely to attract criticism during the Bill process and Regulations Review Committee scrutiny. The Parliamentary Counsel Office agrees that this option is not desirable.

**Conclusions**

83. On balance the targeted regulation making powers are the preferred option. These are most likely to achieve the outcomes sought by removing existing planning rules and preventing future rules that unreasonably restrict development and/or impose unreasonable costs, and/or are duplication of other controls provided through other legislation. The regulation making powers will also enable the Minister to permit certain land uses in plans. This option provides certainty in achieving the outcome sought, while providing appropriate safeguards and constraints in alignment with the LAC guidelines.

84. The changes to council functions to prevent duplication between HSNO and the RMA are the appropriate way to address the significant regulatory duplication.

85. We consider that if the regulation making powers are used, this proposal will go some way in ensuring that planning rules and documents are implemented consistently. It will contribute to achieving the objective of better alignment and integration across the system.

### *1.3 Mandatory National Planning Template to reduce plan complexity and provide a home for national direction*

**Problem**

86. Following the introduction of the RMA, local government had to progress new planning requirements without central government support in the form of guidance or national direction. The NZ Coastal Policy Statement 1994 was the first piece of national direction to be produced under the RMA. It took a further 10 years before the next piece of national direction was introduced. Likewise, the Quality Planning guidance was not introduced until 10 years after the RMA came into effect.

87. This lack of guidance has led to considerable problems with a lack of alignment and integration of policies and plans within the RM system. Each council has developed their plans and policy statements without national direction on how the plan should be structured and formatted. This horizontal and vertical misalignment leads to many issues, including that:

- plans are complex, long and often internally inconsistent;
- local authorities duplicate effort developing provisions that could be made consistent at a national level;
- in many places there is inconsistency between the district plan, the corresponding regional plan, national direction, and between regions which results in costs associated with time spent interpreting plans, litigating, and associated opportunity costs;
- plans are difficult to monitor and audit;
- it is difficult to transition to a fully digital format with seamless interaction with other local and central government documents and databases;
- national direction is not well reflected in many plans which makes consent applications and decision-making more difficult (ie need to look at multiple documents); and
- it is not always clear where plan provisions are giving effect to national direction (some plans are yet to give effect to some national policy statements (NPS)), so submitters and councils may spend time debating issues which have been resolved at the national level.

**Proposal**

88. The proposal is to develop a national planning template to improve the consistency of RMA plans and policy statements. The minimum requirements for the first version of the national planning template would be:

- standardised formatting and structure for plans and policy statements;
- references to existing NPSs and national environmental standards (NESs);
- where possible, standardised definitions; and
- electronic functionality and accessibility of planning documents.

89. The template will reduce the complexity involved in creating and using RMA plans and policy statements, and improve the consistency and user-friendliness of plans. The template will speed up decision-making for all resource management decision-makers, who will have less local rule variation to interpret, and will know where to find relevant provisions in each plan. Long-term plan making costs to councils can also be reduced by greater plan standardisation. This will allow councils to devote greater resources to developing unique local content for their plans.

90. The ability to deliver national direction through template objectives, policies, and rules (or by reference to existing NPSs and NESs) will improve how national direction is reflected in plans. The template will standardise presentation of national direction in planning documents, reduce the number of documents to be referred to for resource management decision-making and ensure national direction is incorporated into all plans through mandatory template updates.

91. There will be a short term increase in cost to both central and local government associated with the roll out and implementation of the template and provision of support to councils. This is likely to be concentrated in the seven years following the introduction of the template provisions.

92. Having a standardised national planning template may also discourage innovations in practice by councils, as they will be required to use the set template. This risk can be mitigated by doing careful analysis in deciding what is appropriate for inclusion in the template, especially in regard to how much content (as opposed to structure and format requirements) is prescribed. Councils would have a significant say in plan content which does not relate to national direction.

**Alternative options**

*Provide incentives for quality plans and good environmental outcomes*

93. This option could include a combination of awards, prizes and public benchmarking reports on plan quality. It would allow indirect pressure to be applied to councils to meet criteria and direct desired outcomes. The effects of this option depend largely on what aspects of plans are encouraged or discouraged. We consider that the 'bonus' of awards would encourage councils to innovate in their delivery. The downside to this is that plans are unlikely to become more consistent – although this may be balanced out if some councils adopt the innovative solutions developed by other councils.

94. There is a risk that this initiative may result in councils revising their plans more frequently to gain awards or avoid punishments. It would require standard measures of quality to be developed and applied, which can be difficult, and these may also change over time. It may unfairly stigmatise councils with less local capability and capacity. This option would have a high cost to central government in monitoring and would require secure and long term funding to be available. It is likely to encourage innovation rather than standardisation.

*Councils use one integrated plan per region*

95. This option would allow local flexibility and reduce complexity and duplication of effort as there would be a total of only 16 plans. While this would reduce the costs of making plans there would still be significant costs involved in coordinating the territorial authorities within each region, so the reduction would be minor to moderate.

96. Reducing the number of RMA plans would make plans more user-friendly. However, regional plans would still differ in their structure and format, so the benefits would be moderate, rather than significant. The proposal in unlikely to lead to increased consistency between regions and a lack of working relationships between councils may hinder the plan making process.

*Intervention*

97. This option would involve a combination of a national planning framework and power for central government to intervene if plans do not meet objectives. It would improve plan links between policies and objectives, and rules and methods, and ensure that plans implement national direction. This is because we assume these are the major areas the framework would emphasise (and therefore would be the focus of any intervention).

98. It is also likely that government intervention would improve the comprehensiveness of plans (as some council plans may be incomplete at present) and the user-friendliness of plans (if some plans are deemed by central government to be too hard to use).

99. The downside is that councils that do not meet national standards are likely to incur greater costs revising their plans to meet the criteria, which may also increase duplication of efforts. The increased emphasis on national direction and a national framework may also mean that community values are not as well reflected in plans as they are currently.

100. This option is unlikely to result in standardised plans and is likely to increase costs to local government if plans are not right the first time.

*Non-mandatory template*

101. This option would involve developing a national planning template for councils to use on a voluntary basis. This would mean that many councils with less capacity to develop their own provisions could free up some of their resources.

102. By not making the template mandatory, the benefits of providing national level consistency in structure, format and content of plan provisions are likely to be substantially reduced. Not all councils would take the option of using the template, especially if they felt that their own provisions were adequate. Those that do take advantage of the template would not be bound by compulsory timeframes, meaning that the benefits of standardisation and cost savings would be realised more slowly.

**Conclusions**

103. The template is the preferred option. It is a relatively flexible option, which can meet a range of objectives depending on how much (or little) is specified in the template (eg, structure and format only, or a combination of structure, format, and content).

104. A common structure and format would significantly improve the consistency and user-friendliness of plans (for users who use plans from multiple regions), and would reduce the duplication of effort required to make plans (as councils won't have to determine the structure and format themselves). While this may reduce councils' ability to come up with innovative solutions for plan making, we consider that this risk is outweighed by the considerable benefits of the proposal. The template's structure and format can also help to reduce the long-term costs of plan making (although there is likely to be an increase in short-term implementation costs), improve plan's comprehensiveness, improve links strategic and spatial plans, and improve the links between objectives, policies and methods and rules.

105. The resource legislation amendment package is an opportunity to add template provisions into the primary legislation. If they are not included now it could be some time before these can be officially incorporated. The template could still be developed for voluntary use, but this would mean losing many benefits, as outlined above.

106. This proposal would have a significant impact on achieving the objective of increased consistency across planning documents, and therefore better alignment and integration across the system.

### *1.4 Improve the management of risks from natural hazards under the RMA*

**Problem**

107. Following the Canterbury earthquakes in 2012, the RMA Principles Technical Advisory Group (TAG) identified that while sections 30 and 31 of the RMA require regional councils and territorial authorities to manage risks from natural hazards, it was not being effectively implemented for a variety of reasons, including:

- a lack of statutory recognition in Part 2 (sections 6 and 7) of the RMA
- limited local planning capability
- shortcomings in governance and inter-governmental cooperation, including a lack of effective coordination between district and regional councils, and the activities of planners and emergency management staff.

**Proposal**

108. In order to better manage risks from natural hazards in New Zealand and improve the integration of this matter across all levels of the RMA, it is proposed that "the management of significant risks from natural hazards" is included as a new section 6 matter that must be recognised and provided for in the RMA. This change will introduce the concept of risk management, as it relates to natural hazards, into Part 2 (the purpose and principles) of the RMA.

109. There is already a strong shift in current council practice towards managing risks from natural hazards. The purpose of the proposed new section 6 matter is to codify this best practice in the legislation and explicitly require decision-makers to consider this matter as part of their Part 2 assessment.

110. This also upholds recommendations of the Canterbury Earthquakes Royal Commission to "ensure that regional and district plans (including the zoning of new areas for urban development) are prepared on a basis that acknowledges the potential effects of earthquakes and liquefaction, and to ensure that those risks are considered in the processing of resource and subdivision consents under the Act."

111. Adding this new matter to the principles of the Act will provide greater emphasis to the consideration of risks from natural hazards across all resource management decisions. This supports sections 30 and 31 of the RMA, which prescribes natural hazards management as a function of both regional councils and territorial authorities. This change also supports changes to section 106 regarding consideration of the risks from all natural hazards in subdivision consents (P 3.8).

112. The effect of not having the section 6 matter would (relative to current local authority section 30 and 31 functions) be that:

- natural hazards management would not be raised in importance for all decision-making under the Act
- local authorities would not be explicitly mandated to take a 'risk management' approach (although in general local authorities are moving towards this approach under the current legislation).

**Alternative options**

*Provision of new national direction*

113. National direction (eg, in the form of a National Policy Statement) to manage risks from natural hazards could be introduced without the need for any amendment to Part 2 or any other part of the RMA provided the subject matter of the proposed national direction is relevant to achieving the purpose of the Act. National direction has the added benefit of being more directive and more flexible to change than inclusion in section 6. The proposed National Planning Template (P 1.3) could, in the future, also enable incorporation of pre-existing national direction and provide detailed guidance on how the purpose of these changes should be achieved and measured.

114. The National Policy Statement (NPS) could outline a risk management process for local authorities to undertake which would be consistent with achieving the purpose of the RMA. Local authorities would then be required to amend planning documents to 'give effect to' an NPS (section 55) and resource consent decisions must 'have regard to' relevant provisions of an NPS (section 104).

115. The main risk of including this matter in national direction rather than in section 6 is that there is greater scope for challenge via judicial review as to whether it is within the purpose of the Act. However, the risk of successful judicial review is relatively low.

116. Creation of meaningful national direction would be more time- and cost-intensive than a change to Part 2 directly. Consideration would need to be given to the priority of an NPS on these matters relative to national direction on other topics.

**Conclusions**

117. This proposal would improve the management approach by mandating risk management as well as raise its importance, and would contribute to achieving the objective of ensuring accountabilities are clear in managing these risks.

### *1.5 Strengthen the requirements on councils to improve housing and provide for development capacity*

**Problem**

118. In some of New Zealand's major population centres demand for housing exceeds supply, contributing to inflated house prices and reduced affordability. While housing affordability is a complex problem with many causes, urban regulation (development controls and zoning decisions) and the impact this has on land supply (or development capacity) has been identified as a contributory factor to the problem.

**Proposal**

119. The proposal is to amend sections 30 and 31 RMA to make it a function of regional councils and territorial authorities to ensure residential and business development capacity to meet long-term demand.

120. This legislative change will be supported by a phased programme of national direction and guidance to support local authorities and the wider sector to ensure that the policy intent is delivered in practice. Phase 1 will include a requirement for local authorities to undertake an assessment of demand for and supply of development capacity based on functional urban areas and give effect to the findings of this assessment through their plans; it will be promulgated in 2016. Phase 2 will look at options for a methodology for assessing demand and development capacity, options for providing further direction around what 'sufficient development capacity' means, and monitoring the take-up of capacity. This will be delivered in 2017.

121. The legislative changes proposed are designed to enable better provision of residential and business development capacity, and contribute to improved housing affordability outcomes.

122. This change would set a fundamental requirement that council plans be explicitly responsive to demand for residential and business land. It would result in change on the ground as plans must ensure adequate residential and business development capacity, which will have flow-on impacts on consent decisions. This should reduce the impacts of land scarcity on price and consequent effects. There would also be more certainty for developers that, where there is demand, planning will not be a barrier to future development (eg, due to reduced front-end costs, fewer delays, and more certain consent outcomes). The change may result in more permissive planning controls which would impact what people can and cannot do to their properties.

123. The costs to implement these changes would mostly fall on local government. Impacts may differ across local authorities depending on growth pressures, previous experience undertaking this kind of work, and existing capability. The costs will be further assessed through analysis of the impacts of national direction, which will provide more detailed direction on how the functions are to be implemented.

**Alternative options**

*Require territorial authorities to provide a minimum of 10 years' supply of "appropriately-zoned land"*

124. An alternative option (previously agreed by Cabinet in 2013) is to amend section 31 to make the provision of a minimum 10 year supply of "appropriately-zoned land" an explicit function of territorial authorities. However, this option is too narrowly focused to achieve the desired outcomes for housing and development across the range of urban areas in New Zealand, as simply prescribing a specific volume (eg, 10 years) does not take into account the price, type and location of demand and may not be appropriate in all areas.

*Require high growth councils to commission an independent expert to assess whether the supply response is adequate to meet demand*

125. Another option is to create a new section to require high growth councils to commission an independent expert to assess whether the supply response is adequate to meet demand. While this could theoretically add more rigour to the analysis, experience with plan audits in the past (in Christchurch and Auckland) suggests they are often difficult to implement and do not

necessarily improve the quality of plans. It also does not necessarily improve the capability of councils to plan appropriately for growth.

*Require councils to include demand and supply analysis in regional and district planning documents*

126. A third option is to amend sections 62 and 72 to require policy statements and plans to forecast housing and land demand (including business land) and explain where and how the council has provided development capacity in response. This option was discounted as the analysis would likely be sizeable (adding more paper to already lengthy plans), and plans should give effect to assessment findings rather than detail them.

**Conclusion**

127. This proposal will go some way in ensuring that councils have the evidence to make high quality decisions in regards to development capacity, and set out clear accountabilities for ensuring capacity to meet long-term demand.

### *1.6 New duties in Part 3 to minimise restrictions on land*

**Problem**

128. Decisions made under the RMA can sometimes result in unreasonable restrictions on private property rights.

**Proposal**

129. In 2013, Cabinet agreed to insert a proposed new section 7A into the RMA, requiring decision-makers to ‘endeavour to ensure that restrictions are not imposed under this Act on the use of private land except to the extent that any restriction is reasonably required to achieve the purpose of this Act’.

130. This proposal is a revised version of the 2013 proposal. It expands the proposed duties regarding land restrictions to cover all land (including private, Crown-owned and council-owned land). This is to ensure that the public's use of its land is not unreasonably restricted by provisions under the RMA.

131. It also removes the words "must to endeavour to", replacing it with a more prescriptive "must", which would require all decision-makers exercising functions and powers to ensure that the above criteria are met.

132. Feedback from the 2013 discussion document and consultation with Government agencies was that the proposed section was not considered appropriate for inclusion in Part 2 (Purpose and principles) of the RMA. The proposed section has now been re-positioned into Part 3, where it is a better drafting fit.

133. While in practice, this proposed addition may not materially impact on the status quo, it is likely to mean that RMA decision-makers need to think about private property rights more explicitly than they have done in the past, since it is an obligation that could be tested in the courts.

**Alternative options**

134. No alternative options were considered for this proposal.

**Conclusions**

135. The proposed addition will provide explicit recognition of private property rights in the RMA by making decision makers accountable for minimising unreasonable restrictions placed on land. While it may have limited material impact on current practice, this proposal will complement other more targeted process changes in the resource management reform package.

## 2 Plan making

### Introduction

136. The RMA requires councils to develop district and regional plans that explain how the council will manage the environment. Plans contain objectives, policies and rules that address land use, subdivision, air quality, coastal and other resource management issues within the region or district.

137. Plan provisions must be reviewed every 10 years to ensure they remain current and relevant. This can happen by means of a rolling review, or councils can decide to do a full plan review. Councils generally decide when to make plan changes or variations (changes to proposed plans) but individuals can also request a plan change.

138. The RMA sets out a process for preparing or changing a plan, which allows for public input at different stages.

### List of proposals

139. Reform proposals covered under the plan making section include:

- Changes to the plan making process to improve efficiency and provide clarity (P 2.1)
- Provide councils with an option to request a Streamlined Planning Process for developing or amending a particular plan (P 2.2)
- Provide councils with an option to use a Collaborative Planning Process for preparing or changing a policy statement or plan (P 2.3)
- Enhance Māori participation by requiring councils to invite iwi to engage in voluntary iwi participation arrangements and enhancing consultation requirements (P 2.4).

## *2.1 Changes to the plan making process to improve efficiency and provide clarity*

**Problem**

140. Under the current plan making process (under Schedule 1 of the RMA) all proposed plans and plan changes are processed in the same manner. The plan making process is therefore not necessarily proportionate to the size or significance of the proposed plan or plan change and not responsive enough to quickly address changing situations, minor or site specific issues. A full plan takes on average 6 years to develop, and an individual plan changes takes around 1.8 years from notification.

141. The Streamlined Planning Process (P 2.2) is the main reform tool proposed to address this problem but there are also some additional changes to the Schedule 1 process that can also assist in addressing this issue.

142. The requirement for all proposed plan changes to be publicly notified can be a disproportionate and inefficient mechanism in certain circumstances, such as a site-specific rezoning or where there is a clearly identifiable group of directly affected parties.

143. The plan making process is also slow. While the time taken for councils to make decisions on plans has reduced (following the introduction of a 2 year time limit from introduction to decisions in 2005), 23% of plans still take longer than two years between public notification and the making of the decision. For plan changes, 8% have taken longer than 2 years.

144. Finally, there is uncertainty about the legal weighting and incorporation of a proposed Regional Policy Statement (RPS) during the preparation of a combined plan that includes a proposed RPS. This leads to an increased risk of future challenges and misinterpretation.

**Proposal**

145. The proposal will:

- introduce limited notification as an available option for plan changes where directly affected parties can be easily identified. This would limit public participation to only those people directly affected. Using the limited notification plan change process would reduce hearing times and the likelihood of appeals;
- require councils to request approval from the Minister for the Environment to extend the two year time limit for making decisions on a proposed plan or plan change; and
- clarify that councils may give effect to a proposed RPS when preparing a combined plan that includes a proposed RPS

146. The proposed amendments to Schedule 1 will provide for a more efficient, flexible and proportionate plan change process. Enabling councils to undertake limited notification could reduce the time, costs and uncertainty for plan changes in circumstances where there is an identifiable group of directly affected parties.

147. It is likely that the majority of plan changes will still be publicly notified because any significant plan change will affect large parts of a community.

148. The changes around the two year timeframe will encourage greater compliance with this existing requirement and seeks to improve compliance with plan making time frames.

149. The changes around the weighting required to be given to an operative RPS seek to clarify that it can be appropriate to give effect to a proposed RPS when a proposed RPS is being developed as part of a combined plan. The changes will eliminate the theoretical/legal debate that occurred with the development of the Auckland Unitary Plan.

**Alternative options**

*Limited Notification mandatory under Schedule 1 when certain criteria met*

150. This is similar to the option described above except that, if certain criteria are met, councils will be obliged to notify the plan on a limited basis. This will mean that councils will not be able to choose to be precautionary and continue to publically notify all plan changes. Furthermore, it will reduce the ability of the council to choose what they regard as the appropriate plan making

process for a given proposal and will significantly increase the negative public perception of limiting public involvement.

151. Due to variability across the country both in terms of Council plans and local environmental issues it is considered prudent to leave the notification decision to be made at the local level and based on the evaluation report (under section 32 of the RMA). Local decision making is an integral part of the RMA and the use of any general criteria could mean that specific or unique local matters could not be considered. This option could also result in a greater risk of judicial review because following a complaint about the limited notification of a plan, the council would not be able to revert to the power to publicly notify the plan.

*Plan Changes and Plans not valid if the two year time frame is exceeded and the Minister's approval to extend the timeframe is not obtained.*

152. It would be possible to make have plan or plan change automatically withdrawn if the two year time limit from notification is not complied with. The issue with this option is that it could lead to perverse outcomes. The time frame could be missed by a simple administrative error (and be only, for example, a week late). Also, if the council or commissioner considers that a plan or plan change is more controversial than expected they could just delay the release of the decision so that the whole plan or plan change is withdrawn.

153. Submitters invest considerable effort and resources into participating in the plan change process and they could be severely disadvantaged by a plan or plan change automatically being withdrawn.

**Conclusions**

154. The proposal outlined is the preferred option.

155. Allowing councils to choose a limited notification track is preferred to making limited notification mandatory when certain criteria are met, as it provides for greater efficiency while retaining flexibility and gives councils the option to continue to fully notify if they consider it appropriate. Combined with the option of requesting a Streamlined Planning Process (P 2.2) and collaborative planning matters (P 2.3), these changes will help improve the overall timeliness and responsiveness of plan making processes and provide greater flexibility for planning options to match the scale or nature of the plan in question by:

- rationalising and refocusing public participation opportunities, in relation to notification, hearings and appeal processes, to where they add most value
- providing for greater system flexibility so there are plan making options available to match the scale and nature of the plan or plan change
- shortening the timeframes and reducing the costs of the plan making process by providing options for limited appeals where a robust decision making process has taken place
- improve compliance with existing timeframes for making plan decisions.

156. Requiring councils to obtain the approval of the Minister for the Environment for an extension of the two year time limit for making decisions on a proposed plan or plan change will encourage greater compliance with the existing two year time limit.

157. Clarifying the status of a proposed RPS in the development of a combined plan will reduce the uncertainty regarding its legal weighting and incorporation and reduce the risk of challenge.

158. We consider that this proposal will go some way in achieving the outcome of increased flexibility and adaptability for plan making processes.

### *2.2 Provide councils with an option to request a Streamlined Planning Process for developing or amending a particular plan*

**Problem**

160. Plan making as prescribed by Schedule 1 of the RMA is too slow. Plans take too long to become operative, around six years on average, with some taking over ten years. This means they are not able to be responsive to urgent issues. A significant amount of the time taken for plans to become operative can be spent resolving appeals in the Environment Court. Schedule 1 of the RMA has no flexibility to provide for plan making processes that are proportional to the scale and nature of the issues involved.

161. As a result, special legislation or regulations have been developed to provide for timely plan making process where there are urgent issues, for example the Auckland Unitary Plan or the Order in Council providing for the Christchurch Replacement District Plan.

**Proposal**

162. The proposal is for the creation of a new Streamlined Planning Process that councils can request to develop or amend a particular plan or policy statement.

163. Under this proposal, councils will be able to request, directly from the Minister, a process to address matters such as:

- the implementation of national direction
- a significant community need (or urgency)
- the unintended consequences of a plan
- where councils wish to develop combined plans.

164. Any Streamlined Planning Process directed by the Minister must, as a minimum, provide for:

- consultation with affected parties (including iwi)
- an opportunity for written submissions and report showing how those submissions have been considered
- an assessment of costs and benefits.

However, the Minister can add additional process steps (such as technical review, if the matter is highly technical in nature).

165. Once agreed, the council must follow the Streamlined Planning Process as set out in the Minister's direction, and not Schedule 1, and send its draft decision on the proposed plan or plan change to the Minister for approval. This step acts as a check on the quality of the council's decision, as it is proposed that there will be no appeal rights on decisions made under a Streamlined Planning Process except judicial review.

166. Councils, when making a request, must provide information including the implications of a Streamlined Planning Process for iwi participation legislation or iwi participation arrangements. Any Streamlined Planning Process directed by the Minister must not result in any inconsistencies with the obligations set out in any relevant iwi participation legislation or iwi participation arrangement.

167. The proposal will provide for more flexibility in planning processes and timeframes and allow these to be tailored to specific issues and circumstances. This will enable, for example, a faster planning process for urgent issues, or where there is a community need, as well as faster implementation of national direction. This flexibility in the choice of process will avoid the need for special legislation and provide greater certainty within the system compared with developing ad hoc special legislation.

168. A streamlined process that guarantees, as a minimum, consultation with iwi and affected parties will provide some certainty for councils and stakeholders. The ability for the Minister to add further process steps will provide for the ability to tailor the Streamlined Planning Process to specific issues. This will help address concerns about secondary legislation being used to provide an alternative process for urgent matters. Removal of appeals provides scope for significant time saving and will align plan making under a streamlined process with the process

for making NESs and regulations, which does not provide for a hearing or a right of appeal. Access to the Court will be maintained by way of judicial review.

169. The costs of the proposal include that it may add to overall complexity within the planning system by adding another specialised planning track. There is also some uncertainty involved in the process and no guarantee of a hearing or further submissions in contrast to plan making under Schedule 1. This may mean the streamlined process is regarded as less rigorous in terms of policy development.

170. Public concerns around reduced opportunities for participation loss of appeal rights may mean that councils will not request a streamlined process, or that their decision to request it may be judicially reviewed. The process will be very resource intensive for the Ministry for the Environment and workload will be difficult to predict given that the process is triggered by council request. Councils may also be less willing to make a request if they have to seek the Minister's approval of their draft decision on the proposed plan or plan change.

171. Risks can be mitigated to some extent by additional features being included to specify the purpose and criteria around the use of the power. We consider that it is appropriate that there are constraints on a power that will modify rights that are set out in a primary statute. The ability to reduce public participation opportunities and appeals rights should not be an unfettered discretion. The objective is to ensure that the power is reasonably flexible but also operates in a transparent manner and there is certainty. It is also important that the interests of the Crown and iwi participation are not compromised through the process.

**Alternative options**

*A streamlined process with council decision and a right of appeal to the High Court on a point of law*

172. This proposal would be similar to the one outlined above, but the council would make its draft decision on its plan and there would be an opportunity for appeals to the High Court on points of law.

173. Providing an avenue for appeals will reduce some concerns about access to justice and participation, and reduce risk of judicial review on natural justice grounds. However, time taken to resolve appeals could substantially delay the plan becoming operative and negate many of the benefits of streamlining.

*A power to make regulations to provide for a streamlined process as required*

174. This option would involve a specific regulation making power which would enable the Minister to recommend to the Governor General that a regulation provide for a streamlined planning process, which must be used by a council instead of the First Schedule for a specific planning matter. The regulation could require consultation with councils as a pre requisite to recommending regulations are made. The legislation could also set out the circumstances in which regulations could be considered, which would serve the same purpose as entry criteria for councils.

175. The regulation making process includes consultation and additional checks and balances to test the rigour of the proposed process. However, regulations are time-consuming, taking six to nine months to develop, and involve substantial workload increases for the Ministry. We consider that this option would reduce the effectiveness and responsiveness of a streamlined process.

*A Joint Council Planning Process*

176. This option would require two or more councils to plan together, undertake early engagement with affected parties, and appoint a majority independent hearing panel which would make recommendations to the council (the final decision maker), with limited appeals. This option was part of the original set of proposal that was consulted on in 2013. Following feedback on the proposal through the submissions process, the proposal was amended. We consider that the objectives of a joint council planning track can be met through the option of councils jointly making a request for a streamlined process (provided it is available for any combined planning matter) and provides better flexibility.

**Conclusions**

177. A streamlined process with the minimum steps prescribed in legislation, the Minister's approval of the council's decision on a proposed plan or plan change, and no appeal rights is preferred over the other options outlined. This is because it will enable flexible and timely plan making processes under the RMA and thereby reduce the need for special legislation. The Minister's approval of the draft decision on the proposed plan or plan change provides a check on the quality of the council's decisions in the absence of any appeal.

178. The removal of appeal rights is necessary to reduce risk of delay and ensure the objectives of the streamlined process are not undermined. It also reinforces the role of elected decision-makers. It will also realign RMA plan making (in certain circumstances) with the process for developing a national environmental standard, which provides for comments on the proposal but does not have any rights of appeal.

179. We consider that this proposal will have a significant impact on achieving the objective of increased flexibility and adaptability for plan making processes.

### *2.3 Provide councils with an option to use a Collaborative Planning Process for preparing or changing a policy statement or plan*

**Problem**

180. Plan making as prescribed by Schedule 1 of the RMA is litigious, costly, and frequently does not produce high quality or durable regional policy statements or plans. Decision-making institutions and incentives are not suited to making difficult decisions about complex problems where different values are at play, there is increasing pressure on resources and trade-offs are required. The lack of front-end engagement by councils on the full range of interests and values in the community, including iwi/Māori, has led to an adversarial approach to planning.

181. The existence of de novo appeal rights and the ability of the Environment Court to replace decisions of council do not encourage full engagement of stakeholders in the first-instance decision, and have led to greater conflict in decision-making and a greater role for appeals. There are considerable time delays and costs during the appeals processes. Furthermore, the Environment Court processes take a legalistic approach, with no requirement to consider alternatives, benefits and costs, or the full range of local values. The lack of recognition of the full range of interests and values in plans has added costs to the resource consent stage, where issues are re-litigated consent-by-consent. This creates significant investment uncertainty and compliance costs.

182. Central government currently provides guidance and support to councils carrying out collaborative processes under Schedule 1 for freshwater planning. There is nothing restricting a council to extend this approach to all resource management matters for a planning process. However, the de novo appeal rights in Schedule 1 processes do not incentivise early, good faith engagement in a planning process (with the exception of Canterbury where special legislation limits appeal rights). Decisions made by current collaborative processes could be undermined later through litigation.

**Proposal**

183. In 2013, Cabinet agreed to a mandatory Collaborative Planning Process (CPP) for freshwater planning only [Cab min (13) 8/18 refers]. This proposal is a revised version of the 2013 proposal with two key differences. First, the proposal is now for CPP to be optional for all planning matters. Secondly, there are changes to appeal rights (as outlined below). Before deciding to use this track, the local authority must first consider if the CPP is the best planning approach for this particular resource management issue. Complex planning issues where significant trade-offs are required are suited to the CPP as a full range of views will be represented and deliberated on at an early stage. Once a commitment is made to a CPP the council is required to follow it through.

184. The local authority must appoint a group whose membership, collectively, reflects a balanced range of the community's interests and values, and investments in relation to the relevant resource management issue. This includes at least one iwi representative if nominated. Terms of reference must be set for the collaborative group which include requirements for a report with recommendations, a process for engaging with the broader community, and arrangements for resourcing and supporting a group to enable them to reach informed consensus recommendations.

185. The local authority publicly notifies the collaborative group report then, as soon as is reasonably practical, prepares a proposed plan or policy statement which gives effect to the consensus position reached by the collaborative group. It may also include provisions on matters where the collaborative group did not reach consensus or as necessary to comply with legislation. Unless otherwise provided for in an iwi participation agreement, iwi are invited to provide comment on the pre-notified plan to the local authority. The proposed plan or policy statement is subsequently publically notified and submissions invited.

186. A majority-independent review panel considers the collaborative group's report, iwi/Māori advice, submissions as summarised by the local authority and the draft notified plan. The panel's report to the local authority can only recommend changes to the notified policy statement or plan if it is satisfied that the change is needed to:

- ensure consistency with the consensus of the collaborative group
- ensure compliance with legislative requirements
- address matters raised in submissions that were not, or not fully, considered by the collaborative group or local authority in preparing the notified policy statement or plan.

187. The local authority must accept or reject the recommendations of the review panel report. If a recommendation is rejected the local authority must propose an alternative. The decisions of the local authority must be publically notified. Where the local authority accepts the recommendation of the review panel appeals will be limited to points of law only. Where it rejects the review panel's recommendations, there can still be appeals on merit to the Environment Court.

188. The second main difference from the 2013 proposal is that appeals based on merit by way of rehearing were initially restricted to where the council's final decisions on the plan were not consistent with the consensus of the collaborative group [42.38 and 42.39 of CAB Min (13) 18/8].

189. Other agencies, particularly Treasury, considered that this approach whilst creating strong incentives for up-front collaboration, unduly weighed the outcome toward the consensus position of the collaborative group and away from the broader perspective of the review panel following public submissions. Subsequently, the proposal has been changed to reflect that appeals based on merit be tied to instances where the final council decision deviates from the recommendations of the review panel (as opposed to the consensus position for the collaborative group) [CAB Min (15) 5/11].

190. It is acknowledged that this may reduce the incentives on the group to collaborate and reach consensus, but significant incentives would still exist such as the requirement for the council to 'give effect' to any consensus position of the collaborative group and the requirement for the review panel to presume in favour of the consensus position when making its recommendations.

191. There are likely to be increased costs to local authorities as well as iwi, community members and stakeholders at the front-end of the process. However, it is expected that this cost will be outweighed by the significant reduction in costs of litigation at the end of the plan making process. The collaborative planning process can be voluntarily adopted. This gives councils greater flexibility to use the plan process most applicable to their needs and cost considerations. Where there is a risk that the capacity and capability of iwi/Māori and/or the wider community is insufficient to fully undertake a collaborative process, the standard Schedule 1 process can be used.

192. There will be low-medium costs to central government to develop direction, guidance and provide support to councils. In the case of freshwater planning, the Ministry is already providing support to councils undertaking a collaborative process under Schedule 1.

193. The incentives for the community to meaningfully participate in the CPP include the council's requirement to give effect to the consensus position of the collaborative group and the limited appeal rights on the final plan or policy statement. The main impacts expected to result from the CPP are:

    - greater representation of community views incorporated early in the planning process, leading to robust and durable plans and policy statements
    - medium cost savings to local authorities and submitters through reduced appeals, due to early, and wide community representation and engagement in developing plan content
    - the values and interests of iwi/Māori being captured through being involved in the collaborative group and in direct relationships to the local authority

**Alternative options**

*Mandatory CPP for freshwater planning only*

194. An alternative option is to introduce a CPP for freshwater, as agreed by Cabinet in 2013. Under this option (as recommended by Land and Water Forum in their second report in 2012), the CPP would be the required process for freshwater planning only. This option would also require the council to assess the sufficiency of the collaborative group's consensus and provide an opportunity for the community to submit to the Minister for the Environment, who, if required, would appoint a commissioner to reconsider the council decision. Finally, proposals surrounding appeal rights would be restricted to:

    - points of law where the council's final decisions on the plan are consistent with the consensus of the collaborative group
    - on merit by way of rehearing where the council's final decisions on the plan are not consistent with the consensus of the collaborative group [42.38 and 42.39 of CAB Min (13) 18/8].

195. More information about this option is set out in the December 2012 RIS: Freshwater Reform: Governance; and the May 2013 RIS: Freshwater Reform 2013 – legislation [CAB (13) 305 refers].

**Conclusions**

196. The proposed optional collaborative planning track is preferred over the alternative options outlined in 2013 as:

    - The CPP could be beneficial for wider contentious planning matters than just freshwater, where resource scarcity requires and/or trade-offs need to be made between different values in the community. However, many planning matters are simple or minor, and would not need the level of investment that a collaborative process would require. It is therefore better to make its use optional for councils.
    - The removal of de novo appeal rights is necessary to emphasise the importance placed on the consensus of the collaborative group and to incentivise the community to participate meaningfully thereby ensuring the full range of values is represented.

197. This proposal will enable robust plan making under the RMA, taking into account community values and interests early on in the planning process, and thereby reduce litigation costs and lengthy delays at the end of the plan making process.

198. We consider that this proposal will have a significant impact on encouraging higher value participation and engagement in resource management processes by those affected, leading to more robust and durable planning decisions.

### *2.4 Enhance Māori participation by requiring councils to invite iwi to engage in voluntary iwi participation arrangements and enhancing consultation requirements*

**Problem**

199. There are many examples of iwi participating successfully in resource management processes. However, engagement is inconsistent across the country, and the effectiveness of existing relationships between iwi and councils varies. In some regions, poor working relationships have meant that Māori have not been engaged with resource management processes. The lack of any requirement to establish effective working relationships with iwi often leads to increased disagreement (and litigation) later in the planning process.

**Proposal**

200. Iwi participation, and transparency over how Māori interests in the resource management system are considered, can be enhanced by:

- requiring councils to invite iwi to form iwi participation arrangements
- enhancing consultation requirements
- enhancing participation in decision making

201. Under this proposal, councils will be required to invite iwi to form an iwi participation arrangement. The iwi participation arrangement will detail how the iwi and the council will work together through the planning process. The iwi participation arrangement will set out the agreed processes for the way in which parties will give effect to Treaty settlement legislation provisions and the way in which iwi authorities can identify resource management issues of concern. If iwi do not respond within a specified timeframe, the council is not required to suspend the preparation of the policy statement or plan, or any other part of the plan making process (as prescribed under Schedule 1 of the RMA).

202. The council must comply with the processes agreed to under the arrangement when preparing their plans under Schedule 1.

203. Additionally, the following changes to the RMA will increase consultation requirements with iwi on plan making processes:

- require councils to invite iwi to participate in planning processes, as part of an iwi participation arrangement
- require councils to provide a relevant draft policy statement or plan to iwi authorities for comment and advice
- require councils to have particular regard to any advice received on the draft plan, and to allow adequate time and opportunity for the iwi authorities to consider and provide advice;
- require councils to summarise all advice received by iwi authorities and outline their response in section 32 reports
- require councils to consult tangata whenua if it is appropriate to appoint a commissioner with understanding of tikanga Māori and of the perspectives of local iwi or hapū.

204. Membership of the collaborative group must include representatives of tangata whenua (in recognition of the Crown's partnership obligations under the Treaty of Waitangi) and iwi are to be consulted on the draft plans (unless an applicable iwi participation arrangement provides otherwise). Further, at least one member, who has an understanding of tikanga Māori and the perspective of tangata whenua, must be appointed to the review panel which makes recommendations to council.

205. The proposed Streamlined Planning Process also provides that in preparing an application, councils would need to consider any implications of streamlined process on iwi participation arrangements and Treaty settlement legislation and the Minister's decision could not be inconsistent with any requirements of any Treaty settlement legislation or iwi participation arrangement.

206. It is noted that Treaty settlements will explicitly be referred to and prevail over any changes to the RMA. Where iwi have agreed a role in the planning process that is greater than what will be provided for in the RMA, those obligations will be maintained.

207. 83% of local authorities currently already have some form of structured arrangement with Māori. The arrangements vary between Memorandum of Understandings (MOUs), joint committees, advisory boards, and forums.[4] However, implementing the proposal may incur additional costs. These costs will vary across different councils, and will depend on scale, scope and complexity of the arrangements. Costs will generally be short term (3-4 years), but for meaningful relationship building and outcomes, ongoing maintenance is required.[5]

208. There may also be initial (voluntary) costs for Māori from greater participation in the resource management system. These costs may be greater for Māori with limited planning experience from investing in capacity and capability to engage effectively in the amended planning process. There would also be upfront costs for iwi authorities (eg, to execute the arrangement and fund administrative costs) but this could result improved efficiencies and potential cost sharing in the long term.

209. It is difficult to calculate the impacts of greater iwi participation in resource management issues due to a lack of robust data; however a study found benefits outweigh costs in all scenarios and for all components.[6] Māori will have a stronger voice and Māori perspectives will be better reflected in council planning documents. Application of Treaty-based relationships to the local government arena would also benefit Māori over time. Moreover, the gain to society (as opposed to Māori specifically) from further Māori involvement in planning processes is estimated to be over four times greater than the costs.

**Alternative options**

*Provide non-statutory guidance on engaging with iwi in the plan development process*

210. The provision of non-statutory guidance to both local authorities and iwi on how they can and should engage with each other during the early stages of the plan development process could encourage local authorities and iwi to develop processes for working with each other. The cost implications on both iwi and local councils could potentially be less than the preferred approach depending on what processes (if any) the local councils and iwi establish to provide iwi with a greater participation role in plan development processes.

211. However, without statutory weighting and the imposition of direct obligations on local authorities to engage with iwi there is no guarantee that councils and iwi would formulate processes to ensure that iwi had greater opportunities to participate in the early stages of the RMA planning process. There is a risk that such guidance will not achieve the objective of enhancing iwi participation in the plan making process.

**Conclusions**

212. The proposal is the preferred option as it provides greater legislative weight to councils' collaborative processes with iwi.

213. This will enable robust plan making under the RMA, taking into account iwi values and interests early on in the planning process, and thereby reduce litigation costs and lengthy delays at the end of the plan making process.

214. We consider that this proposal will have a significant impact on encouraging higher value participation and iwi engagement in resource management processes, leading to more robust and durable planning decisions.

[4] Ministry for the Environment, 2014. Resource Management Plans Database. Unpublished data.
[5] Te Puni Kōkiri, 2013. *Kaitiaki Survey – Results Report.* Unpublished draft.
[6] NZIER, 2011. *Māori participation in the RMA.*
http://tepuna.mfe.govt.nz/otcs/cs.dll?func=ll&objaction=overview&objid=3720667

# 3 Consenting

## Introduction

216. Council plans set out all the rules and conditions for different types of activities within their area. Every activity has a status under the plan – either permitted (meaning no consent is required), controlled, restricted discretionary, discretionary, non-complying or prohibited.

217. In addition to creating plans, local authorities are responsible for making decisions on applications for resource consents and other instruments under the RMA. In this capacity they are referred to as 'consent authorities'.

218. The process a consent authority must follow in coming to a decision on an application is set out in Part 6 of the RMA, and can involve (among other steps) consultation, a decision on whether to notify the application, an evaluation report by the council, a hearing and, if the resource consent is granted, setting consent conditions.

219. In approving or declining an application for a resource consent, a consent authority must have regard to a range of matters, including any environmental effects of the activity, any relevant national direction instruments, any relevant plans or policy statements, and any other matters it considers relevant to making a decision on the application.

## Index of proposals

220. Reform proposal covered under the consenting section include:

- Consent exemption for low impact activities and minor rule breaches (P 3.1)
- 10-day fast-track process for simple applications (P 3.2)
- Streamline the notification and hearing process (P 3.3)
- Improve processes for specific types of housing related consents (P 3.4)
- Require fixed remuneration for hearing panels and consent decisions issued with a fixed fee (P 3.5)
- Clarify the legal scope of consent conditions (P 3.6)
- Enable alternative consent authorities to provide resource consenting services as an alternative to local councils (P 3.7)
- Improve management of risks from natural hazards in subdivision applications (P 3.8).

### *3.1 Consent exemption for low impact activities and minor rule breaches*

**Problem**

222. Some resource consents are required because of breaches to plan rules that are very minor and of a technical nature. In other instances, a proposal may breach a rule where the only potential adverse effects are extremely localised and the affected neighbour has provided written approval. In these cases, the environmental effects are essentially little different from those associated with permitted activities and the objectives and policies of the plan will not be compromised.

223. In such cases the consent decision approves an activity that was very nearly permitted – yet the applicant must proceed through the normal resource consent application process. They may be faced with costs that are not proportionate to the proposal, and delays that seem unnecessary given the minor or technical nature of the rule breach.

**Proposal**

224. Two proposals have been put forward to balance the lack of proportionality around simple applications in the resource consenting system. They are:

- Where a marginal or temporary breach of a rule occurs, the consent authority will have the discretion to give notice to the applicant that the activity is to be treated as a permitted activity.
- Where a proposal requires resource consent because of the breach of a boundary rule (where a structure breaks a rule in relation to its distance from, or dimensions in relation to, a boundary) and the written approval has been obtained from the affected neighbour, the consent authority will be required to treat the activity as permitted.

225. Once considered to be a permitted activity, resource consent will not be required under either of the above situations.

226. These changes will remove, as much as possible, the cost and time burden of obtaining resource consent for the simplest of infringements. These types of infringements account for a significant proportion of resource consent applications.

227. The proposed exemption powers are intended to improve the proportionality of how councils allocate their resources within the consenting framework. The reduced workload will enable councils to focus resources on processing more substantive applications. The proposed requirement for councils to fix their fees (P 3.5) will also support the objectives of this proposal. If councils are obligated to fix fees for simple consents, they are likely to spend less time processing them.

228. The proposed changes are expected to reduce the number of consents required by about 2000—9000 a year, or between 6-26% of all consent applications made during 2012-2013. [7]

229. There is some concern about the charging mechanisms that would be available for councils to explicitly provide for cost recovery if an exemption is granted, the risk being that costs might be cross-subsidised by ratepayers. In addition to this, councils may decide to put up fees for other types of consent if they can no longer charge for simple consents (which may serve in part to subsidise the running of business units).

230. There are risks around the possibility that permitting technical and minor breaches will lead to a ‘creep’ effect and may also contribute to the development of cumulative effects and have unintended impacts on permitted baselines.

231. It is possible that some consent authorities will choose not to exercise their exemption powers, or to do so very infrequently, due to a perceived risk of judicial review by third parties. This

[7] These data are from a custom database of resource consents processed to a decision in 2011/12 or 2012/13, from a purposive sample of 11 local authorities. Boundary data is based on two urban councils in the database, exemption data (based on a processing times of three or fewer hours) for 3 councils

could undermine the policy intent of this provision. However, it is considered that most consent authorities will implement the proposed exemption powers as intended and this is not considered to be a significant risk to the effectiveness of this proposal.

**Alternative options**

*Councils specify exemptions*

232. The RMA could be changed to allow councils to exempt activities without the need to make and record decisions to that effect. This would remove significant time and cost burden to applicants and councils and might be cheaper and faster than tracking exemption decisions on paper. However, there is a risk that fraudulent use of the power would be untraceable.

*Remove the need for consent for any temporary or controlled activities*

233. This would also remove significant time and cost burden to applicants and councils. However, it would not allow for case-by-case decisions to waive consents to be made on the basis of effect. It may also have the unintended side-effect of encouraging councils to avoid using controlled activity status in plans.

*No ability for applicants to apply*

234. At the policy development stage it was intended that applicants would not be able to apply to a consent authority for an exemption. Instead, the consent authority would exercise its discretion to grant an exemption only when considering the proposal through some other application, such as the resource consent, building consent or project information memorandum (PIM). This remains the case for exemptions for minor and technical breaches, however an application process has been proposed for boundary activities in order to ensure that potentially affected neighbours have the opportunity to provide input into the process.

*Non-regulatory options*

235. It is not possible to provide for exemptions through non-legislative means. Guidance and decision template could be produced to encourage consent authorities to cut all non-necessary reporting when dealing with boundary infringements that have the neighbour's written approval. This is likely to deliver significantly fewer time and cost savings.

**Conclusions**

236. This proposal is largely fit for purpose and is considered to be an appropriate means of delivering time and cost efficiencies while improving the proportionality of the consenting system. The proposal would remove time and financial costs for the applicant if their proposal is the same as or similar to a permitted activity. The reduced workload would mean that councils could focus resources on the processing of more substantive applications.

237. This proposal will contribute significantly towards the outcome of scaling RM processes and costs to reflect the specific circumstances.

### *3.2 10-day fast track process for simple applications*

**Problem**

238. The RMA's resource consent framework currently takes a 'one size fits all' approach to non-notified applications. The standard 20 working day process applies to a wide range of activity types that vary significantly in terms of scale and complexity. The result is a lack of proportionality. While the 20 day process is appropriate for the majority of applications, it can result in undue time and financial cost for applicants seeking consent for the simplest proposals. A corresponding burden falls onto councils, who have to undertake a full assessment even when considering simple, straightforward applications.

239. For simple applications, such as a minor house extension over site coverage and height, and other controlled activities under the relevant plan, a shorter process would be more suitable and better reflect their scale and environmental impact.

**Proposal**

240. The proposal will introduce a truncated 10 working day consent process for simple applications. Controlled activities (not including subdivisions) and activities defined in regulations would be subject to the new 'fast track' process. There would be a new regulation making power to specify types of activities, or criteria for what would constitute a simple activity, which must be processed in the shorter timeframe. Applications for these activities would have to meet certain quality criteria before being considered for the fast track process, including being clear and complete, and accompanied by any necessary written approvals.

241. The consent authority would have 10 working days to:

- accept or reject the application
- make the notification decision (if needed)
- decide whether to grant or decline consent.

242. If a hearing is necessary or the consent authority decides that the proposal should be fully or limited notified (including due to special circumstances), the application would cease to be fast-track.

243. This change will improve the proportionality of the consenting system by introducing a process for getting permission that better reflects the scale and environmental impact of simple activities. This is part of the wider objective of delivering a user-focused consenting framework that is efficient in terms of both time and cost. These time and costs benefits would be delivered immediately for both applicants and councils, and the regulation making power will allow the benefits of the fast track process to be expanded to other types of activities if it is seen to be effectively meeting these objectives.

244. A risk of the proposal is that applicants may decide to scale back their proposals, leading to a large increase in controlled activities. This has the potential to significantly increase council workloads.

245. Although simple proposals can be easily identified in practice, it is very challenging to set specific legislative criteria for what constitutes a simple application. If the criteria are too narrow, too few proposals will be subject to the fast-track process and the policy's intent will be undermined. If the criteria are too broad, overly complex applications will be subject to the fast-track process, which could stretch council resources beyond capacity and even compromise the quality of decision-making.

246. There is also a risk that the quality of decision-making will be compromised if decisions are made hastily in order to avoid exceeding the statutory timeframes and incurring penalties under the Resource Management (Discount on Administrative Charges) Regulations (the discount regulations). This issue is considered to be the most significant shortcoming of the proposed fast-track process.

**Alternative options**

*One day process*

247. An ultra-fast consent process for simple applications. This was considered to be unworkable as it would put a disproportionate amount of pressure on council resources for the time savings involved.

*Simple 35% and Council list*

248. This option would require every consent authority to publish a list of rule breaches that qualify for a 10 working day fact-track process. The regulations would specify that each consent authority's list must be broad enough to ensure that at least 35% of all land use consents meet the fast-track criteria and are processed within 10 working days. No fast-track process would be specified in the RMA or regulations. Instead, the process itself would be entirely at the discretion of each individual consent authority.

249. This alternative approach would enable each consent authority to develop a fast-track that is tailored to its specific circumstances. Enabling each council to define their own eligibility criteria reflects the fact that each plan is unique and individual consent authorities are best placed to determine what combination of rule breaches constitute a simple application. It is important to note that this may not be the case after plans are made more consistent through the national template

**Conclusion**

250. The proposal is the preferred option as it is considered the most likely to provide consistency across all councils while being less onerous than some alternative proposals and still providing an adequate amount of time for quality decision-making. It has simple entry (and exit) criteria, reduced information requirements for lodgement and standardised reporting through a prescribed decision template. If councils respond to the new proposal by avoiding the use of controlled activity status in their plans, the regulation making power retains the ability of central government to address this behaviour if considered necessary. If regulations are developed, it will be appropriate to set out criteria to allow for monitoring of decision quality and to check whether criteria for 'simple proposals' have been set at the right level.

251. This proposal will contribute to the objective of proportional and adaptable resource management processes by ensuring that consenting processes for simple applications are able to be scaled to reflect the specific circumstances.

### *3.3 Streamline the notification and hearing process*

**Problem**

252. Decisions on whether to non-notify, limited notify or publicly notify are made on almost all resource consent applications, subject to the tests set out in the RMA. These tests have two difficulties that contribute to uncertainty for applicants, councils and other parties. Firstly, the public notification test for resource consent applications is based solely on the adverse environmental effects of the proposal and does not take into account whether the relevant plan anticipates the proposed activity. This means that district and regional plans, which have been subject to full consultation process prior to becoming operative, can be 're-litigated' at the consent stage. Secondly, the thresholds for limited notification and public notification overlap. This means that, in some cases, the council's decision on the form of notification is difficult and poses legal risks.

253. A further problem is that the scope for making submissions and advancing appeals against consent decisions is very wide. Submissions may be made on any aspect of a notified application, and any person who makes a submission can subsequently appeal the decision. This undermines the purpose of notification and seeking submissions, which is to give decision-makers useful, focussed input. Submitters have the false impression that they can influence any aspect of a proposal, and decision-makers and applicants have much more work in managing that input and, in some cases, mounting rebuttal evidence.

254. Additionally, any person who makes a submission has a right to appeal the decision to the Environment Court, even where their original submission was unrelated to the effects of the proposal. This gives submitters a lot of power to oppose developments, as even the threat of such an appeal (and the delay it creates) creates costs and other difficulties for applicants.

255. The scale of this problem has increased over time, though is difficult to quantify as the system does not record the different decisions applicants might make because of uncertainty in the system or the threat of appeal. The current process requires council time and resources to justify decisions made around notification because of the potential threat of legal action through judicial review, even for relatively minor consents.

**Proposal**

*Clarifying the notification process and involvement of affected parties*

256. The proposal will clarify the notification provisions for certain types of applications and set out a new stepped approach for determining whether to notify an application. This will clarify when public notification is mandatory and when it is precluded for certain types of applications (controlled activities, boundary activities, subdivisions and residential activities that are not non-complying activities). A further clarification will require the adverse effects of activities to be assessed in the context of the objectives and policies of the relevant plan.

257. In addition, the proposal will refine consideration of affected parties for limited notification of district land use activities (eg, housing, commercial and industrial activities and agriculture). This is appropriate as the effects of land use activities are most prominent in the immediate surroundings and diminish away from the site.

258. This change will create the following two-step test for all district land use applications:

- *Public notification test:* councils examine the environmental effects for both adjacent and non-adjacent land.
- *Limited or non-notification test:* councils examine the effects on people who own or occupy adjacent land.

259. In addition to this new approach to notification, the proposal will:

- require councils to identify the specific adverse effects that bring them to decide to notify an application;
- record those specific effects and include them in the public notice; and
- require submissions to be focussed on those effects.

*Regulation making powers*

260. The proposal will also include a new regulation making power to enable regulations that can specify applications which must be processed without public notification, and restrict the persons who may be considered affected by that activity to certain types of named person (identified in the regulations).

261. This proposal will be particularly relevant in residential zones by simplifying the council's decision-making process by removing the need to assess effects and justify decisions regarding more peripheral parties for certain specified activities.

*Narrow submitters' input to reasons for notification*

262. If submissions on notified resource consent applications do not meet certain criteria, they must be struck out. Submissions must:

- be related to the reasons for notification;
- be supported by evidence;
- have a sufficient factual basis;
- if pertaining to be independent expert evidence, be made by a person with suitable experience and qualifications.

263. If a submitter's submission is struck out, no Environment Court appeal against the consent decision will be available.

264. The proposals will focus input from submitters on the most important matters and remove the threat of submissions and appeals on trifling or irrelevant matters while ensuring that those with genuine and relevant input retain full rights of participation and appeal.

265. The proposed changes will also avoid unnecessary time, cost and uncertainty implications for activities that are broadly consistent and/or anticipated by the applicable plan. The changes will provide a clear assessment process if the RMA, regulations, or plans specify that public or limited notification is precluded.

266. In residential zones in particular, but for district land use activities generally, this proposal will simplify the council's decision-making process on notification by removing the need to assess effects and justify decisions regarding more peripheral parties. It will also reduce the risk of judicial review and avoid it from any party other than specified parties. This will benefit the majority of applicants for consents for land use activities that 'fit' with the relevant plan, including residential housing developments, commercial and industrial activities, and help councils by relieving them of the current assessment requirements.

267. Risks of the proposal include that it will increase complexity for the process of determining who can be involved in resource consent processes. This may cause additional costs in the short term for both councils and applicants until practice is established that reflects the new notification framework.

268. Better information about the investment decisions that private individuals, developers and organisations make as a result of the current system would help to fill gaps in knowledge about applicant behaviour in the consenting system. There also appears to be a gap in knowledge about the actual and perceived constraints of the system. For example, one difficult experience of consenting a proposal in one area of the country may play out quite differently in another but the applicant will take a conservative approach as a result of the first experience.

269. Much of the information coming out of the National Monitoring System (see Monitoring and Evaluation section below) will greatly assist in establishing trends in both council and applicant behaviour that will inform decisions about how to achieve the right level of involvement in resource consent applications.

**Alternative options**

*Altering thresholds and definitions*

270. **Changing the threshold for notification of applications** – the requirements in the RMA that determine notification of the public or individuals could be changed. However, changing thresholds will still not address the need for certainty in the system around notification. This option was therefore not considered appropriate for addressing the problems identified around notification.

271. **Changing the definition of an affected party** – the definition of an affected party could be changed to include criteria other than the environmental effects occurring against that person. This is not considered appropriate because the legislation is intended to control effects and other types of assessment would not be appropriate.

272. **Changing the activity classes for types of consent applications** – a different structure or hierarchy of consent type could be introduced which would then have specific notification requirements attached to them. This option could assist to clarify notification but would involve more structural change in the legislation that would then have other consequences for the consenting system. This would be undesirable when there are better methods for clarifying notification requirements.

**Conclusions**

273. These proposals are considered to contribute towards the objective of making Resource Management decisions more robust and durable. Participation and engagement in consenting processes will be more proportionate to the activity and will support decisions made up front in plan-making processes that have themselves involved significant consultation and engagement.

### *3.4 Improve processes for specific types of housing related consents*

**Problem**

274. Through the creation of District Plans, there is an ability to be very clear about the type of development that is anticipated for an area. For example, zoning a piece of land as residential sends clear signals regarding the type of development expected to eventually occur there: housing with associated amenity, traffic, noise and visual effects. Although these clear decisions are being made at the plan making stage, land may not be subdivided unless a subdivision is expressly allowed by a national environmental standard (NES), a district plan rule, or a resource consent. This is in contrast with the presumption for land use activities, which can occur as of right unless a rule is contravened.

275. Requiring resource consent for all subdivisions, even when zoning decisions have provided clear direction as to what is and what is not acceptable for a site, hinders the timely provision of housing. Further delays occur when resource consent applications for subdivisions are opposed by communities, despite plan-making processes concluding that a certain type of development will occur on that land.

276. The current regime also provides appeal rights to the Environment Court for submitters on any notified or limited notified consent application. This means a development with particular effects, for example a residential subdivision in a residential zone, or the construction of houses within residentially subdivided land, can be appealed even if those effects have been anticipated and accepted at the planning stage. Appeals from neighbours or the wider public (whether threatened or real) have considerable power to reduce housing supply, delay developments, or prevent developments occurring at all.

277. A problem therefore exists that decisions made at the plan making stage are subject to potential re-litigation through the consent process. Such re-litigation of residential development is hindering the timely provision of housing and giving third parties too much power to effectively change zoning decisions which have already been agreed through the plan making process. In turn, this provides a strong disincentive to plans being well developed in the first place, and leads to existing plans being undermined.

**Proposal**

278. Firstly, it is proposed to reverse the presumption in favour of subdivision, so that subdivision is allowed unless it is restricted by a rule in an NES, a plan or proposed plan. In practice this will not have a large effect as most, if not all plans, contain rules relating to subdivisions, however it will bring subdivision in line with the presumption for land use.

279. Secondly, it is proposed to restrict public input into subdivision applications and residential activities (in residential zones) at the consent stage. The proposal will focus community input on the plan-making stage of the process rather than allowing the re-litigation of planning decisions at the consenting stage. It will also prevent objections to consent applications from having the weight to prevent planned developments from occurring.

280. Decisions on all subdivision and housing (in residential zones) applications that were anticipated by zoning (and are therefore controlled, restricted discretionary or discretionary activities) will be made without public notification and with limits to the parties who can be considered as being affected. However, if applications have a non-complying status, they will be able to be publicly notified.

281. The only people who can be considered as affected parties for controlled, restricted discretionary or discretionary subdivisions are:

- the owner(s) of the infrastructure providing services to the land (such as stormwater infrastructure, wastewater infrastructure, water supply and either local, arterial roads or state highways)
- the medical officer of health for the health district in which the subdivision will be located
- the New Zealand Fire Service
- a Civil Defence Emergency Management Group of which the consent authority is a member.

282. Thirdly, Environment Court appeals for subdivisions, residential activities in a residential zone and boundary infringements will be precluded unless they have non-complying status in the relevant district plan. These types of applications present relatively simple planning problems at the consent stage, especially where plans are clear about the type of development wanted in particular zones.

283. Non-complying subdivisions, residential activities in residential zones and boundary infringements will still be able to be appealed to the Environment Court to reflect that in many cases a non-complying status indicates a development is not consistent with the objectives and policies of the plan. Additionally, consents for related activities that are required for subdivisions, such as major earthworks and works in waterways, will still be open to appeal if they were notified, but the subdivision itself would not.

284. These changes will promote the delivery of decisions on housing developments in a more straightforward and timely manner. Consent authorities will be able to rapidly grant subdivision applications for anticipated types of developments, thereby supporting developments where land is zoned for the purpose.

285. The effect of the various components of the proposal will be to restrict input at the consenting stage for applications that support the provision of housing. The proposals do not remove the ability of the community voice to be heard in the planning of their districts and regions, but shifts the focus of community involvement to the plan making stage, where district and regional plans are subject to a full consultation process before they become operative. At this stage, the public have an opportunity to provide input on whether the controls proposed in the plan are appropriate.

286. When considered together, the proposals will help to make the consent authority's resource consent decision the 'last stop' and will require submitters and applicants to put their best case to the council, rather than waiting for an Environment Court appeal. It will give developers certainty that the council's decision is final (notwithstanding judicial review) – particularly where their proposal is consistent with developments signalled by plans. The proposal therefore supports the realisation of plan objectives.

287. It is noted that the reversal in the presumption for subdivision is unlikely to bring about substantive change for those seeking subdivisions or for consent authorities when considering subdivision applications. This is because most, if not all plans, already restrict all but the most simple subdivisions (boundary adjustments). This being said, reversing the presumption is unlikely to create problems.

288. There is a risk that where the plan making process was not robust, or where community aims have moved substantially since the plan was written, that reduced opportunities for public input through the notification of housing related and subdivision resource consent proposals may result in potentially important effects remaining unexamined, or decisions being made that no longer reflect the aims of the community.

289. There is the risk removing appeal rights may mean that applicants or submitters have no avenue for overturning poor decision making. This risk is minimised through all decisions makers on hearings being required to be certified through the Ministry for the Environments Making Good Decisions course as well as the publishing of general good practice on the Quality Planning website. Judicial review will remain as an avenue for the revisiting of decisions where an error in law has been made.

**Alternative options**

*Reversal of presumption*

290. No alternative proposals to the reversal of presumption proposal have been considered.

*Remove public notification for all applications considered by consent authorities*

291. The ability to publicly notify applications could be removed from consent authorities, with only nationally significant proposals being eligible for full notification. This would also restrict the numbers of submitters that are eligible to appeal a decision.

292. This proposal would allow those applications that are nationally significant to have input from the general public, whilst restricting input on the majority of applications to those in the community who can reasonably be identified as being potentially affected. Far stronger emphasis would need to be given to involving the public during the plan making stage to ensure that community outcomes are recognised and achieved through the resource management system.

293. There are risks that council plans are not robust enough to appropriately consider all parties without the public notification of resource consents, or do not reflect the current aspirations of the community (if they have not been the subject of a recent review). Additionally, reduced ability to 'ask hard questions' through submissions and appeals might result in some potentially important effects remaining uncovered and could present natural justice risks.

*Require public notification for all applications but remove appeal rights*

294. Following practice from the United Kingdom, all applications would be publicly notified, removing the requirement for the consent authority to identify affected parties or make a notification decision.

295. This would reduce the reporting required by consent authorities as well as eliminate one avenue of judicial review - that associated with the notification decision. It would provide opportunities for public involvement on all applications, no matter the scale and would support natural justice. As consent authorities would be required to consider all submissions made on all proposals, this could result in more hearings being held, however, the risk of appeal is removed.

296. Additional changes to the RMA would be required in order to make changes to the system to ensure consent authorities are not overwhelmed and applicants are not subjected to increased time delays and costs. For example, a certain number of submissions in opposition could be required before a hearing is held.

297. This proposal is unlikely to provide the sought after increase in proportionality of consent pathways. Widespread changes to processes would be required.

*Environment Court appeal rights removed for all resource consent applications*

298. While appeal rights could be removed from all consent applications, this would also likely reduce the robustness of decisions and outcomes on the ground, especially on more complex applications. It is likely that this option would also raise natural justice issues that could not be balanced with better outcomes.

**Conclusions**

299. The proposals will introduce changes that will promote the delivery of decisions on housing developments in a more straightforward and timely manner. In places where zoning decisions made within District Plans are clear, the decision to accept the consequential effects of the anticipated development will have been made at the plan-making stage. Opportunities for appeal will be reduced, thereby supporting the devolution of responsibilities to the most local level.

300. These proposals are considered to contribute towards the objective of making resource management decisions more robust and durable by increasing the quality of participation and engagement in the appropriate stage of resource management processes by those who are affected.

### *3.5 Require fixed remuneration for hearing panels and consent decisions issued with a fixed fee*

**Problem**

301. Consent authorities can recover the actual and reasonable costs associated with processing resource consents (section 36 of the RMA). The way councils recover these costs is generally done one of two ways, either by setting fixed fees for applications or by charging an initial lodgement fee or deposit. Initial lodgement fees or deposits are more widely used than fixed fees.

302. Where fees are fixed by councils, the applicant has certainty upfront that the entire cost of the processing of their application has been covered. However, where an initial lodgement fee or deposit is charged, additional processing charges and disbursements are also passed on to the applicant, generally based on the hourly rate of officers. There is no certainty as to whether the final charge to the applicant will be more or less than the initial lodgement fee.

303. As a result of the different approaches to fee setting, the total cost of the consenting process is not clear for applicants in most council areas. Compounding this lack of certainty is the price of obtaining resource consents also varies significantly across the country due to councils' different cost structures and the extent to which councils subsidise consent costs.

304. Independent commissioners deciding notified consent applications and plan hearings are usually paid on an hourly or day-rate basis. Hearing costs are on-charged to applicants, with no limit on the total costs which may be incurred. Consequently there are insufficient incentives for commissioners and councils to run the hearing process as cost-effectively as possible.

**Proposal**

305. The proposal will introduce provisions that require consent authorities to fix certain consent charges in accordance with new regulations. New regulation making powers would be introduced to facilitate the fixed fee requirements. These regulations would provide the framework under which consent fees must be set, but consent authorities would still be responsible for determining the actual fees.

306. There is scope for the regulations to allow for additional charges beyond the fixed fees in certain circumstances. For example, an additional fee could be charged for every additional information request. The fixed fee provisions would not prevent councils from determining the extent to which they use rates to subsidise the consent process.

307. The proposal will also require councils to pay independent commissioners on a fixed fee basis, and to set the applicant's fee for consent and plan hearings before they start. A new regulation making power will enable councils to be required to:

- pay commissioners on a fixed fee basis for each consent or plan hearing (eg, based on complexity and number of submissions) and when an applicant requests for a commissioner to hear their objection to a decision (section 357B of the RMA)
- fix the fee for each hearings process before it begins, for example after the close of submissions.

308. It will be up to each consent authority and local authority to determine its own remuneration policy for commissioners including the amount they will actually be paid. However, the regulation may set out an optional method for calculating their fixed fees. The regulation may also set out a method for fixing the fee for the hearings process overall. This could be based, for example, on the complexity of the application and/or the number of submissions received.

309. This change will not apply to the payment of local government elected members as their fees are set under the Local Government Act 2002.

310. Along with providing more certainty to applicants, requiring the setting of fixed fees will likely incentivise councils to improve their performance and efficiency and commissioners to run hearings more efficiently. Consent authorities (in the case of plan hearings) will be encouraged to manage the process more efficiently (for example, estimating costs, managing input from

specialists, legal advice, staff time, venue costs). The fixed fee will give applicants more certainty about the overall cost of the hearings process before it starts.

311. The change will complement other existing provisions aimed at speeding up the hearing process. These include commissioners allowing evidence to be taken as read (existing provision) and the pre-provision of expert evidence (this provision came into effect in March).

312. Both these changes will enable consent authorities and local authorities to more accurately estimate fees for notified resource consents and plan changes which will significantly increase certainty for applicants and reduce the overall costs.

313. Councils will be required to develop a policy for how they will calculate the fixed fee for commissioners and the fixed fees before each hearing starts. There may be a reduction in charges through fee-setting at the local authority level, and there will be improved predictability for applicants, cost-containment pressure on local authorities and a more strategic approach to identification and recovery of costs). However, the risks are that applicants may pay more or less in fees than the actual cost, it could make it difficult to get good commissioners if paid on a fixed-fee basis, and commissioners may cut hearings short, which will reduce opportunity for stakeholder participation at plan hearings

**Alternative options**

*Central government to fix consent processing fees*

314. Central government could provide better direction by issuing guidance on the methods of calculating the fixed fees. This option was discarded as it would impinge on business practices and cost recovery practices of local authorities.

*Fixed fees for notified consent applications only*

315. Require councils to introduce fixed fees for notified consent applications. Fees could be based on categories of complexity, consent types or thresholds. The incentives of this option would be the same as the proposal on commissioners and councils to minimise hearing costs. There would be greater certainty up-front for applicants but less ability for councils to base the fee on the complexity of the application and the number of submissions received. There is also a greater chance of councils setting fees higher than they need to be to compensate. Given that notified consents make up only 5% of total consents, this option would have limited impact.

**Conclusion**

316. The proposal is the preferred option because it would result in a reduction in charges through fee-setting and increases certainty of costs for applications from the outset. Decision makers are incentivised to hearing matters efficiently. Costs for similar applications (in size, complexity and number of submissions) would be aligned based on the same factors.

### *3.6 Clarify the scope of consent conditions*

**Problem**

317. Resource consent conditions are an essential tool for decision-makers to manage the environmental effects of activities. A considerable body of case law has established key principles that conditions must adhere to in order to be valid. However, the potential scope and nature of conditions, as set out sections 108 and 220 of the RMA, is very broad.

318. The RMA does limit the scope of conditions, but also specifies that conditions may cover any matter. This contributes to uncertainty around the scope of conditions that can be imposed, which gives rise to confusion and litigation between councils and applicants. This also means that applicants are often unaware of the sorts of conditions that may be placed on their consent and the subsequent cost of compliance. In relation to housing affordability there is a need to ensure consent conditions contribute to, or at least are not a barrier to, improving the supply of housing.

**Proposal**

319. The proposal is to limit the scope of consent conditions to reflect existing case law by requiring that consent conditions imposed by councils must be directly connected to either:

- the provision which is breached by the proposed activity or
- the adverse effects of the proposed activity on the environment or
- content that has been volunteered or agreed to by the applicant.

320. This amendment will improve certainty by providing a legislative requirement for what are already well-established principles of common law. There are no policy trade-offs involved and there is little potential for unintended consequences. This provision is well-aligned with the Ministry's objectives of delivering a user-focused system with appropriate scope and mix of protection, use and development of resources.

321. The risks include that:

- The Ministry does not hold any information as to whether there is actually a wide spread problem regarding ultra vires conditions being imposed or whether this is simply a perceived problem. As such this proposal may have minimal impact if the majority of conditions already meet the proposed criteria.
- Conditions are often the factors that enable the granting of a resource consent. The changes may give consent authorities (and applicants) less flexibility to design consent conditions that achieve sustainable management and enable consent to be granted.
- Often conditions are offered by the applicant to address possible submitter concerns and to proactively offer broader community benefit. There has been public concern, particularly from councils, that limiting the scope of conditions may limit the flexibility and quality of decisions made. The proposal may result in a statutory block on such conditions which may give rise to statutory difficulties and losses for the community.

**Alternative options**

322. No alternative options were considered for this proposal.

**Conclusions**

323. Overall, the benefits of the proposal are considered to outweigh any potential risks. The proposal will codify best practice and provide greater certainty to resource consent applicants, as well as to consent authorities, on the scope of consent conditions.

### *3.7 Enable alternative consent authorities to provide resource consenting services as an alternative to local councils*

**Problem**

324. Current customer satisfaction with the resource consent system administered by local authorities is low. Reasons for this include:

- a lack of incentives for providing good customer services
- risk-averse decision making
- inefficient processes and systems.

325. There is a lack of certainty for applicants both in terms of the time it takes to obtain resource consent (actual time rather than working days) and what the outcome will be. This uncertainty drives up the cost of development. There are currently limited incentives on local authorities to improve performance in the above areas. The 2014 Annual Report of the Kiwis Count survey of public satisfaction with public services undertaken by the State Services Commission[8] found that, while public satisfaction with 'National environmental issues or the Resources Management Act' is improving, it remains low at 48%. The final report of the Rules Reduction Taskforce[9] states that 32% of submissions it received relate to RMA processes and identifies complexity, unnecessary bureaucracy, delays, cost, poor customer service, and inconsistency of rules as the most common frustrations among submitters. 75% of the issues raised in the report were around local government responsibilities and processes.

**Proposal**

326. The proposal is to enable alternative consenting authorities (ACAs) to be established to provide resource consent services as an alternative to local authorities. These alternative consent authorities may be a Crown entity (such as, but not limited to, the EPA), a departmental agency, a local authority (in respect of activities outside of its District) or a private sector provider.

327. The Building Act provides for alternative agencies for building consenting and the RMA currently enables this for projects of national significance. The provision for the establishment of alternative Building Consent Authorities (BCAs) has not been used to date due to the inability for potential providers to obtain the necessary level of liability insurance. As such, it is not possible to draw comparisons between council and non-council BCAs in terms of process, cost and timeframes. We understand liability for BCAs is a matter currently being explored by the Ministry for Business, Innovation and Employment.

328. ACAs would only consider (if their registration allows) consent applications for controlled, restricted discretionary and discretionary activities, and would not be able to consider applications for activities currently considered by regional councils (eg, water takes or discharges). They would (again subject to the limits of their registration and only in respect of district council land uses and activities) be enabled to issue certificates of compliance (under s139) and existing use certificates (under s139A), as well as issue notices confirming a particular activity can be undertaken without resource consent (under proposed new provisions relating to boundary activities and marginal or temporary non-compliance with plan rules). ACAs scope of registration may also enable them to provide services across multiple district council areas.

329. There will be an explicit obligation for all ACAs to comply with the aspects of Treaty settlements that a local authority (in its role as consent authority) would need to comply with in relation to processing resource consent applications.

330. Councils would still be required to provide the full range of resource consenting functions.

[8] State Services Commission, June 2012. *Kiwis Count*. Wellington: New Zealand Productivity Commission

[9] Rules Reduction Taskforce, August 2015. *The Loopy rules report: New Zealanders tell their stories*

331. The proposal is an enabling provision only. The functions, powers and duties that will be given to each alternative consent authority will be agreed when it is established, including what types of consents it is authorised to consider and over what area.

332. The proposal introduces a regulation making power that will enable organisations to apply to the Secretary for the Environment to be registered as alternative consent authorities. The regulation will set out the process for registration, including the standards and criteria that will apply.

333. The process for registering alternative consent authorities will be similar to that for accrediting Building Consent Authorities set out in the Building Act. The registration decision will be made by the Secretary for the Environment to ensure political neutrality.

334. Existing changes to consenting processes from the 2013 RMA reforms that took effect on 3 March 2015 will continue to deliver improvements in processing times and costs to both councils and applicants. These changes include:

- a six month process for decision making on notified applications
- clearer information on what an application needs to contain in Section 88 and Schedule 4.

335. The costs and benefits of the proposal are assessed against the background of the status quo, which includes these previously enacted changes to the resource consenting process.

336. Other related changes in the current package of reforms also seek to deliver improvements to consent processing. These include:

- Provision for "fast-track" applications which are to be processed in 10 working days (P 3.2)
- Removal of the need for consents for minor activities and for certain activities affecting property boundaries with the written approval of owners and occupiers (P 3.1)
- Changes to submissions processes and appeal rights (P 3.3)

337. The existence of the regulation making power to allow for the registration of ACAs, which is proposed to be introduced by Order in Council, is expected to provide the impetus for local authorities to lift their performance and provide consents more efficiently.

338. If ACAs are established, they could help to relieve pressure on councils that are experiencing high demand in certain locations or sectors. In addition to this, they could provide a better service for applicants by:

- attracting high quality staff, resulting in effective and efficient processing and decision making
- using digital systems that will increase efficiency and reduce cost for applicants
- increasing national consistency, especially if offering 'national consents' – the ability to apply for the same proposal in multiple regions or districts
- enabling the processing of both building and resource consents simultaneously.

339. ACAs that have been set up as profit-making concerns will have a number of unique incentives on them in order to operate profitably. These include:

- A need to attract as many consent applications as possible. This could be done either through providing a high level of service to the applicant, or by developing a reputation for viewing consent applications more favourably than the local authority. The proposal includes the ability for the Secretary for the Environment to review the performance of ACAs and take what action they deem necessary to rectify any performance issues identified.
- A need to minimise the number of its decisions that are appealed to the Environment Court and/or judicially reviewed. ACAs will need to ensure due process is followed to minimise the risk of successful judicial review of their decisions.
- A need to recoup all costs levied on it by other bodies (including local authorities providing information on asset capacity and development contribution assessments for example). This, coupled with the existing evidence that resource consent processing is not a profitable business for local authorities, may result in ACAs charging significantly higher fees than local authorities for resource consent services.

340. Key costs and risks of the proposal include:

- High capital costs to set up the registration process and structure for information sharing between consent authorities. This cost is likely to be borne by central government.
- A broad enabling provision which does not give an indication of where or how the ACAs will operate might limit the incentives for councils to improve their performance.
- Councils may decide to make plans less permissive to limit the scope of interpretation open to other decision-makers.
- It is possible that councils will defer upgrades of their customer service if they anticipate losing business to ACAs.
- If ACAs are established, there is the risk that they will be just as risk averse as councils in their decision-making, as they will be subject to the same threat of third party appeal and judicial review.
- It is likely that application fees will be higher for ACAs than for councils. Councils currently subsidise the resource consent process from rates from anywhere between 0% and 85%. Applicants may be willing to pay these higher fees if they can obtain their consent more quickly or over multiple geographic regions.
- Private sector ACAs may decide not to defend appeals due to the cost, and they cannot be compelled to do so
- It is not clear whether there will be sufficient financial incentives for private sector companies to register as ACAs, particularly as cost-recovery data indicates that costs of processing resource consents are subsidised by many territorial authorities.
- The introduction of multiple decision makers may result in an increase in the inconsistent interpretation of plan provisions
- Councils may not respond to competition by improving their performance
- There could be difficulties with information sharing between councils and ACAs on what consents have been applied for, approved or discussed. There could also be difficulties with obtaining information from other parts of the relevant council (eg, in relation to asset capacity and development contributions). There could also be related difficulties with assessing and managing cumulative effects. This issue highlights the need for an efficient and effective information sharing process.
- Iwi/hapū would need to build and maintain relationships with multiple consent authorities, resulting in increased costs and possible weakening of existing relationships with Councils. In addition, ACAs will not have to give effect to any relevant arrangements between iwi/hapū and councils set out in the provisions of an Iwi Participation Arrangement, Joint Management Agreement, or relevant iwi/hapū agreement (except to the extent that such arrangements are established through a Treaty settlement or where requirements of such arrangements are incorporated into a District Plan). ACAs will not be party to any of these arrangements so it would be inappropriate to require them to give effect to them (other than in the circumstances described above). While iwi/hapū will have an opportunity to participate in the plan development process, there may be aspects of the above arrangements that cannot be given effect to through District Plans.

**Alternative options**

*Crown entity/departmental agency ACAs only*

341. This option is the same as the current proposal without the ability to register private sector organisations or alternative local authorities as alternative consent authorities. This option is likely to:

- reduce the potential for inconsistent interpretation of plans
- reduce the impact on iwi/hapū by reducing the number of decision makers
- avoid the potential perverse outcome of private sector ACAs not defending appeals due to cost
- reduce the extent to which political accountability is diminished by the introduction of alternative decision makers

- reduce the impacts and complexity associated with having multiple decision makers – eg, management of cumulative effects, and challenge of sharing property, asset and consent information.

342. However, it would also result in a reduction in the potential choice for applicants, and in the absence of appropriate resourcing could mean that a Crown entity's resources would be spread too thin to effectively improve consent processes nationwide.

*Crown entity/departmental agency only - no competition with local councils*

343. This option is similar to the alternative proposal above but without the element of competition. The entity could be directed to provide consenting services in specific locations or handle specific types of applications to relieve pressure on overstretched councils. This option is likely to avoid the same risks and costs as the proposal above and would remove any potential benefit of having competition introduced into the system.

*A package of non-regulatory options*

344. This option would involve non-regulatory options designed to provide incentives to councils to improve their customer service, and could include:

- a formal accreditation system for consent planners
- development of a national digital consenting system
- publication of central government expectations for council consent authority performance, audits of consent authorities and league tables to benchmark performance.

345. The potential benefits of this option include:

- existing consent authorities are given clearer guidance from central government on their expected performance and process
- national consistency in the consent process through the roll out of a national consenting system
- using digital systems that will increase efficiency and reduce cost for applicants.

346. The potential costs and risks of this option include:

- set up costs for central government in establishing accreditation and digital consenting system
- no potential benefit from the introduction of competition into the system
- there is a risk that consenting performance would not alter as a result of these interventions
- a requirement for accreditation of consent planners could result in a reduction in the already stretched pool of suitable staff across the country.

**Conclusions**

347. The proposed approach is for an enabling provision that will allow the making of regulations which set out the process for registering a party as an alternative consent authority to provide resource consent services. Given the proposal is for an enabling provision only, and the extent to which it will be used and the consequential behaviour of existing consent authorities is unknown, there are gaps in our understanding of the impact of the proposal.

348. There are a number of consenting changes that came into effect on 3 March 2015 or are part of the current reform proposals that aim to provide simpler, faster and fewer resource consents. These improvements to consent processing are expected to result in increased certainty and better customer service for applicants. The aims of these overlap with the aims of the enabling provision for alternative consent authorities. The table below sets out the changes and which aspects of the identified problem they will address.

| **Area of reform (RMAA 13 or current proposal)** | **Issue it will address** |
|---|---|

| | |
|---|---|
| Six month process for notified applications | • A lack of co-ordination within councils<br>• Risk-averse decision-making by councils<br>• Inconsistency across districts and regions |
| Removal of need for consent for minor activities and those with written approval | • Lack of capacity of Council planners<br>• Inconsistency across districts and regions |
| Fewer time exclusions in the consent process | • Inconsistency across districts and regions<br>• Manual systems that are inefficient and increase costs for applicants |
| Clearer and stricter information requirements at lodgement | • Risk-averse decision-making by councils<br>• Inconsistency across districts and regions |
| Ability to fix fees on some types of applications | • Inconsistency across districts and regions<br>• Manual systems that are inefficient and increase costs for applicants |
| • Reduced scope for third party involvement in certain applications<br>• Removal of submitter appeal rights for certain applications<br>• Introduction of criteria to be met by submissions and evidence | • Risk-averse decision-making by councils |

349. The enabling provisions themselves are unlikely to result in significant changes in council performance in resource consent processing. The extent to which the introduction of alternative consent authorities influences council consent processing will depend on a number of currently unknown factors, including:

- the quantum and calibre of applicants seeking registration as alternative consent authorities;
- the level of fees alternative consent authorities will need to charge to operate profitably (and consequently consent applicant's enthusiasm for using their services); and
- whether councils will be concerned by the introduction of alternative consent authorities in a way that results in changes of practice or performance.

350. Capital costs for the establishment of the infrastructure required for alternative consent authorities (for the registration and information sharing processes for example) are likely to be high and borne by central government.

### *3.8 Improve management of risks from natural hazards in decision-making on subdivision applications*

**Problem**

351. Currently, when considering applications for subdivision consents under section 106 (which specifies circumstances under which consents can be refused or conditions placed) decision-makers can consider a limited list of natural hazards but not all natural hazards that may affect the potential subdivision.

352. In addition, section 106 is worded in such a way that a risk management approach does not have to be taken. In particular, some court decisions have excluded low-likelihood and high-consequence hazards from being considered.

**Proposal**

353. The proposal is to amend sections 106 and 220 of the RMA to enable decision-makers to decline or place conditions on subdivision consents where there are significant risks from natural hazards. The sections which specify the circumstances in which a consent authority may refuse subdivision consent, and the conditions on which a subdivision consent may be granted (sections 106 and 220 respectively) will be amended to introduce a risk-based approach to subdivision consent decision-making and ensure all natural hazards are considered (rather than a limited list of hazards that currently exists).

**Alternative options**

354. No alternatives were considered for this proposal.

**Conclusion**

355. The proposal is the preferred option to address the problem outlined. It is supported by the proposal to include "the management of significant risks from natural hazards" as a general consideration under Part 2 of the RMA (P 1.4).

356. This proposal would improve the management approach by mandating risk management as well as include all natural hazards, and would contribute to achieving the outcome of ensuring accountabilities are clear in managing these risks.

# 4 Appeals and Courts

**Introduction**

357. Making decisions on plans and resource consents under the RMA is usually the responsibility of local authorities unless matters are referred to the Minister for the Environment or Minister of Conservation. In certain circumstances, applicants can request a hearing by an independent commissioner rather than the local authority.

358. If an applicant disagrees with a decision made by a local authority, they can either make a formal objection to the decision, or lodge an appeal.

359. When a decision is appealed, the appeal is heard and decided on by the Environment Court.

360. In addition to hearing appeals, the Environment Court can receive direct referrals if the applicant requests this and the local authority agrees. This can also happen if the Minister for the Environment decides that the application concerns a proposal of national significance, and refers it directly to the Court.

**List of proposals**

361. Reform proposals covered under the appeals and courts section include:

- Enable objections to be heard by an independent commissioner (P 4.1)
- Improve Environment Court processes to support efficient and speedy resolution of appeals (P 4.2)
- Enable the Environment Court to allow councils to acquire land where planning provisions have rendered land incapable of reasonable use and placed an unfair and unreasonable burden on the landowner (P 4.3).

### *4.1 Enable objections to be heard by an independent commissioner*

**Problem**

362. Currently, applicants and submitters can request that notified resource consent applications are heard by an independent hearings commissioner instead of the consent authority. However, parties do not have the ability to request an independent decision-maker for objections to decisions (under sections 357-357D) – so objections to the council's decisions are heard by councillors by default.

363. There is a risk of actual or perceived bias if a council is considering an objection relating to one of its own decisions or a decision that one of its officers has made.

**Proposal**

364. The proposal will enable the following objections to be considered by an independent hearings commissioner instead of by the consent authority:

- an objection made if an officer of the consent authority refuses to grant a resource consent (sections 104B and 104C)
- an objection regarding a decision on an application for a change or cancellation of a condition of a resource consent (section 127)
- an objection regarding a decision on a review of the conditions of a resource consent (sections 128 to 132)
- an objection regarding a decision on an application to vary or cancel a condition specified in a consent notice (section 221).

365. Hearings commissioners would be provided with the power to call for further evidence, beyond the reports received from a hearing and pre-hearing meeting, if it will help them to make a decision on the objection. Costs for this process would be charged to the applicant.

366. Benefits will fall on the applicant, who will be able to request that their objection be heard by an independent commissioner. It is assumed that this process will be more cost-effective than lodging an appeal to the Environment Court for those occasions when the applicant is seeking decision-making independent of the council.

367. This proposal has few risks. It is requested by the applicant and cost recovered by the council

368. According to the 2012/13 RMA Survey of Local Authorities, there were 317 objections and 239 appeals in 2012/13 resulting from over 340,000 consent decisions. Objections and appeals decreased by one third compared with 2010/11 but we do not know whether this represents a long-term declining trend. However these numbers are not huge and thus the contribution of this reform to the net benefit of the package of consenting reforms is likely to be small.

**Alternatives**

*Low cost tribunal*

369. A discussion document released by the Ministry for the Environment – *Improving our Resource Management system* – released in February 2013, contained a proposal for a 'low cost tribunal' as a way of addressing the policy problems stated above. The new tribunal was intended to be accessible at low cost and would have covered all aspects of the consenting process, including pre-application engagement. The tribunal was to hear appeals on proposals up to a certain scale and was intended to deliver decisions more swiftly than the Environment Court.

370. The proposal was not supported by submitters, who were concerned that a new process would make the system more complicated to navigate, and who pointed out that mediation already provided a low cost process to deal with less complex issues. In response to this feedback, the Ministry developed the current proposal.

**Conclusions**

371. The option initially preferred was the low cost tribunal as proposed in the 2013 consultation document. This was dismissed for the reasons outlined above. The current proposal was

developed to address the issues raised in the submissions, along with the package of proposals offering more flexibility for the operation of the Environment Court (P 4.2) by extending the powers of judges and commissioners sitting alone. These options do not require the development of a new body, and so are considered to avoid some of the risks of overcomplicating the system that were raised by submitters while still providing efficiency gains and removing the perceived bias.

372. This proposal will provide an alternative option for objection proceedings, which will contribute to the increased flexibility and adaptability of processes and decision-makers.

### *4.2 Improve Environment Court processes to support efficient and speedy resolution of appeals*

**Problem**

373. Environment Court appeals can be made on any issues related to an application. Case management processes are often necessary to focus on the key issues that are in dispute.

374. Due to the restrictions on the range of orders Environmental Judges and Environmental Commissioners sitting alone can make, relatively uncomplicated issues are often heard by a full environmental quorum. This places a large burden on the Court's resources.

375. Judicial conferencing (JC) and alternative dispute resolution (ADR) are effective processes in most appeals to resolve matters before the court or narrow issues in contention. These are not as widely used as they could be as the Environment Court lacks the ability to require a party to attend ADR.

376. Currently, the Environment Court has the power to waive fees. However, neither the RMA, nor the Resource Management (Forms, Fees, and Procedure) Regulations 2009 contain specific fee waiver criteria or the way in which court fees are to be postponed, reduced or refunded.

**Proposal**

377. The proposal will support efficient and speedy resolution of appeals through a package of process changes as it will:

- limit the scope of appeals to matters raised in the appellant's submission
- strengthen the Environment Court's powers to require ADR where appropriate to either come to full resolution or narrow issues in contention before a Court hearing by:
    - making it mandatory for an Environment Judge, as soon as practicable, to consider whether to convene a conference (this decision would be made by the Environment Judge)
    - making it compulsory for all parties in any proceedings to attend an ADR session unless the Environment Court judge agrees otherwise
    - requiring that, when a representative attends on behalf of a party required to attend, the representative must have delegated authority to make decisions on their behalf.
- provide greater flexibility in the use of Environment Court decision-makers by enabling Judges and Commissioners sitting alone to make a wider range of orders:
    - the Principal Environment Court Judge will have the ability to delegate the powers of the Environment Court to an Environment Judge sitting alone
    - the Principal Environment Court Judge or the presiding Environment Judges will have the ability to delegate any powers of an Environment Court Judge under section 279(1)-(4) to an Environment Commissioner. Powers can only be delegated after a conference has been held where an Environment Judge has determined that is it appropriate for an Environment Commissioner sitting alone to exercise those powers. The Environment Judge may provide any terms and conditions to the exercising of the powers as they see fit.
- add a requirement that the Environment Court, when determining an appeal relating to a decision on a consent application, must have particular regard to the consent authority's decision and the outcome of any pre-hearing meetings
- enable fees to be waived by broadening the scope of the section 360 regulations relating to the Environment Court to enable the provision of waiver criteria for the Environment Court registrar to waive, reduce or postpone fees.

**Alternative options**

378. No alternatives to these proposed options were considered. The proposals are drawn in part from discussion of the issues by the Environment Court in the Environment Court Annual Review by Members of the Court 2014, and partly from the Productivity Commission's 2013 Report *Towards Better Local Regulation*. Although the status quo does not create any major problems, the proposals are likely to improve the efficiency of Court processes by reinforcing the existing case management practices that are working well when they are applied with the agreement of all the parties.

**Conclusions**

379. The proposals will:

- reinforce the Environment Court's current case management and ADR processes
- provide a further ability for the Court to require parties to focus on the key issues in an appeal and to explore potential settlement options
- more effectively deploy judicial resource in a proportionate way.

380. These changes will enhance the Environment Court's ability to address appeals in a proportionate, timely and cost effective manner, and will therefore contribute to the outcome of increased flexibility and adaptability of Court processes and decision-makers.

### *4.3 Enable the Environment Court to allow councils to acquire land where planning provisions have rendered land incapable of reasonable use and placed an unfair and unreasonable burden on the landowner*

**Problem**

381. Under the RMA, there is limited legislated redress or remedy available for landowners whose use and development of their property is unduly restricted by local government regulations.

382. Section 85 of the RMA currently enables the Environment Court to require a council to modify, delete or replace a plan provision if that provision renders land incapable of reasonable use and places an unfair or unreasonable burden on a person who has an interest in that land.

383. The existing process lacks flexibility to deal with situations where there is significant public interest in retaining a provision for purpose of the RMA, if that provision renders private land unusable. In some cases, a better outcome may be achieved if the particular plan provision was retained (eg, stringent provisions to protect significant heritage features), and the land was acquired by the council, allowing the person whose interest was affected to acquire interest in a place where that restriction does not apply.

**Proposal**

384. The proposal is to add a new remedy into section 85 of the RMA for landowners whose land is subject to a planning provision that:

- renders their land incapable of reasonable use
- places an unfair and unreasonable burden on them.

385. The proposal will enable the Environment Court on application or appeal by the affected landowner to give the council an alternative option to acquire all or part of the relevant land or interest in it under the Public Works Act 1991. The council will be able choose which remedy to use, however it could only acquire land or an interest in land with the consent of the owner.

386. The new remedy will be available to persons who owned land when a proposed provision affecting that land was publicly notified or otherwise included in the relevant plan and the plan restriction remained in substantially the same form (if the Court ultimately decides that provision meets the threshold and the council wishes to acquire the land). If a person purchases land after a proposed provision has been publicly notified or otherwise included in the relevant plan and the plan restriction remained in substantially the same form, that person will not be eligible for the new remedy but can still seek a change or removal to that provision.

387. The proposal is considered to meet the three objectives of:

- incentivising councils to consider the direct costs of a proposed plan provision on landowners
- providing councils and landowners with a wider range of options of redress in cases where the use and development is unreasonably restricted; and
- incentivising more proactive council engagement with landowners in developing plan provisions to minimise the risk of increases in litigation in the Environment Court in the medium to long term.

388. The impact of this proposal is likely to be quite limited. Section 85 has been used to challenge plan provisions in a very small number of cases (15 between the years of 1991 and 2013). Only three of these were successful. As the proposal does not change the stringency of the test, situations in which councils find themselves able to choose acquire relevant land would occur very infrequently.

389. The scale and potential significance of the impacts of this proposal is unknown in the absence of consultation.

390. The Courts have interpreted section 85 to allow persons to challenge a provision by applying directly to the Court. Persons may also challenge a provision by way of making a submission or applying for a private plan change to the relevant council. The proposal does not change the procedural aspects of challenging a provision under section 85, aside from updating to provide for the new collaborative and streamlined planning processes.

**Alternatives**

<u>Alternative options to proposal for new remedy</u>

*Environment Court can order compensation*

391. This option would enable the Environment Court to order compensation to be paid by councils to landowners whose property has been rendered incapable of reasonable use, or whose ability to use and develop their property has been unreasonably restricted. This option carries a fiscal risk which is difficult to quantify but could be significant.

*Introduce a less stringent test*

392. This option would introduce a less stringent legal test for a successful challenge by a landowner under s 85. This option could be combined with either:

    - enabling land acquisition as a remedy as per the primary proposal
    - enabling a compensation order as per the alternative above
    - no change to the remedy available if the test is passed

393. This group of options would mean a significant increase in the number of cases brought to the Environment Court under section 85. The council will have the double cost of the increasing burden of litigation along with the costs of whichever of the three remedies was decided on, because it lowers the threshold for successful application under section 85.This is likely to impose more cost on the council, as each of the possible remedies have fiscal implications.

394. Overall, it is not considered appropriate to change the legal threshold for a successful application under section 85. Although there have only been three successful applications in the past 22 years, we consider that this is consistent with the fact that this is a last resort remedy for landowners whose rights of use and development of land have been imposed upon by a plan provision.

*Non-legislative option: develop funds for local authorities to allocate grants.*

395. Local authorities could develop funds to use for allocating grants to private property owners whose ability to use and develop their land is restricted by a plan provision. A non-legislative funding option has the potential to provide alternative redress for councils and landowners. However, there are significant risks and uncertainties around this option. It is unlikely to create a direct cost incentive for councils to consider private property rights when making resource management plan provisions unless they provided a significant portion of the funding involved. This option would require significant further research to be done to assess its workability.

**Conclusion**

396. This proposal is linked to a proposed amendment to Part 3 that requires decision-makers to ensure that any restrictions on the use of land are only made as far as is reasonably required to achieve the purpose of the Act (P 1.6).

397. A low risk approach of monitoring the status quo was initially recommended. The current proposal is preferred out of the legislative options available, and is the only option considered to have the potential to meet all three of the criteria for achieving the policy objectives. As outlined above, the proposals which involve lowering the threshold of the legal test in s 85 are considered too high risk.

398. As stated above, the overall impacts of this proposal are likely to be minor, given the existing threshold test for the Court to ultimately make a direction will be maintained.

399. This proposal goes towards achieving the objective of increased flexibility and adaptability of processes and decision-makers and focussing engagement on upfront planning decisions.

# 5 Process alignment

**Introduction**

400. The RMA is New Zealand's primary planning and resource management law. In both of these areas, however, the RMA interacts with multiple other statutes.

401. Over the years, the Ministry has undertaken many analyses of the potential overlaps between the RMA and other statutes. While not all overlaps or duplications are undesirable, in some cases changes to the legislation have been made to improve alignment and to provide greater efficiencies where a particular activity triggers more than one piece of legislation.

**List of proposals**

402. Reform proposals covered under the process alignment section include:

- Provide for joint resource consent and recreation reserve exchange processes under the RMA and the Reserves Act 1977 (P 5.1)
- Align the notified concessions process under the Conservation Act 1987 with notified resource consents under the RMA (P 5.2).

### *5.1 Provide for joint resource consent and recreation reserve exchange processes under the RMA and the Reserves Act 1977*

**Problem**

403. A proposal for developing an urban area can often involve plan changes and resource consents as well as exchanges of reserves. However the process for exchanging reserves under the Reserves Act is not aligned with the RMA. This can result in prolonged decision-making processes, unnecessary costs to developers and local authorities, and duplication of evidence heard. Having two separate processes for issues that are part of the same proposal also leads to ineffective and inefficient community engagement and consultation.

404. Typically, the approval process under each Act is carried out sequentially rather than at the same time (concurrently), prolonging development approvals. Since the decisions are interdependent, it also creates a risk for the applicant of losing time and money if the second approval is not granted. The sequential process can also discourage submitters from engaging with a project earlier because the legislation they are concerned about is not being decided on until a later date. The impacts of a sequential process include increasing land holding costs for developers. The government and community's time and resources are also used inefficiently, resulting in a frustrating engagement process. The interdependency of decisions under each regime makes a case for considering the impacts at the same time.

405. It is not known how many resource consents/plan changes are impacted by the reserve exchange or revocation processes as some reserve decisions are delegated to local authorities. The remainder are forwarded to the Minister of Conservation for final approval. However, discussions with councils suggest that the region most affected by these processes is Auckland. According to the Auckland Council, reserve exchanges or revocation processes can take three to six months, depending on the scale of the project. Resource consents and plan changes can take longer, which means it can take up to one year or more to get approval under both regimes. Auckland Council believes if the processes were combined, it could cut processing times down by half.

**Proposal**

406. The proposal is to amend the RMA and the Reserves Act to enable an optional joint process of public notification, hearings and decisions for proposals that involve publicly notified plan changes/resource consents and recreation reserve exchanges.

407. This process will only be able to be accessed where the local authority making a decision on the plan change/resource consent application is also the administering body for the recreation reserve exchange. This optional joint process will be available upon request by the applicant and if considered appropriate by the relevant local authority. The local authority will also have the option of delegating decision-making under the joint process to a hearing commissioner(s). The process would remove the statutory responsibility of the Minister of Conservation to authorise exchanges of recreation reserves in the circumstance when a joint process is followed.

408. This proposal would reduce costs, provide faster decisions and enable a more efficient process for proposals that involve plan changes/resource consents and reserve exchanges. This process would be particularly beneficial in facilitating urban redevelopment projects, as it enables one integrated public consultation process and ensures optimal urban design outcomes.

409. In practise, a joint hearing process may be difficult to implement. Having one hearing for two decisions to meet different purposes would be more difficult for decision-makers and increase the risk of legal challenge. Even where there is only one decision maker, there are still two separate matters to be considered and two decisions to make under separate Acts. As the joint process has not yet been widely tested, apart from some general discussions with Auckland Council, some developers and councils may still prefer to conduct these processes sequentially. These risks could be mitigated by developing clear criteria and standards to ensure that distinction is made between the two decisions in a joint hearing process. The

voluntary joint process option also would be crafted to allow a joint notification and a separate hearing process only if the local authority deems it appropriate.

**Alternative options**

*Amend the Reserves Act and RMA to require a mandatory joint process*

410. This option would make it mandatory for all applicants and local government to undertake a joint process (where applicable). The main difference between this option and the proposal (above) is that inconsistent implementation would not be an issue because all applicants and local authorities would be required to undertake a joint process.

411. However, a mandatory joint process may not achieve the expected efficiencies and would lock applicants and local authorities into a process that may not be desirable. It can also increase legal risk if particular projects would be best completed in a separate process. Further tests and evidence from other local authorities and development applicants is needed to ensure the expected efficiencies and reduced legal risks will be achieved under a mandatory joint process.

412. Further evidence and testing would be needed to ensure this option would deliver the expected efficiencies. An optional joint process would be a safer option as it could test the risks and efficiencies before making it mandatory.

*Encourage a voluntary concurrent (rather than sequential) notification and hearing process*

413. It is important to note that there is nothing in either Act that limits running the processes concurrently. It appears that applicants will usually seek approval for the more difficult application first (typically the resource consent/plan change) before spending more time and money on the other approval. Under this option, local authorities would coordinate a concurrent process so that the notification and hearings for the reserve exchange/revocation occur within the same timeframe as the resource consent/plan change process.

414. A concurrent process is possible as the notification period between these two Acts are already similar with the RMA requiring 20 days and the Reserves Act requiring one month. However, it still involves sending two separate notifications on the same date, and holding two separate hearings during the same week, month, or day. No legislative change is required to undertake this option, but central government would need to provide national guidance or standard operating procedures on how councils can establish a concurrent process.

415. The main risk of this option is relying on local government to establish a process which may not be a priority for them, or they may not have the capacity to develop the process fast enough to address national problems, such as providing more housing. This would be mitigated by providing non-statutory guidance. Applicants may not want to engage in this process as they would still have to spend the same amount of time and costs on two separate notifications and hearings concurrently. Thus, if the more difficult application is not approved, then they have unnecessarily spent time and money on the other application.

416. Following a concurrent process would provide process simplicity for the applicant, and save on time and costs. However, the gains are likely to be marginal as it would still involve two separate processes for notifications and hearings.

**Conclusions**

417. While we consider the optional joint process to be the best option to address the specific issue of developing an urban area which involves plan changes and resource consents as well as exchanges of reserves, resolving the issues between the RMA and the Reserves Act is likely to make only marginal gains in processing efficiency and expediting development. It does not address the broader problem that development applicants are often required to submit different applications under multiple Acts (including the LGA and LTMA) for the same proposal (often with similar information requirements). However, this is a complex issue that cannot be adequately addressed through the current reform package. Further investigation is needed to assess whether there is potential for better alignment of resource management legislation after the Resource Management Reform has been implemented.

418. This proposal goes towards achieving the objective of reducing duplication within the resource management system for some proposals that require permissions under two different Acts.

### *5.2 Align the notified concessions process under the Conservation Act 1987 with notified resource consents under the RMA*

**Problem**

419. Approximately 5% of concession applications received by DOC also require resource consents. The total is highly variable from year to year, but amounts to roughly 25 applications per annum. While, in general, requiring two approvals does not appear problematic, targeted consultation by DOC with applicants, iwi, and representatives from central and local government has indicated that there may be issues related to the lack of alignment between the RMA consent process and the concessions process.

420. Key concerns include having to apply to two different organisations for the same proposal, providing similar information to two different organisations, dealing with differences in notification timing and other process timeframes, and the need for two hearing processes. This can lead to increased costs, delays, and duplication for large-scale or complex applications that require notification of both concession and consent.

**Proposal**

421. Currently, the concession and consent processes differ in a number of ways. Examples are provided in the table below.

| | **Conservation Act** | **RMA** |
|---|---|---|
| Criteria for notification | All concession leases, and licences over 10 years must be notified, and any concession may be notified if the effects of it make that step appropriate | Plan provisions under RMA are both highly relevant and highly variable |
| When the decision to notify is made | No statutory requirement for a concession application | Within 10 working days of application |
| The possible scope of notification | National notification unless the activity is only of local interest | Notification if the activity will have or is likely to adverse effects on the environment that are more than minor, the applicant request it, or a rule or national environmental standard requires it |
| What is notified | A proposed decision (if there is an intention to grant) | The consent application |
| Submission time period | 40 days | 20 days |

422. Greater alignment of the concession and resource consent processes would provide for more synchronisation at key stages such as lodgement, notification, and submissions. The proposed changes to the Conservation Act are outlined below.

*Require public notification for all notified concession applications*

423. An application under the Conservation Act is not notified until DOC has assessed, considered and come to a preliminary decision to grant the concession. The application itself, and the report with the decision-maker's preliminary decision, is notified with it. Therefore, if the preliminary decision is to decline, then notification is not required.

424. An amendment to the Conservation Act would align it with the notification provisions in the RMA. This would enable the public notification of all notifiable concession applications, not just those that the Minister 'intends to grant'. This would remove the preliminary decision stage of the concession application process, and the only decision would be after the public submissions have been considered. The advantage of such a change would be in ensuring that the Minister was fully informed of the concerns of stakeholders.

425. This change could lead to slightly longer timeframes before final decisions on applications. However, this risk is somewhat mitigated by the proposal to shorten the public submission period (outlined below).

*Shorten the public submission period for concession applications*

426. The public submission period for a concession application is 40 working days, compared with 20 working days for resource consents under the RMA.

427. Given that 20 working days is considered acceptable for the resource consent submission period, and that the nature and scale of information required for resource consent and concession submissions on the same activity are similar, we recommend amending the Conservation Act to provide for a 20 working day period for submissions on concession applications. This would bring this provision in line with the RMA and reduce costs and delays.

*Require the receipt of a compliant concession application before it is accepted*

428. Under the RMA an application is judged as complete before it is accepted and processing begins. There is uncertainty in the Conservation Act as to when an application is "complete" and when the processing starts.

429. An amendment to the Conservation Act would require a concession application to be judged compliant before the application is accepted and processing starts. This would require an assessment of whether a concession application complies with specified requirements to be made within ten working days of receipt. An application is considered complete after it has been publicly notified and any additional material provided. The Minister then considers it.

430. The above changes to the Conservation Act would bring concessions processes and timeframes more in line with resource consent processes.

431. This proposal was developed as part of DOC's 2010 Concessions Processing Review, and was widely consulted on at that time. The changes would benefit applicants who need to apply for both a resource consent and a concession. By providing a consistent approach, applicants will have more certainty around the two processes. In addition, it will enable an applicant to undertake the processes concurrently.

**Alternative options**

*Optional joint process for notified and nationally significant proposals requiring both a concession and resource consent*

432. Another option is to introduce an optional joint process for notified and nationally significant proposals. Under this option:

- Applicants apply directly to the EPA for both the concessions and the resource consents required. The proposal is assessed under the national significance factors set out in section 142 of the RMA.
- For nationally significant proposals, the approval of both the Minister for the Environment and the Minister of Conservation would be required to determine that a proposal was of national significance and the applications should be referred to a BOI. For applications that require notification under both Acts but do not meet the national significance factors set out in section 142 of the RMA, an independent commissioner or EPA itself would be appointed to hear applications.
- The role of the decision-maker would be to hear both applications. The EPA would commission a report from DOC about the statutory tests applicable to the concession application and a recommendation on how DOC considers the matter should be determined.
- It would also require a report from the council on the resource consent with a recommendation on how the council considers the matter should be determined. DOC would also be able to make a submission to the decision-maker regarding the resource consent in the normal manner.
- The decision-maker would make two separate decisions, based on the different decision-making criteria as set out in the RMA and Conservation Act, on the resource consent

application and concession application. This decision would be appealable on points of law to the High Court.

433. While this option could save time and costs for applicants by enabling the amalgamation of two separate notification, hearings and submissions processes, there are significant Treaty implications with this proposal. Legislative responsibilities to iwi differ significantly between the Conservation Act and the RMA. Iwi can be expected to look closely at this process to ensure their role, and the weight provided to the Treaty in the Conservation Act, is not diminished.

434. There is also a risk that this option would pose serious practical difficulties for the BOI or commissioner. The BOI or commissioner would need to apply two different sets of legal tests relating to the different legislation. It is possible that the task of mentally separating out the evidence and applying the different tests may be unrealistic in practice and that the BOI or commissioner would resort to requiring two different briefs of evidence addressing the different tests, and hearing them separately. In other words, the BOI or commissioner would need to hear the evidence on the concession and the consent consecutively rather than concurrently and effectively hold two hearings. The time and cost of developing and implementing this option may therefore outweigh the benefits (particularly given the small number of applications that would be eligible for the joint process).

**Conclusions**

435. The proposed changes to the Conservation Act will bring concessions processes and timeframes in line with resource consent processes. The impacts of this proposal are relevantly minor due to the small amount of applications each year requiring both concession and resource consent. However, this proposal does go some way in aligning processing timeframes across different pieces of resource legislation.

# 6 Process improvement

## Introduction

436. The proposals in this section do not relate to a particular part of the RM system, as in other sections. Some proposals apply to all decision-makers under the Act, whereas others apply to specific decision-making bodies such as councils, Boards of Inquiry or the Environmental Protection Authority (EPA).

## List of proposals

437. Reform proposals covered under the process improvement section include:

- New procedural requirements for decision-makers (P 6.1)
- Streamlined and electronic public notification requirements (P 6.2)
- Enhanced council monitoring requirements (P 6.3)
- Reduce Board of Inquiry cost and complexity (P 6.4)
- Enable the EPA to support decision-making processes (P 6.5)
- Simplify charging regimes for new developments by removing financial contributions (P 6.6).
- Remove the ability for Heritage Protection Authorities that are bodies corporate to give notice of a heritage protection order (HPO) over private land and allow for Ministerial transfer of HPOS (P 6.7)

### *6.1 New procedural requirements for decision-makers*

**Problem**

438. Applicants wishing to undertake activities under the RMA are often subject to requirements and processes that are disproportionately costly, time-consuming, and uncertain.

**Proposal**

439. In 2013, Cabinet agreed to insert new procedural matters (ie proposed section 7B) into Part 2 (Purpose and Principles) of the RMA, requiring decision-makers to endeavour to apply a range of process matters in decision-making.

440. This proposal is a revised version of the 2013 proposal. It requires decision-makers to:

- use timely, efficient, consistent, cost-effective, and proportional processes
- ensure that policy statements and plans only include matters relevant to the purpose of the RMA and use clear and concise language
- promote collaboration between or among local authorities on common resource management issues.

441. It also removes the words "must to endeavour to", replacing it with a more prescriptive "must", which would require all decision-makers exercising functions and powers to ensure that the above criteria are met. However, there is a risk that the unintended consequence of using "must" is a likely increase in challenge and litigation, on the basis that decision-makers have not met the criteria set out in that section when exercising functions and powers. This would have the perverse effect of increasing cost and uncertainty of processes, rather than promoting procedural efficiency. This could be particularly problematic where powers and functions are exercised which do not relate to policy statements/plans or collaboration between local authorities (eg, local authority notification of resource consent applications, the Environmental Court in making decisions on appeals, Minister for the Environment's function of appointing boards of inquiry).

442. Feedback from the 2013 discussion document and consultation with Government agencies was that the proposed section was not considered appropriate for inclusion in Part 2 (Purpose and principles) of the RMA. The proposed section has now been re-positioned into Part 3, where it is a better drafting fit.

**Alternative options**

*Less prescriptive procedural requirements*

443. An alternative to the proposal is to use less prescriptive wording for the new procedural requirements, for example, reverting back to the original 2013 proposals “must endeavour to”. This would still achieve the policy intent of the new section when combined with other parts of the reform package (eg, national template, new planning tracks, and changes to consenting and appeals) while precluding new grounds for appeal and judicial review.

444. Another alternative is to add qualifiers such as “must take all practicable steps to” or “must take all reasonable steps to”. These qualifiers still provide openings for challenge (eg, what is "practicable" or "reasonable") but may reduce the litigation risk from "must" which does not contain such qualifiers and would therefore be required to be achieved in all circumstances. However, these qualifiers would achieve the purpose of imposing a tighter requirement on councils than "must endeavour to".

**Conclusions**

445. The proposed addition would make accountabilities clear for decision-makers in ensuring that the costs of implementing RMA processes are minimised.

### *6.2 Streamlined and electronic public notification requirements*

**Problem**

446. There have been significant advances in technology since the RMA was introduced in 1991. The RMA needs to be agile and able to make use of these advancements to ensure resource management processes are as efficient as possible. At present, the means by which councils service documents for resource management processes (in newspapers and via hard copy post) are not aligned with emerging technology trends.

447. It is also important to ensure resource management processes create the right outcomes for the community and the environment, while being clear and easy to navigate. At present there is variability in the size, style and content of public notices. These factors can lead to the general public becoming disengaged from processes that affect them. This can also lead to unnecessary process costs and extended timeframes for applicants and councils for notified processes under the RMA.

**Proposal**

448. This proposal will encourage greater electronic servicing of documents by requiring that:

- all councils place key resource management content online, including public notices, resource management plans, plan changes and all publicly notified applications
- all public notices are published as short summaries with details of the internet site where the full notice, the application, and any further information can be accessed online
- all public notices are written using clear, concise language
- applicants and submitters specify an electronic address for service to councils and that this is the default for all application correspondence
- councils only need to physically service parties with documents when an electronic address is not provided.

449. The proposed changes will:

- reduce the length of public notices and improve readability to facilitate increased public engagement
- reduce the end user advertising, printing and postage costs incurred
- encourage greater use of existing electronic platforms to increase public engagement
- provide greater flexibility in the methods by which documents are serviced under the RMA
- align RMA processes with changing social and technology preferences and wider government initiatives
- make RMA processes more resilient to recent changes in the frequency of postal delivery.

450. There are short-term low costs to central government to develop and implement this proposal through legislation, and little to no costs for the public/end user. While local government may incur medium costs to develop online tools and platforms, this proposal will lead to significant reduction in advertising, printing and postage costs in the medium to longer term. Many councils are also utilising electronic methods now and for these council there will be low to no additional costs. Public notices will be more accessible to the public, enhancing levels of public engagement with resource management processes.

**Alternative options**

*Public notices and servicing of documents fully web-based*

451. Under this option, documents would only be published online and public notices would no longer be published in newspapers, with no requirement to physically service parties with documents unless explicitly requested.

452. While this option achieves the many of the benefits and cost-savings as the proposal, there is a risk that overall public engagement in resource management processes may decrease. At this point in time, some parties may not be made aware of proposals through solely electronic means. Parties who are not able or capable of accessing the internet may feel unable to participate or miss opportunities to participate.

*Greater non-legislative guidance to improve existing methods*

453. Another option is to encourage increased use of online platforms and electronic servicing of documents through a range of non-legislative methods such as best practice guidance. This would mean councils could elect how, when and to what extent electronic delivery of information is undertaken. While the option could partially achieve the same benefits as the other options, the publishing of notices and servicing of documents would still be restricted by the existing provisions of the RMA. For example, some councils provide documents electronically and still serve physical documents. The proposal is clarifying that electronic servicing is sufficient by itself.

454. Under this option, there is a risk that current practice will not change and existing process issues will remain including the current degree of variation in the size and style of notices. Generally notices include an excessive level of detail and jargon and this can lead to undue costs and complexity.

**Conclusion**

455. The proposal outlined is the preferred option as it will provide clarity that councils are able to modify current practice to ensure electronic servicing is utilised in the first instance to create process efficiencies. While making the processes more efficient, this option also ensures there is flexibility to physically serve documents where required by the public and requires councils to modify current practice to ensure notices are published as short summaries expressed in clear, concise language. This option will help increase overall public engagement in the resource management process by:

- reducing the length of public notices and improving readability
- reducing the costs incurred from advertising, printing and postage
- facilitating greater use of existing electronic platforms to increase public engagement
- providing greater flexibility in the methods by which documents are serviced under the RMA
- making RMA processes more resilient to recent changes in the frequency of postal delivery
- aligning RMA processes with changing social and technology preferences and wider government initiatives.

456. This proposal will contribute to ensuring that the tools under the RMA are fit-for-purpose.

### *6.3 Enhanced council monitoring requirements*

**Problem**

458. Performance information for councils is currently limited, inconsistent and not widely available. Local authorities play a large role in the implementation of the RMA. Issuing resource consents, drafting and reviewing plans, controlling discharges to the environment, monitoring compliance and enforcement are examples of local authority responsibilities under the RMA. Monitoring of council performance in carrying out these functions is currently done through the National Monitoring System, and previously the Biennial Survey of Local Authorities, or ad hoc research. Although valuable information is obtained from these initiatives, it has been unclear to councils what is expected of them in terms of performing their functions under the RMA and how council performance is measured by means of the survey.

459. The RMA has now been in place for 24 years but fundamental issues around consistently implementing the RMA from council to council still remain. No framework exists to work towards aligning council objectives with the Government's strategic resource management objectives. This will eventually result in a fragmented approach to resource management that has both economic and environmental impacts.

**Proposal**

460. The proposal is to:

- clearly prescribe how local authorities monitor the efficiency and effectiveness of processes adopted in the course of exercising powers and functions under the RMA (including timeliness, costs, and customer satisfaction)
- require monitoring to be undertaken in accordance with any regulations
- enable new regulations to prescribe how councils must carry out their monitoring obligations, including what information must be collected, what methodologies must be used, and how and when the information is to be reported.

461. The intent of these changes is to ensure that councils understand that implementation of their powers and functions under the RMA should be in a way that meets the expectations of their community and central government. Requirements to monitor timeliness, costs and customer satisfaction and report on this will assist in driving continuous and incremental performance improvements.

462. The key benefit of improved performance reporting is that councils will have a clear understanding of what they are expected to achieve and how their performance will be measured. They will be able to quickly identify areas of underperformance within their regions.

463. These new monitoring proposals also enable regulations to be made to prescribe how councils undertake monitoring, including what information must be collected, what methodologies must be used and how these would be reported. This would lead to standardised information collation, facilitate council comparisons and improve the quality and consistency of information received from councils for initiatives such as the National Monitoring System.

464. Costs of implementing these monitoring requirements will be variable across councils depending on the nature of the systems that they already have in place. At this point in time, it is not possible to quantify what these costs would be. The Ministry, in defining the information required to be reported by councils will assess the ability of councils to collect information, and the effects (including costs) on councils as a result of these requirements. There will be low costs for local authorities (variable across local authorities) to implement these monitoring requirements, although there is a risk that system changes could see costs balloon.

**Alternative options**

465. No alternative options were considered for this proposal.

**Conclusions**

466. On its own, this proposal is a relatively minor initiative. However, enhanced council monitoring underpins much of the package and provides means of addressing information gaps for future use.

467. This proposal goes towards achieving the objective of ensuring that decision makers have the evidence, capability, and capacity to make high quality decisions and accountabilities are clear.

### *6.4 Reduce BOI cost and complexity*

**Problem**

468. The Board of Inquiry (BOI) process for considering Nationally Significant Proposals was significantly reformed in 2009 so that decisions would be made in a nine month time frame. However it is an expensive process, with the cost of the EPA process alone costing the applicant from one to three million dollars.

469. Currently, Boards are chaired by Judges who have high per diem costs. This provision was introduced in 2005 before the Making Good Decisions Program for training RMA commissioners existed. Notification requirements are excessive. The use of IT is not expressly allowed for, and Boards conduct their affairs without a consideration of cost-effectiveness.

**Proposal**

470. The proposal is a suite of amendments to reduce BOI cost and complexity.

471. Specifically, the following changes are proposed:

- requiring the Board to conduct its inquiry in accordance with any Terms of Reference set by the Minister
- changes to processes to simplify and reduce costs (such as the reduction of the public notice requirements and allowing for electronic provision of information)
- expanding the role of the EPA by:
    - allowing it to make decisions that reduce cost of a BOI for administrative matters that are incidental to the conduct of an inquiry – this includes fixing the place, and venue of a hearing
    - enabling it to provide planning advice if the Board requests it
    - allowing it to suspend processing where there are outstanding debts, and to debt recover
- reducing costs of the Board by making the current requirement that a BOI be chaired by a Judge optional, and including a consideration of legal expertise, experience managing cross examination within its skills and experience, and relevant technical expertise
- requiring Boards to carry out their duties in a timely and cost-effective manner and to have regard to forecasted budgets.

472. Cost reductions may be realised through lower notification costs, less contracting out for planning and technical advice, and lower per diem costs of the Board. Boards will have to balance efficient processes against the need for natural justice for inquiry participants.

473. The impacts of these proposed changes will be highest for the EPA, as they will be responsible for implementation. They will need to develop new processes for notification, making decisions on administrative matters that do not impinge on the substantial decision, recovering debt, selecting potential Board appointees. These costs are mostly upfront. There also could be longer term cost implications if EPA needs to increase its staff capacity to provide planning advice.

474. As the cost of BOI processes are fully cost recovered, process efficiencies should result in lower costs for applicants. There may be increased risk of litigation if increased emphasis on efficiency results in a fettering of natural justice and hence litigation. As a result, appeals may prolong the nine month prescribed timeframe.

475. Affected parties and submitters would be served with minimal paper and will be able to access application details online although the current dissemination channels will still be available for those who do not have access to the internet. It is noted that identifying affected parties and their contact details remains a laborious process.

**Alternative options**

476. Alternative options were considered for each amendment, including various changes in specifications for the chair of the Board, varying the specifications for composition of Board criteria and size, and changing the interface between the Board and the EPA.

477. Having the Board selected and appointed by the EPA is the most cost effective means of Board selection. Impacts are immediate, with cost savings for the applicant and time savings for the process (ie the Board will be appointed earlier).

478. The size of the Board has a direct impact on the cost of the Inquiry but the size of the Board is at the Minister's discretion. The most efficient option allows Board size to be proportional to the complexity of the application. Impacts are immediate, resulting in cost savings for the applicant. Similarly the composition of the Board should reflect the expertise required to make a decision which will vary from Board to Board rather than having regard to multiple criteria, which may not be relevant in all cases and increases search costs.

**Conclusion**

479. Boards of Inquiry make decisions on complex applications that are of high public interest and attract considerable scrutiny. They must produce a 'quality' decision within a strict timeframe but at acceptable cost. An increased emphasis on efficiency aims to achieve this.

### *6.5 Enable the EPA to support RMA decision-making processes*

**Problem**

480. The functions of the Environmental Protection Authority, as described in the EPA Act 2011, are set out either in the EA Act 2011 or six environmental acts. The Resource Management Act 1991 is one of these.

481. Recently the EPA was asked to provide secretarial and support services to the review of the Christchurch Replacement District Plan. This was required under the Christchurch Earthquake Recovery Act 2010, which is not an environmental act. It required an Order in Council for the EPA to provide these services and to cost recovery for their provision.

**Proposal**

482. The proposal is to create a legislative power through which the EPA can provide secretarial and support services to decision makers where major hearings are held. These are set up under Acts that can amend an RMA process for deciding matters, or the proposed Streamlined Planning Process (P 2.2) and would be available at the request of the Minister for the Environment.

483. Under this proposal, the EPA would cost recover from the person who would have been responsible for those costs under the relevant decision making process. This would allow the EPA to share its experience and expertise gained through running major hearings with other RMA decision makers, and is a minor and ancillary addition to its current functions.

484. The benefits achieved through this proposal outweigh the relatively low costs. The potential market could be expanded for the EPA's services, but otherwise the proposal is business as usual for the EPA. This is due to the EPA's experience in managing its resources to cope with the ebb and flow of NSP applications, and will therefore have only minor cost implications. The proposal also provides local authorities with a potential resource for conducting hearings as part of the Streamlined Planning Process (P 2.2) or under other special circumstances.

**Alternative options**

485. No feasible alternative options were identified for this proposal.

**Conclusion**

486. This proposal will contribute to the outcome of increasing adaptability of resource management decision makers by utilising the support and expertise of the EPA where this is required.

### *6.6 Simplify charging regimes for new developments by removing financial contributions*

**Problem**

487. Currently the only restrictions around the use of financial contributions under the RMA are that the purpose and level of contribution must be specified in a council plan. Both a financial contribution and development contribution (under the Local Government Act) may be charged for a single development; although they must be for different purposes. There is considerable variation and overlap between how different councils charge financial and development contributions. This has resulted in confusion and concerns about councils' charging under the two regimes; especially when contributions are charged under both regimes for the same development. To provide greater clarity on the use of development contributions, amendments were made to the Local Government Act. These came into force in August 2014, restricting the use development contributions.

488. The overlap between the two charging regimes may be confusing and could lead to perceptions of councils double charging. However, information on the size and scale of this problem is currently not available.

489. The original intent of financial contributions was to:

- provide a fair and reasonable way to finance the extension or development of bulk services or other infrastructure costs as a result of development
- provide a fair and reasonable way to ensure the adequate provision of reserves (including esplanade reserves/strips other than in relation to subdivision) to meet the community needs generated by the project
- deal with potential adverse effects on the environment that cannot be directly avoided, remedied, or mitigated. This includes ensuring positive effects to offset any adverse effect.

490. Development contributions were introduced in the 2002 Local Government Act as a regime that better met the financial management requirements that councils are required to follow. Points 1 and 2 above can be achieved through development contributions (providing appropriate polices are developed) which can be taken for reserves, network infrastructure and community infrastructure under section 199 of the Local Government Act. Development contributions can only be charged in accordance with a development contributions policy that is developed through the Annual Plan or Long Term Plan process.

**Proposal**

491. The proposal is to repeal the ability to charge a financial contribution under the RMA. It would still be possible to offset environmental effects (if volunteered by the applicant) under the RMA with conditions on consents for delivering specific environmental mitigation.

492. Restricting or removing financial contributions will make it clear that the costs of servicing new growth should be met through development contributions and make charging more certain and transparent for applicants.

493. It is expected that the removal of the ability for local authorities to charge financial contributions will result in a drop in local authority revenue of an estimated $10 million per year. Where a financial contribution is related to the provision of infrastructure or reserves, some local authorities will be able to mitigate the removal financial contributions through making greater use of development contributions under the Local Government Act 2002. The narrower scope of development contributions means that it is likely the lost revenue will not be fully offset.

494. One of the sections being repealed by this proposal is the only place in the RMA where environmental offsetting is mentioned and could lead to some confusion that the ability offset environmental effects is being removed as part of this proposal. The reforms will clarify how environmental offsetting is considered under the RMA. The removal of financial contributions will mean that environmental offsetting will only be possible on a voluntary basis. The research that MfE has undertaken around how regional councils use financial contributions found that the regional councils preferred to use conditions to avoid or manage the actual adverse effects

rather than receive money to offset the effect. The ability for voluntary environmental offsetting under the RMA is not affected by this proposal.

495. It is possible that more resource consents will be declined if an applicant does not agree to the offsetting requirements or where the offsetting offered by the applicant is insufficient to justify the consent being granted. Councils will not have the ability to impose conditions that take land or cash without the applicant's agreement. In practice, applicants sometimes agree to offsetting conditions (eg, planting, or habitat protection on another site) that are reasonable and necessary to ensure the consent is granted.

496. The RMA provides the ability for councils to require esplanade reserves, access strips and esplanade strips to, amongst other matters, enable public access to or along any sea, river, or lake. The removal of financial contributions will not affect the power ability for councils to acquire esplanade reserves, esplanade strips or access strips but may affect their ability to fund the acquisition of such instruments.

497. Unlike development contributions, the purposes for which financial contributions can be charged are not solely related to servicing growth. For example, a submission on the NES for forestry discussion document mentioned that at least one council charges financial contributions for forestry to cover the cost of maintaining the roads used by the forestry trucks. For this example, the proposal is not changing the provisions around the ability to impose works and services conditions on resource consents. Works and services conditions could be applied where there a direct relationship between the forestry vehicles and the increased maintenance required for the roads. However, it is likely to be difficult to determine the exact effect that the forestry vehicles have on roads where there are multiple road users. Under this type of scenario the full amount of the financial contribution may not able to be replaced.

498. It is recommended that the changes to financial contributions do not take effect for a period of five years. This transitional period will provide territorial authorities with an opportunity to amend or prepare their development contributions policies as part of their Long Term Plan processes. Some territorial authorities may have to prepare or amend their development contribution policy to ensure that they can still recover the costs of providing for new growth from any development that creates a demand for new infrastructure.

**Alternative options**

*Remove the ability to take financial contributions for infrastructure purposes*

499. It would be possible to restrict the use of financial contributions so that they could not be used to cover the costs of maintaining, upgrading or providing infrastructure. This option would remove some of the existing overlap between the two charging regimes. It would not completely remove the overlap or confusion around the use of financial contributions that currently exists. The ability to take land for reserves will still be possible under both regimes. Part of the current confusion stems from the variability in how the different councils use the two charging regimes and this variability is likely to continue while the both charging regimes are able to be used for the same purpose.

500. While this will assist by providing some clarity and improve the differences between the two charging regimes, it does not completely resolve the confusion and overlap between the two charging regimes.

*Limit the purpose of financial contributions to environmental offsetting*

501. Another option is to take development contributions for the offsetting of environmental effects. One consideration is therefore to retain the ability for financial contributions under the RMA as this is where there is no overlap between the two charging regimes.

502. It is considered that just limiting financial contributions to environmental offsetting will not be sufficient, as some upgrading or provision or infrastructure would be justified under a guise of offsetting environmental effects. This option may not have any significant changes in current charging practices.

*Merge financial contributions and development contributions under one Act*

503. A third option is to merge financial contributions and development contributions under one piece of legislation. However, this option is not considered appropriate due to the different purposes of the two statutes. The Local Government Act (LGA) does not seek to manage environmental effects and the purpose of development contributions in the LGA is clearly defined to cover the capital costs of servicing growth. Between 1991 and 2002 there was only the ability for councils to charge financial contributions under the RMA. Development contributions were introduced as this was not working. The requirement for a direct causal linkage on resource consent conditions can be too restrictive to fund the future growth requirements.

*Remove the ability to have a financial contribution under the RMA where there is a development contribution for the same purpose (infrastructure or facility)*

504. The final option is to remove the ability to have a financial contribution under the RMA where there is a development contribution for the same purpose. However, this option would not remove the confusion that exists between the two charging regimes and would achieve no practical purpose. Section 200 of the Local Government Act 2002 already excludes to the ability to take a development contribution to when a financial contribution has been taken for the same purpose. There would still be variation as to how different councils use the two charging regimes recover the costs of servicing growth under this option.

**Conclusions**

505. The proposal removes any confusion around the two charging regimes. It clarifies that it is the place of development contributions to recover the costs of providing the necessary infrastructure to service growth. The restrictions that exist around the use of development contributions under the LGA make it clear under what circumstances development contributions can be applied by councils. This should lead to greater consistency around how councils meet the costs of providing for growth.

506. This proposal will contribute to achieving the outcome of reduced duplication across resource management legislation.

### *6.7 Remove the ability for Heritage Protection Authorities that are bodies corporate to give notice of a heritage protection order (HPO) over private land and allow for Ministerial transfer of HPOS*

**Problem**

508. Under the RMA, body corporate Heritage Protection Authorities (HPAs) have the power to issue notices of requirement for heritage orders over private land. The primary issue with this empowerment is that it is an intrusive interference with the private property rights of others. This has been a constant concern since the enactment of the RMA in 1991.

509. HPAs under the RMA have powers to protect places or structures with special heritage qualities. Currently, an HPA can require a heritage order over a place, or structure to protect its special historical, spiritual or cultural qualities. An HPA includes any Minister of the Crown, a local authority, Heritage New Zealand Pouhere Taonga (Heritage New Zealand), and approved bodies corporate.

510. A high level of protection is afforded to heritage orders:

- Under section 193 of the RMA, no person may use or undertake works on a building or land that would nullify or partly nullify the effect of the heritage order without the prior written consent of the HPA. This is extended to the owners of land under which heritage orders have been put in place.
- Under section 195 of the RMA, a heritage order can only be revoked or amended by the HPA that is responsible for it.

511. The use of heritage orders by bodies corporate may have an intrusive regulatory impact on private land. There have been long standing concerns about how heritage orders work in practice in terms of bodies corporate. In 1999, the Environment Court commented that "the Act is curiously silent as to how an order might actually work in practice bearing in mind that the heritage protection authority would not normally be the owner of the land."[10]

512. The amendments proposed may impact directly on HPAs who currently have a heritage order and on body corporate HPAs who intend to obtain a heritage order over private land in the future.

**Proposal**

513. The proposal is to amend section 189 of the RMA to state that an HPA that is a body corporate may not give notice for a heritage order over private land. Therefore, HPAs that are bodies corporate will no longer be able to regulate private land through heritage orders. However, bodies corporate would still be able to seek HPA status and obtain heritage orders over public land.

514. Transfer provisions will be included to give the Minister for the Environment the ability to transfer responsibility for a heritage order from an HPA to another HPA that is not a body corporate. The transfer provision will allow the Minister for the Environment to transfer responsibility of a heritage order without revoking the HPA's status, removing heritage orders or introducing retrospective legislation. However, although this process could remove a heritage order responsibility from an HPA to Heritage New Zealand, a local authority or Minister for the Environment, the HPA could continue to operate as a 'guardian' of a heritage place, without regulatory powers.

515. This proposal would fulfil the objective of reducing undue interference on private property rights while retaining the ability of bodies corporate to seek HPA status, obtain heritage orders over public land and continue to act as 'guardians' of a heritage place where the responsibility for a heritage order has been transferred to another HPA. This means that the community and community groups can still participate in heritage protections. It will, however, remove the ability of the community and Māori to participate in heritage protection on private land. There

[10] *Catholic Archdiocese of Wellington v Friends of Mount Street Cemetery Inc,* C125/99, at [11].

will be some remaining uncertainty around protection of buildings and sites with high heritage value on private land.

516. Bodies corporate who currently have a heritage order over private land are likely to be concerned about proposed powers to transfer existing heritage orders to public agencies. This risk can be mitigated by including a requirement to consider the views of existing HPAs and any other relevant matter when exercising a decision to transfer existing HPA powers.

**Alternative options**

*Amend section 198 of the RMA to give landowners the ability to seek a Court order that their land is purchased by the HPA, or the heritage order withdrawn where a change in circumstances has rendered the land incapable of reasonable use*

517. This proposal would meet the objective of limiting the intrusive regulatory interference of body corporate HPAs on private property rights by providing relief to landowners, in situations where circumstances have changed rendering the land incapable of reasonable use. However, private property rights would still be impinged upon as landowners would still require the consent of the HPA to modify the land. The proposal would also involve ongoing litigation, and uncertainty around the protection of buildings and sites with high heritage value. It would also have limited practical effect because of the small number of HPAs that exist now, and would not prevent other bodies corporate seeking HPA status in the future and giving notices of requirement for heritage orders over private land.

*Remove ability for a body corporate to become an HPA and revoke HPA status of body corporate HPAs under section 188(6) of the RMA*

518. This proposal would meet the objective of eliminating regulatory interference into private property rights. Downsides of the proposal include that there would be no ability for the community groups to participate in heritage protection on both private and public land, which might also create resourcing issues for local authorities, the Minister and Heritage New Zealand. Arguments around whether a body corporate HPA is failing to meet one or both limbs of the section 188(6) tests may also not be sufficiently strong to justify revoking HPA status. Additional concerns include the risk of judicial review in the High Court, and the fact that the proposal retrospectively changes the status of existing body corporate HPAs.

*Remove all heritage orders*

519. This proposal meets the objective of eliminating the regulatory interference on private property rights. However, it is not a proportionate way to address the problem as it leaves no effective alternative mechanism for protecting heritage sites or buildings, as the district plan process of registering heritage orders can take a long time.

*Amend the RMA so an HPA that is a body corporate may not give notice for a heritage order over private land and include a new transfer provision in the RMA which explicitly gives the Minister the ability to transfer responsibility for a heritage order to an HPA that is not a body corporate*

520. This option also meets the objective of reducing undue interference on private property rights. It means that bodies corporate retain the ability to seek HPA status, and to obtain heritage over public land, meaning that the community can participate in heritage protection on public land. The transfer powers included in the proposal allow HPAs to continue to operate as ‘guardians’ where their heritage order has been transferred to a public entity and serve to retain certainty for the protection of buildings and sites with high heritage value. Disadvantages of the proposal include that there is no ability for the community and Māori to participate in heritage protection on private land, and consequently there is some uncertainty around protection of buildings and sites with high heritage value on private land.

**Conclusions**

521. The proposal outlined above is the preferred option for solving the problem described. The primary reasons for amending section 189 are that:

- it removes the ability of a body corporate HPA to regulate private land

- it retains the ability of a body corporate to become an HPA over public lands, this is particularly important for iwi in view of heritage resources, such as significant waterbodies or wāhi tapu in public spaces
- it will provide more certainty for the HPA application and decision-making process knowing that any potential impacts on private land will be minimised.

522. The new transfer process is recommended because it would:

- mitigate public concerns about the removal or revocation of an existing heritage order.
- provide flexibility to enable a transfer to the most appropriate body – Heritage New Zealand, a local authority or a Minister and therefore ensure the continued protection of buildings and sites with high heritage value.
- provide a clear process to give the Minister for the Environment the power to make a decision to transfer a heritage order, including a minimum number of steps, such as a formal notice to the HPA responsible for the heritage order and the HPA to whom responsibility will be transferred and consideration of the comments received in response.
- while not removing the possibility of judicial review, the transfer process would provide a clear process to ensure all relevant matters have been considered.

# 7 Minor/technical fixes

### Introduction

523. The changes in this section are less significant than those outlined in the sections above. They are minor and technical fixes which are not likely to contribute substantially to the objectives of the reform package as a whole, although they are necessary to solve smaller discrete problems.

### List of proposals

524. Reform proposals covered under the minor and technical fixes section include:

- Minor changes to the Public Works Act 1981 (P 7.1)
- Provide for equal treatment of stock drinking water takes (P 7.2)
- Provide regional councils with discretion to remove abandoned coastal structures (P 7.3)
- Create a new regulation making power to require that stock are excluded from water bodies (P 7.4)
- Amendment of section 69 and Schedule 3 – Water Quality Classes (P 7.5).

### *7.1 Minor changes to the Public Works Act 1981 to ensure fairer and more efficient land acquisition processes*

**Problem**

525. The Public Works Act 1981 (PWA) enables the Crown to acquire land for public works by agreement or compulsory acquisition and prescribes landowner compensation. The RMII review found that the PWA process for acquiring land and compensating affected landowners is generally working well. There are, however, some opportunities to improve the efficiency and fairness of the PWA compensation, land acquisition and Environment Court objection provisions.

526. Although the compulsory acquisition provisions are rarely used, public works providers perceive that the compulsory acquisition process and prescribed compensation are barriers to infrastructure development. Feedback from public consultation also raised concerns that the compensation process is unfair. Current implementation of the process for land acquisition under the PWA is not as efficient as it could be.

**Proposal**

527. In addition to being compensated for the market value of their property, a solatium (form of compensation) is paid to landowners whose home (main residence) is being acquired. On vacant possession, it is paid for disruption, interference and other inconvenience.

528. The proposal is to make the following changes to PWA solatium payments:

- The solatium will increase to up to $50,000. It has not been increased from $2000 since it was introduced in 1975.
- As authorised by Cabinet, the Minister for Land Information approved the following criteria for the solatium payment of up to $50,000:
    - a payment of $35,000 is paid to all eligible landowners, with further payment to landowners who meet either or both the following criteria:

      (a) - $10,000 for early (within 6 months) written agreement to the acquisition;

      (b) - $5,000 depending on their circumstances.
- Cabinet agreed to introduce a solatium for landowners whose acquired land does not include their home, as these landowners also suffer disturbance and inconvenience through acquisition. This amount is set at 10% of the value of the land acquired, from a minimum of $250 up to a maximum of $25,000.
- Cabinet agreed to enable future changes to the amounts of the solatium to be made via Order in Council. This is so the amounts remain relevant.

529. To make the land acquisition process more efficient and to reduce duplication, the proposal will also:

- Amend s 4C(2)(a) of the PWA to enable the Minister for Land Information to delegate the administrative function of issuing ‘notices of desire’ under s 18(1) to the LINZ Chief Executive. This would shorten the land acquisition process by approximately two weeks without compromising landowner rights.
- Enable the Environment Court to accept evidence in PWA compulsory acquisition cases that has already been heard in RMA hearings or related Environment Court enquiries or appeals.

530. The solatium changes adequately compensate landowners for the disruption created by acquisition of their home and/or land. This will help improve confidence in and public acceptability of the acquisition of land for public works, thereby assisting with acquisition by agreement and encouraging vacant possession. This will likely also result in improvements in land acquisition times which affect infrastructure delivery times.

531. The changes to the Environment Court hearing procedures (P 4.2) will assist in streamlining the process for PWA objections to compulsory acquisition, with time and cost savings for both landowners and public works providers.

**Alternative options**

532. No alternative options were considered for this proposal.

**Conclusions**

533. The proposed changes are expected to improve the efficiency of land acquisition processes under the PWA. The changes are likely to impact on both the fairness and perceived fairness of landowner compensation. While more efficient acquisition processes are expected, the impact of the proposal on infrastructure delivery times has not been specifically assessed.

### *7.2 Provide for equal treatment of stock drinking water takes*

**Problem**

534. Sector groups have raised concerns with us that the interpretation of section 14(3)(b)(ii) of the RMA (which allows for drinking water for stock) being used by some regional councils is restricting access to stock water.

535. Section 14(3)(b)(ii) allows an exception for the reasonable needs of an individual's animals for drinking water, but does not define individual. Some regional councils limit individuals to natural persons only and exclude companies and trusts, and are therefore requiring farms to have a consent for their stock drinking water because the farm is in a company or trust structure. There is potential for this to be a reasonably significant issue for farmers taking water for stock use.

536. Many farms are run with either company or trust structures in place, leaving many rural businesses exposed to litigation without being aware of this (given the potential of third parties to challenge the interpretation of different regional councils).

537. Both the Horizons and Canterbury regional councils have strictly interpreted individual as meaning a natural person only, although Canterbury have indicated that they intend to take a pragmatic approach. Others like the Waikato Regional Council allow water to be taken for reasonable stock drinking purposes, regardless of who owns the animals, provided that there are no adverse effects on the environment. Another group of regional councils is silent on how individual should be interpreted. The range of interpretations leads to uncertainty and debate during planning and consenting processes, and corresponding costs.

538. Limiting the right to take stock water to natural persons means that water takes and uses may be regulated based on the nature of ownership of stock rather than the potential environmental effects of taking stock water. For example, provided an adverse environmental effect does not occur, a farmer who operates as an individual (rather than through a company or trust) and owns 1500 cows may be allowed to take water for those cows without needing a resource consent. On the other hand a neighbour, that owns 100 cows under a family trust can only take water for those cows if there is a rule in the regional plan allowing the take or the trust has a resource consent.

**Proposal**

539. This proposal is to amend section 14(3)(b)(ii) of the RMA to replace the term "individual" (which is not defined) with the word "person" (which is defined in the RMA as including both natural and legal persons). This would ensure the right to take water for a person's stock could be limited in plans based on the reasonableness of the take and whether the take is likely to have an environmental effect; but not whether it is a natural person, trust, or company that owns the stock.

540. The benefits of this proposal is that it would provide certainty in all regions once section 14(3)(b)(ii) is amended and plans have been amended as required to define the scope of section 14(3)(b)(ii) takes. While there would be short-term medium costs to regional councils to amend plans, and low costs to users to engage in subsequent plan change processes, the distinction between natural persons and companies/trust would be removed meaning a more equitable approach to managing environmental effects rather than classes of user.

**Alternative options**

*Non-legislative guidance*

541. Guidance would explicitly clarify section 14(3)(b)(ii) and the term "individual" so that councils consistently interpret and implement it. This would lead to certainty in all regions once plans have been amended to conform to new guidance and legal advice. There will be short-term low costs to central government to develop guidance, medium costs to regional councils to amend plans to conform with guidance, low costs to users to engage in plan change processes, and high costs to users who subsequently require a consent for their take of stock water.

542. However, the main disadvantage of non-legislative guidance is that it is not legally enforceable. Councils could therefore choose to continue to interpret this section in inconsistent ways, or not adopt the approach outlined in the guidance material in a timely fashion.

543. Moreover, guidance favouring the wider interpretation of “individual” would be strained given other statutes (eg, the Unsolicited Electronic Messages Act 2007) which define ‘individual’ as a natural person, rather than a legal person. Straining the meaning would add to the risk of councils not implementing the guidance.

**Conclusions**

544. On balance, this proposal would provide the most certainty for regional councils and resource users in relation to the rules that apply and equitable management of the environment effects of water takes and use, with minimal costs to resource users, government and regional councils.

### *7.3 Provide regional councils with discretion to remove abandoned coastal structures*

**Problem**

545. Currently, many regional councils remove old, derelict and minor structures in the common marine and coastal area to promote the efficient use of space and to manage adverse effects including health and safety problems. However, legal advice has determined that regional councils do not have legal authority to remove these structures, as section 19 of the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA Act) requires them to undertake an inquiry to attempt to find an owner when a structure appears abandoned. If an owner cannot be found, ownership passes to the Crown (DOC).

546. Undertaking inquiries for many of these structures (which will include thousands of pre-RMA coastal structures) would be impractical and costly for both regional councils and for the Crown. It will also lead to unnecessary ownership costs for the Crown.

**Proposal**

547. The proposal is to amend the RMA to provide regional councils with discretion to remove unconsented structures (including where permitted in a plan) that do not warrant a formal inquiry under the MACA Act. In reaching a decision that an inquiry is not warranted, a regional council must be satisfied that:

- efforts have been made to locate an owner but have been unsuccessful
- the structure is likely to have no, or minimal value to any owner or to the community.

548. Regional councils will be authorised to remove a structure at their discretion either:

- in accordance with any provisions in the regional coastal plan, or
- without obtaining a resource consent or without the need to comply with any conditions in a regional coastal plan (where removal is a permitted activity) if in the councils view any adverse effects of removal are not more than minor.

549. Following recent targeted consultation (with four regional councils), two regional councils expressed support for this proposal as it would provide a pragmatic, low cost solution where this is warranted. No councils expressed opposition.

**Alternative options**

550. There are no non-regulatory options that would achieve the policy intent. Early on consideration was given to alternative options, including whether the Department of Conservation should have more responsibility for dealing with the problem.

551. However it was considered that the most practical approach is to authorise regional councils as it aligns with their role in regional coastal management and with current practice.

552. Consideration was given to defining eligible structures according to their size or state of repair but this was rejected as it would have been too difficult to define. Instead it was considered more appropriate for a regional council to assess whether a structure is likely to have any value to any owner or to the community.

**Conclusions**

553. This proposal is a low cost, low risk way of ensuring the efficient management of abandoned and derelict structures in the common marine and coastal area.

### *7.4 Create a new regulation making power to require that stock are excluded from water bodies*

**Problem**

554. Livestock incursions into waterways can cause significant damage in terms of both direct contamination of waterways, and impacts on local habitat quality. Excluding stock is considered to be a 'universal' good management practice that lends itself well to national regulation. In its 2014 election manifesto policy, the Government committed to excluding dairy cattle from waterways by 1 July 2017.

555. The dairy industry has made good progress on voluntarily addressing this environmental issue. The Sustainable Dairying: Water Accord has already excluded stock from over 90% of waterways subject to the accord (nearly 24,000km of waterways). There is an opportunity to provide reassurance to the public that good management practices are in place, and to combat the common perception of 'dirty dairying'.

**Proposal**

556. The proposal will make stock exclusion a mandatory requirement for all dairy farmers. It will enable regulations to be made that require all dairy cattle to be excluded from water bodies by 1 July 2017. In order to provide an efficient way of enforcing these regulations, the breach of the proposed regulation will be an infringement offence. This would enable councils to use a streamlined, single-step process for enforcing compliance with the regulation, rather than relying on the current abatement notice and enforcement order process.

557. Introducing the ability to make regulations to exclude dairy cattle on dairy farms from accessing water ways will help to:

- provide greater confidence to New Zealanders that dairy farming is using good management practices, and meet public expectations around how we should be farming
- improve water quality
- give national coverage to the Sustainable Dairying: Water Accord requirements by including suppliers to Westland Milk Products Company
- pick up the poor performers.

558. The impacts of the proposal are likely to be small, given that a significant proportion of water bodies already have stock excluded under the Sustainable Dairying: Water Accord. However, a new regulation making power is necessary in order to be certain that full dairy exclusion from waterways can be achieved.

559. The costs of exclusion will vary depending on the context. This could involve natural barriers, temporary fencing, or permanent fencing. These costs are currently being modelled. Exclusion costs will fall on those that are yet to exclude cattle from their water bodies under the Accord, such as Fonterra's 3.9 per cent and all Westland Milk Products.

560. The costs and benefits above have not yet been fully quantified. Impacts will be limited for the majority of the dairy sector given the high level of existing stock exclusion. The detailed costs and benefits will be considered at the time that detailed proposals for the regulations are developed.

**Alternative options**

*A new National Environmental Standard (NES) regulating stock exclusion from water bodies*

561. This option is similar to the preferred option. Exclusion requirements and costs/benefits would be the same. Some minor differences include that an NES would express exclusion requirements in the form of a rule or prohibited activity for regional councils to administer, while a regulation could be more direct. There would be some situations in which an activity or resource use can continue even if it is contrary to an NES. These 'existing use rights' may prevail over an NES for stock exclusion – specifically, any consents that expressly permit activities, where those activities involve stock access to water. There is an (currently unquantified) risk that some existing consents could permit stock access to water making an NES for stock exclusion ineffective for a specific class of consent holders.

**Conclusions**

562. The proposal is the preferred option as it will provide certainty for full dairy exclusion from waterways. Regulations have some advantages over an NES because of their ability to override existing use rights and achieve comprehensive coverage.

### *7.5 Amendment of section 69 and Schedule 3 – Water Quality Classes*

**Problem**

563. Schedule 3 of the RMA contains water quality classes and standards which a council may use for setting rules in planning documents. The use of Schedule 3 is directed through section 69 and allows a council to set rules based on the standards, unless the council thinks they are inadequate in which case they can prescribe more stringent or specific standards. The standards have not been updated to reflect scientific advances and are relatively unused by councils, with only two (out of 16) regional council water plans referring directly to Schedule 3.

564. The introduction of the 'national objectives framework' in the *National Policy Statement for Freshwater Management* in 2014 provided a process to guide council decision making on fresh water. It includes updated water quality standards that councils can use in planning decisions. The national objectives framework has superseded Schedule 3 making it largely redundant.

**Proposal**

565. The policy intent is to provide clarity for councils on the tools, and a consistent process to use, for freshwater planning. Leaving Schedule 3 in the Act would undermine this intent.

566. The proposal is to amend s 69 of the RMA to remove Schedule 3 from applying to fresh water. It would continue to be available for use by councils with regard to geothermal and coastal water. The direction contained in s 69(3) regarding setting rules regarding water quality would continue to apply to freshwater.

567. The impact of this amendment is considered to be minor. The standards are not widely used for fresh water and all councils have begun planning processes based on the process and standards contained in the *National Policy Statement for Freshwater Management 2014.* The impact of the amendment is further lessened by retaining the classes and standards for use for geothermal and coastal water which do not have alternative mechanisms.

**Alternative options**

568. There are no non-regulatory options that would achieve the policy intent.

569. The alternate option is to retain the status quo. Under this option councils would use the national objectives framework to set freshwater objectives and, if they were appropriate, use the Schedule 3 water quality standards for setting rules to achieve the objectives.

570. However this will not achieve the policy intent of providing clarity, and a consistent process for plan making. Additionally, it is unnecessary to retain Schedule 3, as appropriate rules can be derived based on the process in the *National Policy Statement for Freshwater* Management *2014.*

**Conclusions**

571. This proposal is a zero cost, low risk way of providing greater direction to councils on how to manage fresh water resources.

## Impact of proposals in achieving objectives

572. While most of the policy proposals in the package have a low or medium impact on achieving the various intermediate outcomes outlined in an earlier section of the RIS, we consider that there are a core group of proposals that will have the most significant impact in achieving the overarching purpose and objectives of the Bill. This is largely due to quantity of applications or participants affected by these proposals, and the scale of their respective net long-term benefits relative to costs.

573. These proposals are highlighted in **Table 3** below.

**Table 3: Impact hierarchy**

| *Purpose* | **A resource management system that achieves sustainable management of natural and physical resources in an efficient and equitable way** | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| *Overarching Objectives* | **Better alignment and integration across the system** | | | **RMA processes are proportional and adaptable** | | **RMA decisions are robust and durable** | | | **Minor/technical fixes** |
| *Intermediate outcomes* | *Duplication within the system is reduced and the legislative framework is internally consistent* | *The tools under the RMA are fit for purpose* | *The RMA is implemented in a consistent way and the hierarchy of planning documents is better aligned* | *Processes and costs are able to be scaled, where necessary, to reflect the specific circumstances* | *There is increased flexibility and adaptability of processes and decision-makers* | *Higher value participation and engagement in RM processes by those affected is encouraged* | *Decision makers have the evidence, capability, and capacity to make high quality decisions and accountabilities are clear* | *Engagement is focussed on planning decisions rather than individual consent decisions* | |
| *Reform proposals* | Provide for joint resource consent and recreation reserve exchange processes under the RMA and Reserves Act (P 5.1)<br><br>Align the notified concessions process under the Conservation Act with notified resource consent process under the RMA (P 5.2)<br><br>Simplify charging regimes for new developments by removing financial contributions (P 6.6)<br><br>Remove the ability for Heritage Protection Authorities that are bodies corporate to give notice of a heritage protection order over private land, and allow for Ministerial transfer of HPOs (P 6.7) | **Streamlined and electronic public notification requirements and electronic servicing of documents (P 6.2)**<br><br>Changes to NPSs and NESs (P 1.1) | **Mandatory National Planning Template to reduce plan complexity and provide a home for national direction (P 1.3)**<br><br>New regulation making power to provide national direction through regulation (P 1.2) | **Consent exemption for minor rule breaches (P 3.1a)**<br><br>**Consent exemption for boundary infringements with neighbour's approval (P 3.1b)**<br><br>**10 day fast-track process for simple applications and a regulation making power to enable this (P 3.2)**<br><br>Introduce regulation making powers providing the requirement for consent decisions to be issued with a fixed fee (3.5a)<br><br>Require fixed remuneration for hearing panels and consent decisions issued with a fixed fee (3.5b)<br><br>Changes to the plan making process (under Sch 1) to improve efficiency and provide clarity (P 2.1) | **Provide councils with an option to use a Streamlined Planning Process for developing or amending a particular plan (P 2.2)**<br><br>Improve Environment Court processes to support efficient and speedy resolution of appeals (P 4.2)<br><br>Enable the Environment Court to allow councils to acquire land (P 4.3)<br><br>Enable alternative consent authorities to provide resource consenting services as an alternative to local councils (P 3.7)<br><br>A suite of technical amendments to reduce Board of Inquiry cost and complexity (P 6.4)<br><br>Enable the EPA to support decision-making processes (P 6.5)<br><br>Enable objections to be heard by an independent commissioners (P 4.1) | **No appeals to Environment Court for: boundary infringements and subdivisions (unless non-complying activities); and residential activities in a residential zone (P 3.4d)**<br><br>Preclude public notification for: residential activities in a residential zone; and subdivisions applications anticipation by plans (P 3.4c)<br><br>Where subdivisions are not permitted, specify who can be considered an affected party (for limited notification purposes (P 3.4b)<br><br>Introduce regulation making powers providing nationwide: non-notification of simple proposals with limited effects; limited involvement of affected parties for certain activities (P 3.3d) | Enhanced council monitoring requirements (P 6.3)<br><br>Improve the management of risks from natural hazards under the RMA (P 1.4)<br><br>Improve management of risks from natural hazards for subdivision applications (P 3.8)<br><br>Strengthen the requirements on councils to improve housing and provide for development capacity (P 1.5)<br><br>Clarify the legal scope of consent conditions (P 3.6)<br><br>New duties in Part 3 to minimise restrictions on land (P 1.6)<br><br>New procedural requirements for decision-makers (P 6.1) | **Enhance Māori participation by requiring councils to invite iwi to engage in voluntary iwi participation arrangements and enhancing consultation requirements (P 2.4)**<br><br>**Provide councils with an option to use a Collaborative Planning Process for preparing or changing a policy statement or plan (P 2.3)**<br><br>**Narrow submitters' input to the reasons for notification (P 3.3a)**<br><br>Notification decisions will be made in reference to environmental effects and the policies and objectives of plans (P 3.3b)<br><br>Require submissions to be struck out in certain circumstances (P 3.3c)<br><br>Make subdivisions permitted unless restricted by plans (P 3.4a) | Minor changes to the Public Works Act to ensure fairer and more efficient land acquisition processes (P 7.1)<br><br>Provide for equal treatment of stock drinking water takes (P 7.2)<br><br>Provide regional councils with discretion to remove abandoned coastal structures (P 7.3)<br><br>Create a new regulation making power to require stock to be excluded from water bodies (P 7.4)<br><br>Amendment of section 69 and Schedule 3 – Water Quality Classes (P 7.5) |

## Consultation

574. Various rounds of independent expert groups and public consultation have informed the development of resource management reforms. This includes several reports from independent technical advisory groups including a Principles Technical Advisory Group,[11] an Urban Technical Advisory Group,[12] and an Infrastructure Technical Advisory Group.[13] Information and advice from the Canterbury Earthquake Royal Commission of Inquiry, work with stakeholder groups and research providers, surveys of the public and business, and monitoring of local government implementation of the RMA has also been used in the development of the policy proposals. Summaries and reports of earlier resource management consultation are available online.

575. In February 2013 a discussion document, *Improving our resource management system*, was released outlining problems and proposals for resource management reform (the resource management discussion document). The Government's proposals for freshwater reform were included in a proposal paper, *Freshwater reforms 2013 and beyond*, and released for consultation in March 2013 (the freshwater proposal paper). This document included the collaborative planning process proposal.

576. Consultation on the two documents was largely undertaken in tandem. Throughout March, approximately 2,000 individuals and representatives attended over 50 public meetings, hui, and council and stakeholder meetings around the country to discuss the resource management and freshwater proposals. Over 14,000 submissions were received on the resource management discussion document, with nearly 13,000 of these being form submissions. The majority of form submissions came from the Greenpeace 'Save the RMA' campaign. Others came from campaigns organised by the Green Party Aotearoa, Forest and Bird, and Fish and Game. In total, 368 written comments were received on the freshwater proposal paper. Just over half of all contributions were from individuals.

**Overall feedback**

577. A summary of submissions on the resource management discussion document can be found on the Ministry for the Environment's website at: www.mfe.govt.nz/publications/improving-our-resource-management-system-summary-submissions. The Government identified a number of issues with the RMA in this discussion document. Many submissions disputed the issues and opportunities and the proposals derived from them. The complex nature of the RMA and limited information availability make evidence difficult to collate. Proposals to improve monitoring of council performance will help provide information to inform any further policy development.

578. Many submitters agreed that the RMA is complex and cumbersome, and welcomed amendments that will make the legislation clearer and easier to use. Some submissions contained alternatives to proposals which informed further policy development. There was strong support from business and primary industry groups for most of the changes. There was also council support for some change in certain areas subject to the management of implementation costs. Support was commonly expressed for more integrated planning and less reliance on consents and appeals, the National Planning Template, more national guidance via NPS/NES tools, better consideration of natural hazards, stronger measures around council performance and measures to ensure better engagement with iwi/Māori in resource management planning.

579. Councils raised concerns regarding their capability and capacity to implement some of the proposals. These risks will be mitigated by providing guidance to councils on implementation and developing regulations such as those relating to the national planning template in consultation with councils. The Ministry has recently introduced a programme of engagement with councils

[11] Principles Technical Advisory Group. 2012. Report of the Minister for the Environment's Resource Management Act 1991 Principles Technical Advisory Group. Wellington: Ministry for the Environment.
[12] Urban Technical Advisory Group. 2010. Report of the Minister for the Environment's Urban Technical Advisory Group. Wellington: Ministry for the Environment
[13] Infrastructure Technical Advisory Group. 2010. Report of the Minister for the Environment's Infrastructure Technical Advisory Group. Wellington: Ministry for the Environment.

which ensures Ministry officials are in contact with every council at least quarterly. This direct engagement will assist the Ministry to provide implementation assistance and to identify any issues with implementation early.

**Topic-specific feedback: National direction**

580. Submissions and public consultation meetings on the resource management discussion document raised a lot of concern around the proposed changes to sections 6 and 7 (note that these are no longer being progressed in the current reform package).

**Topic-specific feedback: Planning**

581. Council representatives highlighted concern regarding cost, effectiveness and practicality of implementing certain planning proposals. This feedback was taken into account in further developing the design features of the planning proposals.

582. Council representatives were consulted on a proposed collaborative planning process for freshwater. The Freshwater Iwi Leaders Group and Iwi Advisers provided input into the development of policies regarding Māori participation in the resource management system and in particular on the role of iwi/Māori in the planning process.

583. Feedback relating to the collaborative planning process was broadly supportive. The comments reflected demand from stakeholders and local government for a collaborative process for freshwater-related planning and decision-making, to address problems related with the status quo (Schedule 1 process). Many submitters, including local government, believed the scope of the process should be expanded to include all resource management matters.

584. There were questions raised regarding how the collaborative planning process might work in practice. In particular, there were questions about:

- the capability of councils to implement the collaborative planning process;
- the removal of de novo appeal rights; and
- the detail of the proposed review panel.

585. Overall, officials consider the detail in the collaborative planning process adequately balances the incentives and risks across the collaborative group, the review panel and local government. As the collaborative process is optional, councils may still select to use the existing RMA Schedule 1 process if they consider that they do not have the capability or capacity to implement the collaborative process.

586. While the consultation was on an earlier proposal for exclusively freshwater collaborative planning, the feedback received is still broadly applicable and has informed the design of the proposed collaborative planning process for all resource management matters.

**Topic-specific feedback: Consenting**

587. As with the planning proposals, councils raised concerns about their capability and capacity to implement the changes. This was particularly in relation to the fact that the consenting changes in the Resource Management Amendment Act 2013 are due to come into force in March 2015 and the cost involved in updating database systems.

588. In addition to the resource management discussion document, Ministry for the Environment officials carried out workshops with council representatives regarding the development of consenting proposals. In particular local government representatives contributed to the design features for 10 day consenting and application waiver proposals. Council representatives were particularly concerned about the fixed fees proposal due to the perception that central government would be setting their fees for them. However, the proposal only requires councils to set fixed fees for a proportion of activities and leaves the fee level up to the council.

**Proposals not included in consultation**

589. In May and June 2013 Cabinet agreed to the following proposals, which were included in consultation through the *Improving our resource management system* discussion document in February 2013:

- proposed changes to Part 2;
- a single amalgamated plan per district;
- two new planning tracks:
    - a joint council planning process (requiring a council planning agreement)
    - a collaborative planning process for freshwater-related matters only; and
- amendments to Schedule 1 to enhance pre-notification consultation.

590. Since these decisions were made, the Government has considered these proposals again in light of the feedback provided during consultation and further advice from officials. The proposals in the paragraph above have been replaced by the following proposals:

- Adding "the management of significant risks from natural hazards" to section 6, but no other changes to Part 2
- providing public access to all planning documents for a district as part of the electronic delivery requirements for the national planning template;
- two new planning tracks:
    - a streamlined planning process
    - a collaborative planning process for all matters; and
- amendments to the existing plan making process to provide for limited notification in some cases, enforce the existing two year timeframe (from notification) for councils to make decisions on plans, and clarify the status of proposed regional policy statements (RPS) in the development of combined plans.

591. There have also been a number of other amendments to proposals and additional proposals included in the package since the package was publicly consulted on in 2013. These proposals include:

- new regulation making powers which would allow the Minister for the Environment to:
    - define specific activities as permitted where councils may currently require consents that are not proportionate to achieving the purpose of the Act
    - prohibit councils from making rules that are not consistent with the purpose the Act or overlap with other Acts; and
- a number of consenting and appeal changes, including refining the scope of notification and Environment Court appeal rights.

592. **Table 4** provides a description of how these reforms differ from the 2013 proposed reforms and where consultation on the current reforms has not been possible.

| TABLE 4: CONSULTATION | | |
|---|---|---|
| **National direction** | | |
| Changes to NPSs and NESs (P 1.1) | Revised proposal | Partially consulted on |
| New regulation making power to provide national direction through regulation (P 1.2) | New proposal | Not consulted on |
| Mandatory National Planning Template to reduce plan complexity and provide a home for national direction (P 1.3) | Previously agreed proposal | Consulted on in previous form |
| Improve the management of risks from natural hazards under the RMA (P 1.4) | Revised proposal | Consulted on in previous form |
| Strengthen the requirements on councils to improve housing and provide for development capacity (P 1.5) | Previously agreed and revised proposal with new elements | Consulted on in previous form |

| | | |
|---|---|---|
| New duties in Part 3 to minimise restrictions on land (P 1.6) | Revised proposal | Consulted on in previous form |
| **Plan making** | | |
| Changes to the plan making process to improve efficiency and provide clarity(P 2.1) | New proposal | Not consulted on |
| Provide councils with an option to use a Streamlined Planning Process for developing or amending a particular plan (P 2.2) | New proposal | Not consulted on |
| Provide councils with an option to use a Collaborative Planning Process for preparing or changing a policy statement or plan (P 2.3) | Previously agreed and revised proposal | Consulted on but only relating to water |
| Enhance Māori participation by requiring councils to invite iwi to engage in voluntary iwi participation arrangements and enhancing consultation requirements (P 2.4) | Previously agreed proposal | Consulted on |
| **Consenting** | | |
| Consent exemption for minor rule breaches (P 3.1a) | Previously agreed proposal | Consulted on |
| Consent exemption for boundary infringements with neighbour's approval (P 3.1b) | New proposal | Not consulted on |
| 10 day fast-track process for simple applications and a regulation making power to enable this (P 3.2) | Previously agreed proposal | Consulted on |
| Narrow submitters' input to the reasons for notification (P 3.3a) | Previously agreed proposal | Consulted on |
| Notification decisions will be made in reference to environmental effects and the policies and objectives of plans (P 3.3b) | Revised proposal | Not consulted on |
| Require submissions to be struck out in certain circumstances (P 3.3c) | Previously agreed proposal | Partially consulted on |
| Introduce regulation making powers providing nationwide:<br>• Non-notification of simple proposals with limited effects<br>• Limited involvement of affected parties for certain activities (P 3.3d) | Previously agreed proposal | Consulted on |
| Make subdivisions permitted unless restricted by plans (P 3.4a) | Previously agreed proposal | Consulted on |
| Where subdivisions are not permitted, specify who can be considered an affected party (for limited notification purposes) (P 3.4b) | Previously agreed proposal | Consulted on |
| Preclude public notification for:<br>• residential activities in a residential zone | Previously agreed proposal | Consulted on |

| | | |
|---|---|---|
| • subdivisions applications anticipation by plans (P 3.4c) | | |
| No appeals to Environment Court for:<br>• boundary infringements and subdivisions (unless non-complying activities)<br>• residential activities in a residential zone (P 3.4d) | New proposal | Not consulted on |
| Introduce regulation making powers providing the requirement for consent decisions to be issued with a fixed fee (3.5a) | Previously agreed proposal | Consulted on |
| Require fixed remuneration for hearing panels and consent decisions issued with a fixed fee (P 3.5b) | New proposal | Not consulted on |
| Clarify the legal scope of consent conditions (P 3.6) | Previously agreed proposal | Consulted on |
| Enable alternative consent authorities to provide resource consenting services as an alternative to local councils (P 3.7) | New proposal | Not consulted on |
| Improve management of risks from natural hazards for subdivision applications (P 3.8) | Previously agreed proposal | Consulted on |
| **Appeals and Courts** | | |
| Enable objections to be heard by an independent commissioners (P 4.1) | New proposal | Not consulted on |
| Improve Environment Court processes to support efficient and speedy resolution of appeals (P 4.2) | Previously agreed proposal | Not consulted on |
| Enable the Environment Court to allow councils to acquire land (P 4.3) | New proposal | Not consulted on |
| **Process alignment** | | |
| Provide for joint resource consent and recreation reserve exchange processes under the RMA and Reserves Act (P 5.1) | New proposal | Not consulted on |
| Align the notified concessions process under the Conservation Act with notified resource consent process under the RMA (P 5.2) | New proposal | Partially consulted on |
| **Process improvement** | | |
| New procedural requirements for decision-makers (P 6.1) | Revised proposal | Consulted on in previous form |
| Streamlined and electronic public notification requirements and electronic servicing of documents (P 6.2) | New proposal | Not consulted on |
| Enhanced council monitoring requirements (P 6.3) | Revised proposal | Consulted on in previous form |

| | | |
|---|---|---|
| A suite of technical amendments to reduce Board of Inquiry cost and complexity (P 6.4) | Revised proposal | Partially consulted on |
| Enable the EPA to support decision-making processes (P 6.5) | New proposal | Partially consulted on |
| Simplify charging regimes for new developments by removing financial contributions (P 6.6) | New proposal | Not consulted on |
| Remove the ability for Heritage Protection Authorities that are bodies corporate to give notice of a heritage protection order over private land, and allow for Ministerial transfer of HPOs (P 6.7) | New proposal | Not consulted on |
| **Minor fixes** | | |
| Minor changes to the Public Works Act to ensure fairer and more efficient land acquisition processes (P 7.1) | Previously agreed proposal | Consulted on |
| Provide for equal treatment of stock drinking water takes (P 7.2) | New proposal | Targeted consultation with primary sector |
| Provide regional councils with discretion to remove abandoned coastal structures (P 7.3) | New proposal | Targeted consultation with regional councils |
| Create a new regulation making power to require stock to be excluded from water bodies (P 7.4) | New proposal | Not consulted on |
| Amendment of section 69 and Schedule 3 – Water Quality Classes (P 7.5) | New proposal | High-level consultation |

**Consultation with other agencies**

593. The following agencies were consulted in the development of this policy: the Treasury, Ministry for Primary Industries, Department of Internal Affairs, Te Puni Kōkiri, Department of Conservation, Department of Corrections, Ministry of Transport, Ministry for Culture and Heritage, Ministry of Civil Defence and Emergency Management, Ministry of Justice, Ministry of Health, Ministry of Education, Ministry of Business, Innovation and Employment, Land Information New Zealand, New Zealand Historic Places Trust, New Zealand Transport Agency, Environmental Protection Authority, Canterbury Earthquake Recovery Authority.

594. Agencies were invited to comment on the proposals in the Cabinet Papers.

595. While there is general support for the proposed amendments, agencies have also provided additional comments in some key areas. **Table 5** summarises these key concerns, extracted from the full agency comments on the Cabinet Papers, but does not list all comments.

| TABLE 5: SUMMARISED AGENCY COMMENTS | | |
|---|---|---|
| **Theme/proposal** | **Nature of comments** | **Agency** |
| New regulation making powers to provide national direction through regulation | • Concerns at the extent of the Minister's powers and non-compliance with LAC guidelines | Treasury, TPK, MoJ |
| Improve the management of risks from natural hazards under the RMA | • Support inclusion of management of risks from natural hazards<br>• Recommend the removal of the word "significant" | DOC |
| Strengthen the requirements on councils to improve housing and provide for development capacity | • Support as this is consistent with integrated planning | NZTA |
| New duties in Part 3 to minimise restrictions on land | • Impact of proposal unclear | DOC |
| | • May impact on ability of Councils to protect biodiversity on private land and manage natural hazards | DOC |
| No appeals to Environment Court for: boundary infringements and subdivisions (unless non-complying activities); and residential activities in a residential zone | • Not many gains from removing these and may have unintended consequences | Treasury, DIA |
| | • Iwi/Maori ability to raise legitimate issues will be affected | TPK, MoJ |
| Enable alternative consent authorities to provide resource consenting services as an alternative to local councils | • Concern on lack of specificity of policy proposal leading to a lot of uncertainty on how enabling provision will be used | Treasury, DIA, MoE |
| | • May create issues for existing arrangements that iwi/hapu have developed with councils under the RMA | TPK |
| Alignment processes under the Reserves Act 1977 and Conservation Act 1987 with the RMA | • Support, but recommend additional consultation with iwi in relation to Reserves Act changes | DOC |
| Simplify charging regimes for new developments by removing financial contributions | • Will remove transparency and certainty for developers | MBIE, DIA, Treasury |
| Consultation | • Concerns about lack of consultation on revised package, extent of changes and possible unintended consequences | Treasury, TPK, MoJ, MoE |

# Implementation

### Overview

596. A new approach to implementation will be required in recognition of the size and significance of the changes, the complexity and challenges within the resource management system, and the range of players involved. In particular, implementation will need to be more hands-on and provide active support for, and engagement with, Councils and others, including iwi. This approach will need to be flexible in recognition of the devolved nature of the resource management system. What works in one part of the country will not necessarily be suitable elsewhere. The approach will also need to be flexible and adaptive to reflect any changes in legislation from the Select Committee process.

597. The Ministry for the Environment, and other central government agencies, will need to take more active roles in overseeing and supporting the ways in which councils are implementing the RMA.

598. The system-wide nature of these reforms means that there will be an intense period of implementation activity once the legislation comes into effect and a need for sustained activity in the longer term.

599. The implementation package has a budget of $8.9 million over four years and will be designed around the principle of ensuring smooth and efficient roll-out of the reforms. This will be achieved through a number of strategies, including:

- Working smartly with our stakeholders to promote understanding and uptake of the reform package in ways that leverage off existing forums, initiatives and relationships and make best use of their time and resources. This will include capability and capacity building and innovative initiatives such as electronic forums and training.
- Supporting regulation development.
- Facilitating the changes to processes and plans.
- Providing certainty for processes already underway.
- Providing value for money.
- Providing measurable outcomes.

600. The package of reforms will be implemented through the Resource Legislation Amendment Bill 2015, regulations, a suite of statutory guidance[14] and a comprehensive implementation package. An overview of this implementation package will be reported back to Cabinet within four months following the introduction of the Bill.

### What does success look like?

601. If we get delivery and implementation right, we will have a more efficient, predictable system built on evidence-based decision-making, and improved, less contested outcomes. A more consistent approach to monitoring the system will also be needed to ensure we are achieving these outcomes.

### Transitional measures and savings provisions

602. Transitioning from the current RMA to the new RMA will create costs and uncertainty for central government, local government and users of the RMA. If all the amendments were to commence immediately (the day after the date of Royal assent) these transitional costs would be significant.

603. Transitional measures and provisions making exception (called savings provisions) have therefore been drafted into the Bill to help mitigate these transitional costs and facilitate the smooth and efficient commencement of the reforms.

604. For the reform package to meet the Government's objectives in a timely manner, the commencement provisions have been designed to:

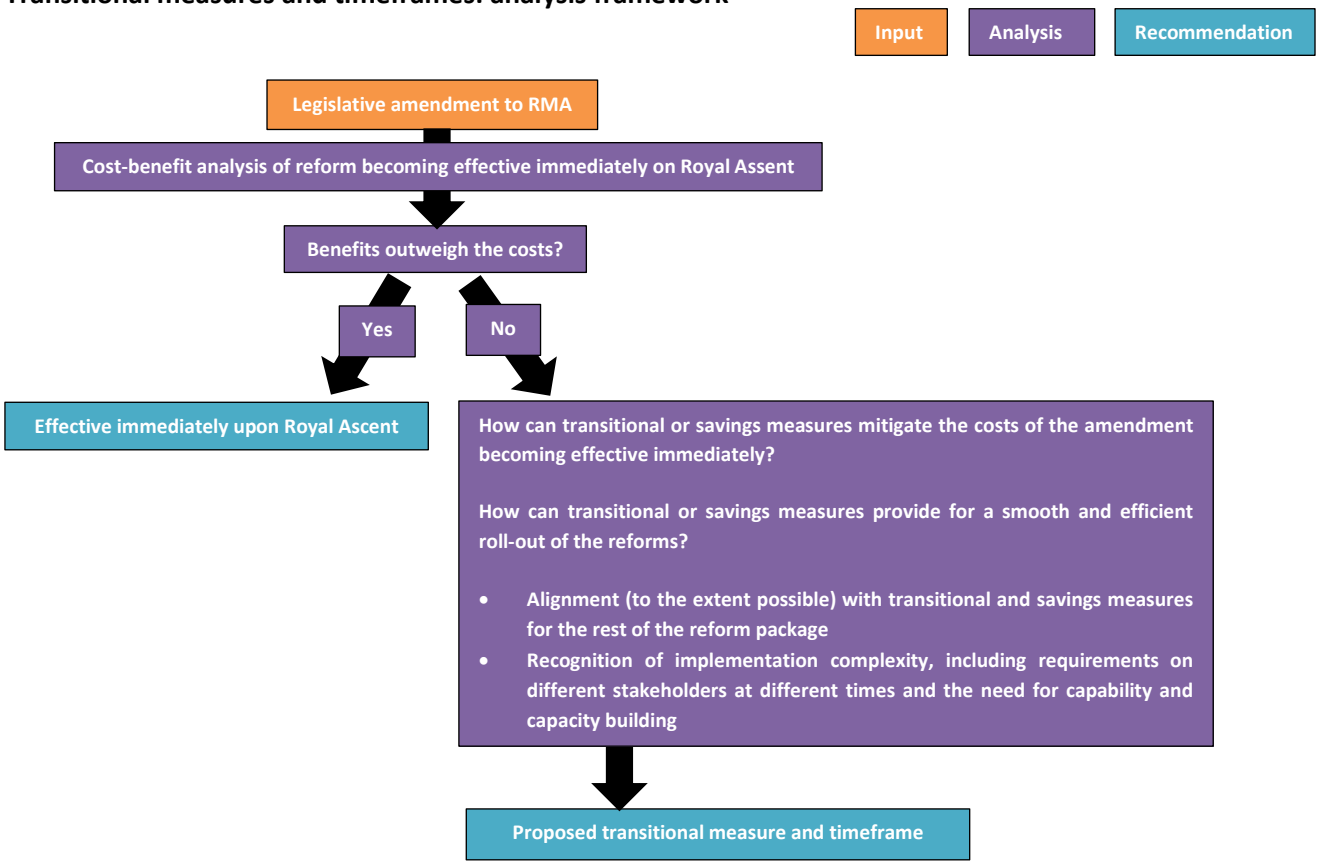
[14] Including updated guidance on hazardous substances management – following the changes to section 30 and 31 to remove the explicit function for councils to control hazardous substances under the RMA.

- be mindful of who will be impacted and when;
- promote understanding of the reform package by those affected;
- allow time for processes and plans to be altered; and
- provide certainty and continuity for processes already underway.

605. With these principles in mind, we have conducted an analysis of the costs and benefits of commencement provisions for the reform package. We have used immediate commencement as a starting point and unpacked where the costs of this outweigh the benefits, and why. This is outlined in **Figure 3** below.

**Figure 3: Analysis framework**

**Transitional measures and timeframes: analysis framework**




606. Following our analysis, we have bundled the reforms into seven categories of transitional measures and commencement provisions. The distribution of the reforms across these categories can be seen in **Table 6** and sees the majority of the reforms coming into effect immediately, some with savings provisions (the drafting for which is in italics below).

- Legislative changes commencing immediately.
- Legislative changes creating regulation making powers that commence immediately (but require regulations to be developed in order to effect change to these policy areas). These regulations may take approximately nine to twelve months to be developed, depending on their size and complexity.
- Legislative changes commencing immediately with savings provisions under the RMA for any of the applicable:
    - *Specified matters that have been lodged with, or initiated by, a local authority, the EPA, a Minister or a requiring authority or heritage protection authority or a court which have not proceeded to the stage at which no further appeal is possible; and*

    - *Proposed policy statements and plans, national policy statements and environment standards (and any amendments to these) which have been publicly notified but have not proceeded to the stage at which no further appeals are possible.*
- Legislative changes commencing six months after Royal assent[15] and only applying to:
    - *new consents and appeals relating to those new consents lodged after the commencement of the provision.*
- Legislative change commencing two years after Royal assent.
- Legislative change commencing five years after Royal assent.

607. These bundles are the simplest possible groupings to bring the reforms into effect as quickly as possible while minimising transitional costs to stakeholders and avoiding unintended consequences.

608. Cabinet has already agreed the first version of the National Planning Template will be gazetted within two years of enactment of the Bill [Cab Min (15) 5/11 refers]. We are recommending that the regulation making power enabling this process will commence immediately following Royal assent.

**Table 6: Transitional measures and commencement provision bundles**

## Commencing immediately

### *Legislative changes*

- Optional Streamlined Planning Process
- Optional Collaborative Planning Process
- Body corporate HPA restrictions
- Clarifying legal scope of consent conditions
- Environment Court changes: fee waiver; flexibility in use of decision makers
- Expand EPA functions to support other decision-making processes
- **Changes to improve plan-making process:** Limited notification of plan changes; status of proposed RPS in combined plan
- Changes to iwi participation
- Discretion to remove abandoned coastal structures
- Equal treatment of stock drinking water takes

### *Legislative changes that create or amend regulation making powers* but require regulations to be developed in order to effect change to these policy areas

- **New Regulation-Making powers to provide national direction through regulation:** power to address duplication; power to make certain activities permitted; power to override unnecessary provisions; power to exclude stock from water bodies
- **Consenting Changes:** Fixed consent fees; fast track process; new regulation making power enabling non-notification and limited involvement of affected parties
- Enhanced council monitoring requirements
- **NPS and NES Changes:** Flexibility for NES; combined NPS/NES development; Clarified scope of NPS; Allow NES/NPS to be developed in relation to a specific region
- Amend EEZ Act to allow national direction to be issued for matters relevant to the purpose of the Act

### *Legislative changes with exemptions (savings provisions) under the RMA*

- Inclusion of natural hazards in section 6
- Inclusion of new duties in Part 3
- Strengthened requirements on councils to improve housing and the provision of development capacity
- Joint plan change/resource consent and reserve exchange process
- Board of Inquiry Amendments to reduce costs and complexity
- Ability for Environment Court to direct councils to acquire land
- **Environment Court changes:** Having regard to the decision that is the subject of appeal; alternative dispute resolution and judicial conferences

### *Legislative changes with exemptions (savings provisions) under the EEZ Act*

- **Amendments to align with BOI processes:** Decision-making model; composition of the board; timeframes; appeals; determining if an application is complete; enabling EPA to recover debts
- Two-stage approach to decommissioning
- Clarifying when rulings for minor alterations to existing structures are required
- Clarification of enforcement provisions
- Minor and technical amendments
- Clarification of search and seizure provisions

## Commencing six months after Royal assent

- Consent exemptions
- **Notification Changes:** No public notification of boundary infringements or residential activities in the residential zone; clarifying notification test; requiring notification decisions on environmental effects subject to policies and objectives of plans or policy statements; non-notification of controlled activities
- **Subdivision consent changes:** Improved management of risks from natural hazards; subdivisions permitted unless restricted by plans; no public notification of subdivisions
- Fixed budget and remuneration for hearing panels
- **Improving hearing efficiency and reducing appeal risk:** No right of appeal to Environment Court for boundary infringements, subdivisions and residential activities; submissions limited to the reasons for notification; submissions to be struck out in certain circumstances; appeals limited to matters raised in submissions; public notification requirements and electronic servicing of documents; objections able to be heard by independent commissioner; reasons for notification to be recorded and in public notice
- Minister's approval required for an extension of two year timeframe to release decisions on a proposed plan
- Alignment of Conservation Act notified concessions process with notified resource consents under the RMA

## Commencing five years after Royal assent

- Removal of Financial Contributions

## Commencing five years after Royal assent *unless brought into force earlier by an Order in Council*

- Alternative Consent Authorities

**National Planning Template provisions commence immediately following Royal assent**

*This will mean the timeframe already agreed by Cabinet for the first version of the National Planning Template to be gazetted within two years of enactment of the Bill will start from the day after Royal assent*

## Monitoring, evaluation and review

609. In New Zealand, responsibility for RMA monitoring and reporting is divided between national, regional and local levels. At the national level, the Minister for the Environment is responsible for monitoring the implementation and effectiveness of the RMA under sections 24(f)(g) and (ga) of the Act. These functions are fulfilled by the Ministry for the Environment ("the Ministry") on the Minister's behalf. The Ministry also has broader mandate under the Environment Act 1986 to monitor the operation and effectiveness of a broad range of environmental Acts and to advise the Minister on all aspects of environmental administration. RMA monitoring should therefore be designed to fit within this broader context to explore key linkages, impacts and outcomes across New Zealand's key environmental Acts.

610. Until recently, the main source of national data was through the RMA Survey of Local Authorities. This was focused on quantitative outputs (eg, number of consents), efficiency (eg, number of consents processed within statutory timeframes) and the use of different processes (eg, for councils to request further information from applicants). Some more qualitative measures were also included. The survey was carried out 11 times in total, which established the basic data set on core RMA processes. Other various implementation surveys, periodic research reports, and ad hoc data requests to councils were also made.

611. After some years of carrying out the RMA Survey, it was increasingly recognised that it had several limitations which impact on its overall effectiveness and usefulness.

612. As a response to this, the National Monitoring System (NMS) was developed. It is intended to address gaps in the information collected by the RMA Survey and provide a more comprehensive and coordinated national framework to monitor the RMA. The intention is for the NMS, alongside other initiatives, to help gradually shift towards more sophisticated measurement of qualitative outcomes rather than the standard 'check box' measures.

613. To minimise anticipated effects for councils and central government, of the adjustments to their existing monitoring and reporting systems to meet the required information requirements, the National Monitoring System (NMS) is being implemented progressively, and in partnership with local authorities. Data has been collected from all councils for the 2014/2015 financial year.

614. The Ministry is currently defining the scope of any further information requirements and assessing the ability of councils to collect the data, and effects on councils as a result of the addition data collection requirements. The discussion document 'National Monitoring System for the *Resource Management Act 1991 – A proposal for discussion'*[16] identified a range of additional qualitative and contextual information that could be collected through the NMS.

615. In addition to the NMS, the Ministry is developing an overarching framework (the RMA Outcomes project) for measuring the effectiveness of the RMA in supporting the achievement of the full range of environmental outcomes it is responsible for. The purpose of this project is to measure the performance of the RMA using a range of data to give us a better understanding of the institutional performance and the effectiveness of policies and interventions under the RMA in achieving social, economic, environmental and cultural outcomes.

616. Evaluation and monitoring frameworks will be developed for the proposals in the current reform package. Detailed consideration of the success indicators for each proposal or group of proposals

16 http://www.mfe.govt.nz/publications/rma/national-monitoring-system-resource-management-act-1991-%E2%80%93-proposal-discussion

will be undertaken. This will involve an assessment of the data required to measure the success of the proposals in the reform package and whether it is currently being collected.

617. The NMS, alongside other monitoring initiatives, will be utilised to monitor the implementation of the reform package. Further analysis of the data and more detailed studies through complimentary initiatives will then be undertaken to determine whether the intent of each proposal in the reform package has been achieved.

# Glossary of RMA terms

This page provides definitions of Resource Management Act terminology.

**Abatement notice** requires compliance with the RMA within the time specified in the notice. Only councils can issue these to get someone to stop or to start doing something.

**Appellant** is a person, group or organisation who lodges an appeal with the Environment Court.

**Applicant** is a person, group or organisation who applied for a resource consent.

**Assessment of environmental effects** is a report that must be given to the council with your resource consent application. It outlines the effects that the proposed activity might have on the environment.

**Certificate of compliance** is confirmation that your activity is permitted by the council and does not need a resource consent.

**City or district councils** are primarily responsible for managing the environmental effects of activities on land. Also referred to as territorial authorities.

**Department of Conservation** administers land under the Conservation and National Parks Acts and has a role under the RMA overseeing the management of the coastal environment.

**Designations** are provisions in district plans which provide notice to the community of an intention by the council or a requiring authority to use land in the future for a particular work or project.

**District plans** must be prepared by city or district councils to help them carry out their functions under the RMA.

**Enforcement order** is another way of getting someone to comply with the RMA. It differs from an abatement notice in that anybody (not just the council) can apply for an enforcement order against somebody else. These are issued by the Environment Court rather than the council.

**Environment** includes

a. ecosystems and their constituent parts, including people and communities, and
b. natural and physical resources, and
c. amenity values, and
d. the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs a to c of this definition or which are affected by those matters.

**Environment Court** is a specialist Court where people can go to appeal decisions made by councils on either a policy statement or plan, or on a resource consent application, or apply for an enforcement order.

**Excessive noise directions** are issued by a council to get people to reduce an excessive noise to a reasonable level.

**Existing use certificate** is useful when an existing activity doesn't meet a current district or regional plan rule, but was lawfully established before the rule came into force.

**Further submission** provides an opportunity for people to comment on other people's original submissions on a proposed plan, plan change or variation either by supporting or opposing those submissions.

**Heritage orders** are provisions in a district plan to protect the heritage characteristics of a particular place.

**Infringement notice** is an instant fine that is issued for relatively minor environmental offences.

**Land information memorandum** is issued by a council and will tell you what information the council has about that piece of land.

**Limited notification** means that only those persons who are adversely affected by an application are notified of the application by the council and can make a submission on a resource consent application.

**Ministry for the Environment** provides advice to the Government on policies, laws and other means to improve environmental management in New Zealand.

**National environmental standards** are tools used to set nationwide standards for the state of a natural resource. For example 14 standards for the prevention of toxic emissions and the protection of air quality were introduced in October 2004.

**National policy statement** provides national policy guidance for matters that are considered to be of environmental importance, for example the coastal environment.

**Natural and physical resources** include land, water, air, soil, minerals, energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures.

**Parliamentary Commissioner for the Environment** is an independent adviser to the Government on environmental issues. The Commissioner investigates emerging environmental issues and concerns from the public.

**Party** is a person, group or organisation in an appeal or other legal proceedings.

**Plan change** is the process that councils use to prepare changes to an operative plan.

**Private plan change** is a plan change initiated by any person to an operative council plan.

**Project information memorandum** is issued by the city or district council and contains information relating to the location of the building and whether it will need a resource consent or not.

**Public notification** means a notice published in a newspaper or notice sent to every person the council thinks may be affected by a proposed plan, plan change or variation.

**Publicly notified resource consent** means that any person can make a submission on the consent application.

**Regional councils** primarily manage resources like the air, water, soils and the coastal marine area.

**Regional plans** can be prepared by regional councils if they want to use them to help manage the resources for which they are responsible.

**Regional policy statements** must be prepared by all regional councils and help set the direction for the management of all resources across the region.

**Resource consent** is permission from the local council for an activity that might affect the environment, and that isn't allowed 'as of right' in the district or regional plan.

**Resource Management Act 1991 (RMA)** is New Zealand's main piece of environmental legislation and provides a framework for managing the effects of activities on the environment.

**Respondent** is the person or group against whose decision or actions a case has been lodged with the Environment Court.

**Submission** outlines your written comments, opinions, concerns, support, opposition or neutral stance about a proposed development, a notice of requirement for a designation, or a proposed policy statement or plan.

**Sustainable management** means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while:

a. sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations, and
b. safeguarding the life-supporting capacity of air, water, soil and ecosystems, and
c. avoiding, remedying or mitigating any adverse effects of activities on the environment.

**Unitary authorities** carry out the roles of both regional and district councils.

**Variation** is a change prepared by a council to a proposed plan.

**Working day** means any day except for a weekend day, public holiday, and those days between 20 December and 10 January.