



Ministry for the
Environment
Manatū Mō Te Taiao

Resource Management Act Survey Regulations

Issues and Options Paper

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Purpose

This document is designed to help evaluate the need for, and scope of, a possible set of regulations to make the Resource Management Act Survey of Local Authorities (“RMA Survey”) mandatory and subject to timeframes as provided for under section 360(1)(hk) of the Resource Management Act 1991 (RMA).

This document sets out the principal issues identified through research, the preliminary consultation carried out to date, and the main options for dealing with those issues. It is designed to seek feedback on the options to help determine which options are the most appropriate for inclusion in regulations (if regulations are required).

The Ministry for the Environment welcomes feedback from local authorities on this Issues and Options Paper. Please email your feedback no later than 5.00pm 5 February 2010 to either Richard Hills (richard.hills@mfe.govt.nz) or Julian Jackson (julian.jackson@mfe.govt.nz) or post to:

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Executive Summary

Four main issues that need to be addressed through regulations relating to the RMA Survey have been identified. Several options have been identified to address each issue.

Issue 1: Incomplete data sets

Options:

- do nothing
- regulations to make the supply of data for the RMA Survey mandatory for all local authorities
- mandatory ‘must answer’ questions prescribed through regulations

Issue 2: Lengthy survey report publication timeframes

Options:

- do nothing
- set a timeframe within which local authorities must supply information to the Minister for the Environment
- set a timeframe within which the Ministry for the Environment must publish and publicly release the final RMA Survey report

Issue 3: Unclear priorities for data collection

Options:

- do nothing
- incorporate the RMA Survey questions into regulations
- set a timeframe within which local authorities must supply information to the Minister for the Environment

Issue 4: Insufficient time for local authorities to adjust information collection systems

Options:

- do nothing
- formalise the advance warning to local authorities of any change to existing RMA Survey questions or the introduction of new questions.

Background

History

The RMA Survey is an important tool for measuring local authority performance in regard to RMA processes.

The RMA Survey helps the Minister for the Environment fulfil his functions under section 24(f) of the RMA (monitoring the effect and implementation of the RMA). For most of the last decade the RMA Survey has focussed on measuring workload and efficiencies of processes, particularly in relation to resource consents (though this has broadened over time to recognise the role and importance of other aspects of the RMA, such as plan changes and enforcement).

The information collected for the RMA Survey has generally been used by the Ministry for the Environment to:

- track overall trends in the administration of the RMA
- evaluate the effectiveness of changes made to the RMA aimed at improving process efficiency and reducing costs
- identify areas where improvements can be made to local authority practice
- identify local authorities that are struggling with their RMA functions and which may benefit from assistance.

In November 2008, the Government promised to introduce legislation into the House to amend the Resource Management Act (RMA) within 100 days of the formation of the new Government.

The Resource Management (Simplifying and Streamlining) Amendment Bill 2009 was introduced into the House on 19 February 2009. Making the RMA Survey mandatory was not amongst the proposed amendments contained within the Bill at that time.

Results from the most recent survey (2007/2008) were published in June 2009, nearly a year after the data collection period finished. Delays in reporting the results of the survey, and the fact that there are still instances of local authorities not completing the survey or not supplying a full set of data, has resulted in the Minister for the Environment expressing the intent to make completion of the RMA Survey mandatory. This intent was expressed to the Local Government and Environment Select Committee who were then considering the Resource Management (Simplifying and Streamlining) Amendment Bill.

The Resource Management (Simplifying and Streamlining) Amendment Act 2009, passed in August 2009, amended the RMA to insert a new section 360(1)(hk). This new subsection (described below) allows the Minister for the Environment to make regulations about the RMA Survey.

The next RMA Survey will be the 2010/2011 survey. Data collection for the 2010/2011 survey is expected to begin on 1 July 2010. Any regulations developed in 2010 are likely to apply to the supply of information at the end of data collection period on 30 June 2011.

Legislative mandate for regulations

RMA section 360(1)(hk) says that the Minister for the Environment can make regulations for the purpose of “*requiring local authorities to provide information under sections 35 and 35A [which relate to monitoring and the collection of information] to the Minister within time limits specified in the regulations*”.

Issues and Options

Issue 1: Incomplete data sets

The usefulness of data obtained from the RMA Survey can be reduced by local authorities not completing the survey at all or only completing it in part.

Background to the issue

The RMA Survey is now more than 12 years old. In its earlier years, it was not unusual for one or two local authorities (as in 1996/1997) not to respond to the survey. For most years since 1996/1997 all local authorities have responded to the RMA Survey, though as recent as 2007/2008, one local authority did not do so.

Over the life of the RMA Survey it has also been evident that not every local authority answers every question. For some questions, particularly those relating to financial information, it is not uncommon for local authorities to not supply information. For example, only 66 out of 85 local authorities provided financial information on non-notified land-use consents in the 2007/2008 Survey.

The accuracy of statistics decreases the smaller a sample size becomes, lessening the usefulness of the information that has been obtained. Absence of a complete data set can also make it difficult to pinpoint the scale and nature of some problems being encountered in practice, or whether particular local authorities are struggling more than others (and therefore in need of assistance).

Though the absence of data from a particular local authority may in itself indicate that the local authority is struggling, this may not necessarily be the case. Even where it is, the total absence of data may not indicate where the problem lies or its scale.

Options to manage the issue

Option 1: Do nothing

The status quo remains with local authorities filling out the survey voluntarily. The only incentives for filling out the survey remain the ability to benchmark performance against other local authorities and the possibility of adverse publicity if the particular authority's lack of response is highlighted by the Minister for the Environment.

Pros

- Most local authorities are filling out the RMA Survey anyway

Cons

- Does not emphasise the importance of completing the survey.
- Potentially incomplete data set and information which leads to reduced accuracy and usefulness – difficult to pinpoint the scale and nature of problems and where assistance is required.
- Can result the publication of the survey results being delayed while data trickles in and officials have to follow up local authorities who have not supplied all the data.

Option 2: Regulations to make the supply of data for the RMA Survey mandatory for all local authorities

The need to complete the RMA Survey in its entirety is spelt out clearly through regulations. Failure to comply invokes the discretion for the Minister for the Environment to use his powers under sections 24A or 25 of the RMA.

Pros

- Emphasises the importance of the Survey and can be used to clarify obligations and timeframes.
- Ensures full and complete samples for questions, improving the accuracy and usefulness of the results.
- Most local authorities collect data for their own monitoring purposes and complete the survey anyway (so being made mandatory should not be overly onerous).

Cons

- Most local authorities complete the survey anyway. Those struggling to could be encouraged or assisted instead.
- Regulations with possible sanctions may be seen as overkill for what appears to be failure to report.

Option 3: Mandatory ‘must answer’ questions prescribed through regulations.

Supplying data to answer a set of core questions within the RMA Survey is made mandatory. Answering non-core questions, such as where council practice is more variable due to practice or plan provisions, remains voluntary.

Pros

- Allows local authorities with few resources to concentrate on the questions that are most important.
- Retains time series data for a core set of questions.

Cons

- Could potentially send a message that the survey is not important.
- Could render results from voluntary questions useless if local authorities choose to ignore them.
- Could make the regulations lengthy and overly detailed as the mandatory questions have to be identified.
- Makes it difficult and slow to change questions (where prescribed in regulations) as regulations have to undergo a formal amendment process.

Preferred option: Option 2

The status of the RMA Survey could be made clear through regulations (with responses to all questions becoming mandatory by implication).

It is recognised that some local authorities do not provide data for particular RMA Survey Questions because particular RMA provisions may not apply to them or the processes they follow. In these instance either the regulations, or the RMA Survey itself, can be used to clarify how the question should be answered in order to comply with the regulations.

Individual questions will not be specifically identified within the regulations to allow them to be quickly adjusted following legislative changes, allow new questions to be introduced, or to improve interpretation of questions when necessary.

Stakeholder comments *[Continue typing in box to create room, or continue on separate sheet if filling in a hard copy version of this document.]*

Issue 2: Lengthy survey report publication timeframes

RMA Survey report publication timeframes mean that information can be more than nine months old before it becomes publicly available, with subsequent changes in circumstances potentially rendering it out of date.

Background to the issue

The end of the data collection period for the RMA Survey coincides with the end of the financial year (30 June). The results from the RMA Survey are often not published until March the following year (nine months after the survey period). The 2007/2008 results were not publicly available until June 2009 (nearly a year after).

A number of components contribute to the time it takes to report the results of the survey. These components include:

- one to three months for local authorities to supply data to the Ministry for the Environment
- one month for the Ministry for the Environment to check the data and seek amended data from local authorities if necessary
- two months for the Ministry for the Environment to draft the final RMA Survey report
- one month for publication of the report.

Interviews conducted in the preparation of this paper have suggested that some of the timeframes are overly generous and could be shortened. All of the local authorities interviewed indicated they are capable of collating and supplying data within one month, many within two weeks (one indicated that they could supply data almost the same day it was collected due to their real-time data recording and collection).

In other cases, the lack of clear deadlines and a statutory obligation has been cited as reasons why timeframes may drift. Two local authorities suggested that the generous reporting deadlines could mean that a low or 'non-urgent' priority was attached to the RMA Survey so that, despite the generous timeframes, there always appeared to be a rush to get the data supplied as the deadline loomed. Similarly, there are instances where a generous and flexible deadline may have contributed to the late publication and release of the RMA Survey report by the Ministry for the Environment.

The consequence of a late publication date is that the information loses some of its usefulness and credibility. The survey becomes a record of 'what was', rather than 'what is' the state of RMA administration and implementation. For some local authorities, a period of poor results may have been reversed by the time the survey is published.

Options to manage the issue

Option 1: Do nothing

Timeframes continue to be set informally (ie, set out in correspondence) and the publication date determined by events external to the RMA Survey.

Pros

- Maintains flexibility to take into account changes in circumstance that necessitate a delay in the supply of information or publication of the survey.

Cons

- The risk that information in the RMA Survey is already out of date by the time the survey is published remains.
- Provides no certainty for stakeholders (including local authorities) as to when information will be publicly released, available and able to be used.
- Does not convey the message that RMA Survey is a priority and should be part of normal local authority operations.

Option 2: Set a timeframe within which local authorities must supply information to the Minister for the Environment

A timeframe within which information must be supplied to the Minister for the Environment is formalised within regulations (for example, within 20 working days of the close of the RMA Survey data collection period).

Pros

- Provides certainty about when information for the RMA Survey needs to be supplied by, and enhances the level of accountability to ensure the information is supplied by that date.
- Could help shorten overall survey timeframes, to ensure information is still relevant and useful when published.

Cons

- Less flexibility to take into account changes in circumstances which mean a local authority needs more time to supply data for the survey.

Option 3: Set a timeframe within which the Ministry for the Environment must publish and publicly release the RMA Survey report

This option sets a fixed date or timeframe within which the Ministry for the Environment would be obliged to publish the results of the RMA Survey. The timeframe would either be expressed as a time period (six months or 120 working days for example), or a specific date (for example, by the 1 February the year after data collection).

Pros

- Ensures that information in the RMA Survey is still current and useful when published.
- Provides certainty for stakeholders as to when the survey report will be released so they can prepare for it if necessary, and know when use can be made of the content.

Cons

- Less flexibility to take into account circumstances where the Ministry for the Environment needs additional time to verify data, investigate anomalies, or provide assistance to local authorities who are having difficulty completing the survey.

Preferred option: Options 2 and 3 combined

Regulations prescribe the timeframe within which a local authority must supply information for the RMA Survey. It is suggested that the timeframe should be one month (20 working days) from the close of the data collection period (currently 30 June).

The regulations would also prescribe a specific date by which the Ministry for the Environment would need to publish and release the RMA survey report. It is suggested that this date should be no later than six months after the close of the data collection period (preferably shorter if practicable) to ensure the information in the report is still relevant enough to be acted upon.

Stakeholder comments *[Continue typing in box to create room, or continue on separate sheet if filling in a hard copy version of this document.]*

Issue 3: Unclear priorities for data collection

Some local authorities give the RMA Survey a lower priority than other competing tasks. This can contribute to late, incomplete and sometimes inaccurate data being supplied.

Background to the issue

Local authorities may be busy during the survey period. They have their own priorities and may prioritise the RMA survey in the context of other competing demands. Because the RMA Survey is voluntary local authorities may give it a lower priority than tasks that have a statutory requirement. Larger local authorities tend to have a greater pool of resources on which they can draw, while smaller local authorities have less flexibility to cope with competing workload demands.

While most local authorities give high priority to providing survey data, there is a need to ensure that this is universally the case. There may be a tendency to put the survey aside and respond to the survey as late as possible while other pressing matters are dealt with. Such practice can lead to:

- data not being able to be collected (for example, it may require going back through files which can be too time consuming)
- local authorities electing not to supply specific data within timeframes
- data being collected in an *ad hoc* fashion (so the results are erroneous or incomplete)
- whole survey responses being supplied late to the Ministry for the Environment

Options to manage the issue

Option 1: Do nothing

The status quo remains. Local authorities are made aware of data collection requirements and timeframes before each survey through covering letters supplied with the survey questions.

Pros

- Maintains flexibility for local authorities to respond in a manner that matches their circumstances.

Cons

- Does not elevate the priority of the RMA Survey relative to other tasks.
- The risk that incomplete, inaccurate, or late data being supplied remains.

Option 2: Incorporate the RMA Survey questions into regulations

All the questions within the RMA Survey are formalised through regulations. This would make it clear that the collection of data for the questions should be accorded a high priority, and would also mean that the questions in the RMA Survey would be more consistent (as changing them would require an amendment to regulations).

Pros

- A clear and direct legal requirement to answer questions raises the priority of the RMA Survey relative to other tasks.
- Potential for improving the quality of data as there is no discretion as to which or how questions are answered.

Cons

- Less flexibility to amend questions in a timely manner (or add new questions) in response to legislative changes or changes in implementation.
- Increased risk that the questions themselves become subject to legal debate over interpretation
- Less flexibility for local authorities to respond in a manner that matches their circumstances.
- Less discretion for local authorities to choose which questions they answer (and how).

Option 3: Set a timeframe within which local authorities must supply information to the Minister for the Environment

A timeframe within which information must be supplied to the Minister for the Environment is formalised within regulations (for example within 20 working days of the close of the RMA Survey data collection period).

Pros

- Would make the completion of the RMA Survey within a set timeframe more important.
- Would assist local authority workload planning by providing certainty around timeframes.
- Ensures that information in the RMA Survey is still current and useful when published.
- Provides certainty for stakeholders about when the survey report will be released so they can prepare for it if necessary, and know when use can be made of the content.
- Incentivises good monitoring and recording systems in local authorities that can help meet other obligations (such as other monitoring duties under RMA section 35).

Cons

- Less flexibility to take into account changes in circumstances which mean a local authority needs more time to supply data for the survey.

Preferred Option: Option 3

A timeframe within which information must be supplied to the Minister for the Environment is formalised within regulations (for example, within 20 working days of the close of the RMA Survey data collection period).

Stakeholder comments *[Continue typing in box to create room, or continue on separate sheet if filling in a hard copy version of this document.]*

Issue 4: Insufficient time for local authorities to adjust information collection systems

Short notice of changes to RMA Survey questions, or the addition of new survey questions, means some local authorities struggle or are unable to adjust or change the automated systems they use to capture the required data.

Background to the issue

All of the local authorities interviewed indicated that there are no significant issues with responding to the current survey questions. Most commented that the survey was difficult to interpret and respond to initially (in the 1990s). However, the perception is that the ability to interpret the questions and anticipate the information required has improved greatly over time and tracking and reporting systems are now in place to respond to the questions.

However, it was noted that if any changes to the questions are proposed, even subtle ones, or new questions are proposed, that advance warning is required to enable local authorities to amend their systems to capture the required data. When asked whether any system or data capture changes had been made as a result of the RMA 2009 Amendments, some local authorities indicated that they are waiting to see how the RMA Survey is changed. Others were currently making changes or planning to make changes in early 2010 regardless.

The Ministry for the Environment tries to circulate questions for the RMA Survey well in advance of the survey collection period; however, in some instances local authorities have found the pre-circulation of the questions too late to enable them to adjust the databases they use to record and collate data. Additional local authority staff time has to be allocated to the RMA Survey where data has to be recorded and collated manually. This can divert staff away from other tasks, see inappropriately experienced staff being used to record and collate data when others are unavailable, or lead to delays in providing information to the Ministry for the Environment.

Several local authorities interviewed in the preparation of this paper indicated that circulation of RMA Survey questions several months before the data collection period begins would be useful to ensure electronic databases can be adjusted and added to make data collection efficient.

Options to manage the issue

Option 1: Do nothing

The status quo remains. Local authorities are made aware of changing data collection requirements through covering letters supplied with the survey questions.

Pros

- Provides flexibility for the Ministry – can make changes to existing questions and insert new questions at any time before the survey is distributed.

Cons

- Does not provide certainty to local authorities who need to know when final questions for an upcoming survey will be received by and how much time they have to amend their systems.
- Could present interpretational issues associated with changes to existing questions and new questions.
- Could result in time delays – in local authorities providing information to the Ministry and the Ministry reporting on the information.

Option 2: Formalise advance warning to local authorities of any change to existing RMA Survey questions or the introduction of new questions

This option would require the Ministry for the Environment to provide local authorities with advance warning of any change to existing questions or new questions so they could ensure their systems are set up to capture the required data. It is suggested that a minimum of three months warning could be given of changes or additions to questions in the RMA Survey.

Pros

- Gives local authorities time to ensure their systems and staff resources are in place to gather the required information.
- Could lessen interpretational issues with amended and new questions as local authorities have lead-in time to clarify questions if required.
- Likely to ensure information is provided in a more timely manner
- Requires the Ministry to be more forward thinking and accommodating of local authorities concerns.

Cons

- Establishing how much advance warning is actually required to be of benefit to local authorities could be problematic.
- The timing of the survey may not correspond with changes to the RMA and the need for amended or new questions may not be known well in advance.
- Reduces the amount of time within which the Ministry for the Environment has to design survey questions and test them with local authorities before finalisation.

Preferred Option: Option 1

Timeframes for pre-circulation of questions are not set out in regulations but the Ministry for the Environment has agreements with local authorities to circulate questions at a suitable and realistic timeframe before the survey data collection period begins. Such agreements are backed up by Ministry for the Environment internal protocols and project management procedures to ensure questions can be supplied to meet agreed timeframes.

Stakeholder comments *[Continue typing in box to create room, or continue on separate sheet if filling in a hard copy version of this document.]*