

Regulatory Impact Statement

Phase Two of the Resource Management Reforms

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry for the Environment.

It provides an analysis of options to address a number of issues in the context of Phase 2 of the reform of the Resource Management Act. Cabinet has agreed that the objectives for reform are to:

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

In the context of this overarching reform, a limited set of proposals are discussed in this RIS, which aim to provide for greater transparency in decision-making on resource management.

Specifically options are proposed to:

- streamline the development of Auckland's first unitary plan
- improve section 32 analysis and reporting
- make some technical amendments the application of the Local Government Official Information and Meetings Act 1987 (LGIOMA) to boards of inquiry.

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

Given the nature of the issues covered in this policy process, accurate quantification of the size of problems, and the size of impacts, has not been feasible across all problems and option analyses. A multi-criteria analysis (MCA) was therefore adopted, consistent with the Ministry's now standard approach. Policy objectives (all considered to be equally important, and so equally weighted) were translated into options assessment criteria (also equally weighted), with care taken to ensure no overlap between criteria. Where possible, impacts (costs and benefits) have been quantified, and this information had fed into the MCA. Areas where quantification has not been feasible are highlighted

throughout the RIS. Risks associated with options have also been considered. The MCA approach is, by definition, a logical framework within which to make subjective decisions on how options perform against policy objectives. The RIS contains multiple issues and options, and care has been taken to apply subjective performance scores in a consistent manner across the issue.

The analysis assumes that removal of unnecessary constraints arising from resource management and planning processes, and increased clarity on required processes, will have a broad range of substantive benefits for businesses, communities, and individual property owners, in terms of reduced time and costs involved in consent and planning processes, facilitation of the development of infrastructure, and increased certainty in relation to the management of risks from natural hazards. These effects are assumed to translate to wider economic and environmental benefits.

Consultation

Consultation has varied depending on the issue concerned. Targeted consultation has taken place with stakeholders and resource management practitioners whose experience with the current system is well placed to inform policy thinking. Further consultation is however recommended with affected parties and Maori.

Consistency with Government Statement on Regulation

We do not expect the proposals in this RIS to impose additional costs on business. The recommendations aim to reduce costs on business and provide increased public benefit by streamlining processes and increasing transparency. The proposals in this RIS are not expected to impair private property rights, market competition, incentives on business to innovate or override fundamental common law principles.



Kevin Currie – Director, Environmental Regulation
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13-9-12.
Date:

PART 1: Overview

Background

Resource Management Reforms

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

Phase One

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

Phase Two

Phase Two focuses on improved institutional arrangements, on improving some key processes, and on achieving better interaction between the RMA and other statutes.

Some Phase Two reforms have already been delivered, including the establishment of the EPA as an independent Crown agent; and a national policy statement on freshwater management that provides national direction on water allocation and quality.

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

Taken as a whole, the proposed reforms to be enacted over 2012-2013 aim to provide for a resource management system that delivers community planning needs, enables growth and provides strong environmental outcomes in a timely and cost-effective way.

Auckland governance reforms

Following reform of Auckland's governance arrangements in 2010, Auckland Council has begun to develop Auckland's first Unitary Plan. The Unitary Plan is critical to achieving

Auckland's proposed growth targets, as well as planning land-use, critical infrastructure and housing supply.

The Council has stated that, using the existing plan development process under Schedule 1 of the RMA, development of the unitary plan would be a long and costly exercise, taking between seven and ten years to become fully operative. The Council has therefore requested the Government to consider legislative amendment to enable the Unitary Plan to become operative in a shorter time.

Scope of RIS

This RIS supports the second of two Cabinet papers seeking policy decisions on the content of the 2012 Bill. The first Cabinet paper and associated RIS proposed options to streamline consenting processes for medium sized projects and improve data for national environmental reporting.

The scope of this RIS and associated Cabinet paper covers options to:

- i. streamline the development of Auckland's first Unitary Plan
- ii. improve section 32 analysis and reporting
- iii. make some technical amendments regarding the application of the Local Government Official Information and Meetings Act 1987 (LGIOMA) to boards of inquiry. These amendments do not involve substantive changes to policy and accordingly do not require a RIS. However, in order to provide a more complete overview of the proposed improvements to the RMA outline information on these have been included in this RIS.

The issues identified above are a small subset of a wider range of matters that have been identified as part of a larger resource management reform process. The above have been selected as discrete matters, that do not require further detailed policy development, and can be implemented relatively quickly in 2012, to provide some early benefits to stakeholders, by improving processes, and clarifying and updating legislation. The proposal to streamline processes relating to the development of Auckland's first Unitary Plan (issue i) responds to concerns raised by the Auckland Council over the protracted timeframe arising from the current statutory process. If amendments to enable a streamlined process for Auckland are to be implemented, these must be in place by August 2013 at the latest. This is because the Auckland Council is intending to notify the Plan by September 2013 and participants need to understand the process concerning the Unitary Plan process as early as possible. Issue ii has been raised by stakeholders as needing early resolution and can be readily addressed in 2012. Technical amendments regarding the LGIOMA can be appropriately made now to correct anomalies and align statutes.

As these are discrete matters, this RIS does not propose complete and final solutions to address the need for broader efficiencies in the resource management system, but provides for more immediate improvements, pending further reform in to be progressed over a longer timeframe in 2013. Addressing the issues identified in this RIS will respond to the Government's objectives for resource management reform and the proposals in the RIS do not constrain future reforms.

Detailed analysis of each of these issues is set out in Part 2 of this RIS. Matters to be addressed in the proposed 2013 Bill are not discussed in this RIS, and will be the subject of later advice to Ministers.

Status quo

The RMA is New Zealand's principal statute for managing natural and physical resources. The purpose of the Act is to promote the sustainable management of natural and physical resources. This purpose is supported by a number of principles for the guidance of persons exercising functions and powers under the RMA (sections 6 and 7), including recognition of specified matters of national importance.

The RMA forms part of a broader planning and resource management regulatory system, and intersects with a number of other statutes, such as the Public Works Act 1981, Building Act 2004, Conservation Act 1987, Historic Places Act 1983, Forests Act 1949, and Civil Defence and Emergency Management Act 2002.

Costs and benefits of status quo

The status quo provides a comprehensive framework for resource management decision-making, at the local, regional and national levels. It aims to provide for an appropriate balance of rights between various parties: developers, individual property owners, the community, councils and government, recognising that resource management and planning will necessarily involve trade-offs between the interests of parties. There are also complex inter-relationships and trade-offs to be managed between a range of values: environmental, economic, cultural, and social.

The RMA has been in place since 1991, providing broad stability and ongoing experience in relation to the planning framework and associated processes. The interpretation of the RMA's purpose is well-grounded in case law.

The complexity of the regulatory system, and impact of resource management and planning means that there will be inherent costs in the administration and impact of the system. The status quo, however, imposes unnecessary costs.

These costs are context specific, as discussed in Part 2 of this RIS.

The above is a high level summary only, which has not sought to quantify impacts. Discussion on the more specific costs and impacts of the individual issues covered by this RIS are set out in Part 2 of this report. The scale of proposed reforms vary from relatively slight (necessary technical amendments to address anomalies) to potentially significant (e.g. Auckland, where any changes to improve processes are likely to have a noticeable and broad impact, given the scale of Auckland as a major urban, commercial and cultural centre).

High level problem definition

The effects of the RMA are far-reaching. As noted above, the resource management framework impacts across all levels of government, society, the environment and the economy. The Act as it stands does not provide an optimally efficient planning and resource management system, and this impacts on a range of parties - developers, councils and communities and across the economy as a whole. Core problems have been identified as investment and community uncertainty, weak planning outcomes and costs and delays. This is reflected in, for example, constraints on efficient urban planning; development of infrastructure, weak recognition of issues such as natural hazards, inadequate consultation and inadequate analysis and evaluation as part of council decision-making, with consequent wide-ranging economic, environmental and social impacts,

Since it was passed in 1991, the RMA has not been the subject of comprehensive review, but has come under increasing pressures. Demands placed on resources are greater; there is a heightened recognition of the inter-relationship between sound resource management, environmental management and economic development; and an effective and well-integrated planning system is essential to the development of infrastructure, to the availability of affordable housing, and to the overall performance of cities as a contributor to economic and social well-being. The complexity of decision-making, and the potentially negative economic and environmental outcomes means that there is a compelling need to ensure that the resource management system is well integrated and efficient system.

Experience of its operation since that time has highlighted a number of issues where reform is merited. The issues discussed in this RIS have been identified, through consultation, and the advice of expert groups, as requiring attention. Individual problem definitions are discussed in Part 2 of this RIS. Cumulatively, however, these issues impact on the effectiveness, transparency and integrity of the resource management system as a whole.

Objectives and assessment criteria

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

- providing greater central government direction on resource management
- improving economic efficiency of implementation without compromising underlying environmental integrity
- avoiding duplication of processes under the RMA and other statutes
- achieving efficient and improved participation of Māori in resource management processes.¹

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

- ensuring that principles of good regulatory practice are met. This reflects the expectations set out in the Government Statement on Regulation (17 August 2009).

¹ CAB Min (09) 13/2 refers

Achievement of these objectives will help to ensure that New Zealand's resource management system will enable growth, provide good environmental outcomes, and adapt to changing values, pressures, and technology. They also provide the context for reform that will enable improved planning outcomes and processes, by removing unnecessary constraints on investment and planning, including sound urban planning and provision of infrastructure.

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

Table 1: Objectives and derived assessment criteria

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

Ensure that principles of good regulatory practice are met	is clear, can be readily understood by those to whom it is directed, and facilitates compliance
	is proportional to the scale of the issue or problem being addressed
	provides an appropriate balance of rights and obligations between the affected parties
	provides appropriate rights of appeal to parties affected by regulatory decisions
	does not create unintended consequences or perverse incentives
	can be readily and cost-effectively implemented and, where necessary, enforced

Approach to analysis

For consistency, the objectives and assessment criteria have been used for the analysis of all the policy problems identified. The objectives are equally weighted. Criteria associated with each objective are also given equal weight in relation to that objective. Each policy option has been scored against each criterion compared to the status quo. ✓✓✓ indicates the option is substantially better at achieving a particular criterion than the status quo; ✓✓ better than the status quo; ✓ slightly better than the status quo; ~ indicates no change compared to the quo; x slightly worse than the status quo; xx worse than the status quo; xxx substantially worse than the status quo.

Where criteria are not applicable to assessment of a specific option **N/A** is indicated. In such cases the weightings have been equally re-adjusted between the remaining criteria.

Where possible, quantitative analysis was used to determine the order of magnitude of the score. Where this was not possible judgement was used instead. Note that the issues canvassed in Part 2 of this RIS vary in terms of their overall significance and impact. As discussed above, some involve relatively small technical improvements, while others have far-reaching implications for urban planning and resource management. It has not therefore been possible to impose a consistent scale to determine orders of magnitude: the level of impact identified for each issue is therefore context specific. Where a judgment has been made on orders of magnitude (i.e. quantitative data are not readily available), this judgment has been informed where possible by consultation with experienced stakeholders or resource management practitioners.

The assessment against objectives has involved detailed multicriteria analysis, which is not published with this RIS. In the interests of brevity, this RIS presents a summary assessment against the broad objectives rather than each of the underlying criteria. Summary impact assessment tables are provided for each of the options addressed in the sections below.

Consultation

The options in this RIS have been the subject of targeted consultation.

In the case of the Auckland proposals, consultation has taken place with the Auckland Council, a number of government departments (see Part 2) and tested with a representative sample of stakeholders and expert practitioners, including legal practitioners, planning practitioners, and an independent commissioner.

The following departments were consulted on the proposals for Auckland in this RIS and associated Cabinet paper 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.

For section 32 proposals the analysis contained within this document is based in part on a February 2010 paper prepared for the Ministry for the Environment in response to concerns raised by a Technical Advisory Group appointed by the Minister. This paper was prepared with the guidance of a 12-member evaluation group including regional councils, territorial authorities, government agencies and some key applicants/submitters.

Conclusions and recommendations

The options discussed in the body of this RIS are those considered best meeting the objectives and criteria for addressing this phase of resource management reform.

The detail on recommended options is set out in Part 2 of this RIS. In summary, it is recommended that:

- the RMA be amended to provide for a unique time-limited process for the development of Auckland's first Unitary Plan to allow faster delivery of a quality plan while achieving good stakeholder and community support
- section 32 of the RMA be amended to add an explicit requirement for the detail of the section 32 evaluation to correspond with the scale and/or significance of the plan or policy change
- some technical amendments be made to improve the clarity and operation of the Act.

Implementation

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

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

It is recognised that the capability and capacity of different councils varies and that implementation of the proposed recommendations will have greater implications for those with capability and capacity constraints. In these circumstances, there is a risk that without sufficient guidance and support implementation could be compromised. It is therefore proposed that appropriate guidance be developed to support council implementation. A

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

Where recommended options involve specific implementation measures, aside from the generic detail outlined above, these are discussed in the relevant topic sections in Part 2 of this RIS.

Monitoring, evaluation and review

An overarching monitoring and evaluation framework will be developed to enable to high level performance of the suite of reforms associated with this RIS to be evaluated. The issue-specific sections of this RIS (Part 2) also set out more specific detail of monitoring and evaluation for individual regulatory proposals. These will also inform the development of the overarching monitoring and evaluation framework.

PART 2: Regulatory impact analysis of specific issues

A. An alternative plan development process for the Auckland Unitary Plan

Status quo and problem definition

Status quo

The reform of Auckland's governance was intended to address the problem of fragmented planning and decision-making in the Auckland region, and resulted in the establishment of Auckland Council (the Council) in November 2010. The reform followed recommendations from the Royal Commission on Auckland Governance, which also proposed the development of a regional spatial plan and one district plan for Auckland.

Following the adoption of the Auckland Plan (Auckland's first spatial plan), the Council is now in the process of developing its first Unitary Plan under the Resource Management Act 1991 (RMA). The Unitary Plan is the most important regulatory mechanism for implementing the high level strategy and policy adopted by the Council in the Auckland Spatial Plan. It will replace the current Regional Policy Statement (RPS), four regional plans, and seven district plans, inherited from the former councils.

Under the status quo, the Unitary Plan will be developed using the plan preparation process in Schedule 1 of the RMA. The Schedule 1 process can be broken down into four distinct stages. These four stages and the key aspects of each stage are described below:

i. Pre-notification plan preparation

- During the preparation of the Unitary Plan the Council will be required to consult the Minister for the Environment, other Ministers and local authorities who may be affected, the tangata whenua of the area who may be affected, and any customary marine title group in the area.
- The Council has agreed to undertake an 'enhanced engagement process' – that is to engage more broadly than required under Schedule 1 and at greater length than might have otherwise occurred. The details of this are still being worked through.

ii. Plan notification, submissions and pre-hearing activity

- Once the Council has determined the Unitary Plan is ready, it will be notified, with persons having a maximum of 40 working days to make a submission.

iii. Hearings and decisions

- Following close of submissions public hearings will be held at which submitters (or representatives of submitters) will present evidence before a hearings panel. The composition of the hearings panel is at the discretion of the Council and may comprise only local councillors, a mix of independent commissioners and local councillors, or just independent commissioners.
- If the hearings panel comprises any independent commissioners, its decisions must be approved by the Council.
- The Council will be required to notify decisions on submissions within two years from the date the plan was notified.

iv. Appeals

- If a submitter is dissatisfied with a decision he or she may appeal the merit of the decision to the Environment Court. The Environment Court may direct mediation prior to the commencement of a hearing in an attempt to clarify issues and resolve conflicts.
- Parties dissatisfied with the decision of the Environment Court will then be able to appeal the decision to the High Court on points of law only.

Problem definition

Preparing the Auckland Unitary Plan, which is unique in scale, through the existing plan development process will result in unnecessary costs and delays.

A long and costly exercise

The Council has stated that using the Schedule 1 process the development of the Unitary Plan would be a long and costly exercise. It has been estimated that it would take between seven and ten years² for the Unitary Plan to become fully operative and cost the Council between \$13.7 and \$21.1 million dollars.³ Compared with the costs required to develop first generation plans⁴ and given the scale of the Unitary Plan, these costs appear to be commensurate. Throughout this time the Council, stakeholders and the community would be required to operate in a highly uncertain, complex, and costly planning environment.

The likely cost to submitters and other participants of becoming involved in the development of the Unitary Plan through this process has not been estimated, though is likely to be substantial and at least as much as the direct costs to Council. There would be direct costs e.g. through attending hearings, engaging technical experts and making appeals; and opportunity costs of navigating the system and awaiting decisions e.g. resultant delays in the release of land for development which could further exacerbate Auckland's housing affordability crisis – a cost which would be borne by the Auckland and New Zealand economy.

Unique scale and complexity of the unitary plan, and significant legacy issues

Given the size of Auckland's first Unitary Plan – it will be significantly larger in scope and complexity than any planning exercise undertaken in New Zealand and will impose regulations on approximately one third of all New Zealanders – there will be further logistical challenges that have not been encountered in previous plan development processes.

The Council is required not only to review current policy, but also to integrate and develop new policy in the context of a new and complex organisation and large geographical jurisdiction. There are also considerable legacy issues in the form of multiple live plan

² The average total length of time from a council commencing preparation of the plan to it becoming fully operative (including appeals) was 8.2 years (or 5.7 years excluding plan preparation). The average length of time for the previous Auckland Councils' RMA plans to be made operative from notification (i.e. excluding plan preparation) was 7.1 years

³ Cost estimates provided by the Auckland Council range from \$13.7 to \$21.1 million depending on the scale of submissions on the Plan and appeals to the Environment Court. The total estimate for pre-notification costs (consultation, contracting, communication and engagement, production of the Plan, and legal) included in the overall costing is unchanged under either scenario at approximately \$5.4M.

⁴ The average cost to local authorities of producing the first generation of plans under the RMA was \$1.92 million per plan with some costing as much as \$17 million.

variations and changes.⁵ The expectation that the Unitary Plan will implement the statutorily required Auckland Plan means the Unitary Plan requires a significant reorientation of objectives, policies and rules. A consolidation of the existing plans will not be sufficient or appropriate.

Given the difficult decisions that will need to be made in the Unitary Plan (e.g. where growth will be accommodated, and what that growth will look like) the Unitary Plan is likely to incur significant interest from the public and key stakeholders. However, the current Schedule 1 process does not require or incentivise the Council to undertake quality 'front-end' engagement and dialogue with communities and stakeholders about these kinds of hard choices. While the Council has agreed to undertake an 'enhanced engagement process'⁶ there is no assurance that this will necessarily lead to the level of community and stakeholder engagement necessary to ensure the level of support required.

These problems are driven by the RMA's current plan development process which incentivises litigation rather than front-end collaboration and is resulting in fragmented plans that take years and cost millions to become operative.

Regulatory impact analysis

Policy options

Table 1 below identifies the key features of the four practical options considered. All options require amendments to the RMA in order to shorten the time taken to deliver the Unitary Plan and are to be complemented by the Council's 'enhanced engagement process'. While these options aim to meet all five objectives, any streamlined plan development process must allow faster delivery of a high quality unitary plan and ensure meaningful community engagement in its preparation. This has particular relevance to objectives of improving economic efficiency of implementation without compromising underlying environmental integrity, and avoiding duplication of processes under the RMA and other statutes.

Table 1: Practical options

Option	Key features
1) Council-run model	<p><u>The RMA would be amended to:</u></p> <ul style="list-style-type: none"> require the Unitary Plan to be made operative within three years from notification remove the right to appeal decisions on the Unitary Plan on merit, limiting appeals to points of law to the High Court only
2) Combined council-independent model	<p><u>The RMA would be amended to:</u></p> <ul style="list-style-type: none"> require the hearings panel chairperson to be a retired Environment Court of High Court judge require the hearings panel chairperson to be appointed by the Minister for the Environment in consultation with the Mayor of Auckland and Minister of Conservation give the hearings panel chairperson an additional oversight role pre-hearing

⁵ As an example, The Hauraki Gulf Islands District Plan, which is only one of the three volumes of district plans of the former Auckland City Council, was notified in September 2006 and drew almost 4000 public submissions. It remains a proposed plan as it is yet to be made operative (both this version and the previous district plan, which was notified in 1996, must be considered when applying for resource consent). The costs incurred by Auckland City Council (and subsequently Auckland Council) thus far are upwards of \$4 million, including \$2.4 million allocated to resolving appeals to the Environment Court.

⁶ On 3 July, 2012 the Auckland Plan Committee agreed to support an enhanced engagement process as proposed by Council officers.

	<p>which includes requirements to commission an independent review:</p> <ul style="list-style-type: none"> ○ into the adequacy of Council's section 32 report to ensure the draft plan has been developed with sufficient rigour ○ of the Council's proposed notification and submission process ● The Unitary Plan will not be notified until the chairperson is assured that the draft plan, notification and submission process have been well designed ● require the hearings panel to comprise councillors and a minimum number of independent commissioners ● require the hearings panel members to be jointly appointed by the Council and panel chairperson ● enable the hearings panel to: <ul style="list-style-type: none"> ○ direct mediation and caucusing to resolve issues prior to the hearing ○ allow cross examination in the hearing ● allow parties to appeal any final decisions of the Auckland Council that are at variance with the recommendation of the hearings panel to the Environment Court. The ability to appeal to the High Court on points of law will remain unaffected ● require the Unitary Plan to be made operative within three years from notification
3) Special purpose entity model	<p><u>The RMA would be amended to:</u></p> <ul style="list-style-type: none"> ● establish an independent, special purpose entity overseen by a board comprising Ministerial and Council appointees ● enable the special purpose entity to: <ul style="list-style-type: none"> ○ direct mediation and caucusing to resolve issues prior to the hearing ○ appoint the hearings panel ○ manage the submissions and hearing process ● enable the hearings panel to: <ul style="list-style-type: none"> ○ allow cross examination ● allow parties to appeal any final decisions of the Auckland Council that are at variance with the recommendation of the hearings panel to the Environment Court. The ability to appeal to the High Court on points of law will remain unaffected
4) Calling-in to the EPA	<p><u>The RMA would be amended to:</u></p> <ul style="list-style-type: none"> ● enable the Unitary Plan to be 'called-in' to the EPA to be considered by a Board of Inquiry as a nationally significant proposal

In developing the above options other potential components of an alternative plan development process were considered and discounted. These are identified in Table 2 below.

Table 2: Discounted options

Option	Reason option considered unviable
Restrict merit appeals to rules or zoning only	<ul style="list-style-type: none"> ● There is a risk that this option would not lead to substantial time savings, as a majority of plan appeals relate specifically to zoning.
Restrict appeals to Regional Policy Statement (RPS) level policies only	<ul style="list-style-type: none"> ● Changes that occurred to the RPS level policies as a result of the appeal would need to filter through all lower level policies, rules and methods and would result in a greater level of plan fragmentation and uncertainty. ● It would also be likely to lengthen the time required for the plan to become operative.

Require appellants to seek leave from the Environment Court to appeal on merit	<ul style="list-style-type: none"> • A similar provision was considered in the 2009 amendments to the RMA alongside a proposal to limit appeals on plan decisions to points of law. The proposal was removed from the Bill at Select Committee stage. • Submissions received at the time raised concerns that the provision would lead to additional uncertainty and litigation. • We are not satisfied that the option would deliver on the goals for streamlining the Auckland Unitary Plan.
Environment Court appeals by a way of rehearing (i.e. no new evidence able to be submitted)	<ul style="list-style-type: none"> • Concerns exist that such a provision could significantly affect the quality of final decisions and potentially lengthen the overall process. • As an example, additional information could be uncovered through Court proceedings; however the Court would be bound to make decision only based on evidence presented at the Council hearing.
Give all plan provisions full legal weight on notification	<ul style="list-style-type: none"> • This would significantly reduce timeframes but giving the whole of the notified plan full legal weight before testing it through an appropriate hearings process would have significant adverse consequences. • It may mean that inappropriate development commences prior to people having a chance to submit and be heard, or before mistakes are rectified. • As an example, a large development, permitted under new permissive provisions, begins construction. Evidence is uncovered at the hearing showing the land as unsuitable for a large scale development due to natural hazard risk, creating significant health, safety and insurance issues for the building's owners and occupants.

Summary impact assessment

The table below summarises the impacts of each feasible option, who bears these impacts and the likely magnitude of them. As all policy options aim to significantly reduce the cost and time taken to make the Unitary Plan operative, the magnitude of the impacts are fairly considerable.

Table 3: Summary impact assessment

Impact	Incidence	Magnitude ^{7,8}
Option 1) Council-run model		
Costs		
Costs of adoption of a new process including additional training and work to prepare new procedures, and educating the general public and staff around the new process	General public and Auckland Council	Unknown, although potentially medium.
Benefits		
Reduced time and cost of developing the Unitary Plan through lower	General public and business	Unknown, although potentially high. An Auckland Council estimate of the appeal

⁷ Key for costs and benefits: **High** indicates the monetary impact is likely to be \$1,000,000 or greater; **Medium** indicates the monetary impact is likely to be between \$100,000 and \$1,000,000; **Low** indicates the monetary impact is likely to be less than \$100,000

⁸ Key for risks: **High, medium, low** indicates the likelihood of the risk occurring

likelihood of appeals (because of inability to appeal on matters of merit)	interests	costs under the status quo (based on previous appeal costs for the Hauraki Gulf Islands District Plan) is \$5.2 million based on 100 appeals. The number of appeals on the Unitary Plan can be estimated to be more than this.
Reduced consenting costs resulting from an up to date and coherent Auckland planning framework	General public and business interests	Unknown, although potentially medium.
Reduced opportunity costs and social and economic benefits through quicker implementation of the Auckland Plan e.g. results in more business development and provision of housing (faster realisation of planning outcomes)	General public and business interests	Unknown, although potentially high.
Reduced barriers to public participation	General public and business interests	Unable to quantify. The option incentivises input at or before the initial Council hearing, which is less formal.

Risks

The process fails to deliver the time benefits it is designed to (due to increased appeals on points of law, applications for judicial review and unforeseen costs and delays during the hearing process) and leads to additional costs	General public, Auckland Council	Unable to quantify, although potentially high.
The provision of a streamlined plan development process for Auckland creates expectations of precedent in other parts of New Zealand	Central government	Unable to quantify, although potentially medium.
Could lead to a higher incidence of poor decisions or decisions that are not evidence-based, which will increase the number of appeals to the High Court on points of law and associated costs	General public, Auckland Council	Unable to quantify, although potentially high.
There is a reduced incentive for the Council to conduct effective public engagement, increasing the risk that the Plan is poorly drafted	General public, Auckland Council	Unable to quantify, although potentially high.

NET IMPACT: Although it is difficult to accurately quantify and therefore assess the impacts of this option, we consider that this option is likely to result in a net cost. It will result in reduced costs through the reduction in appeals on the Unitary Plan. However, it presents potentially significant risks in terms of a lack of public engagement, poor quality decisions and planning outcomes that do not have broad support.

Option 2) Combined council-independent model		
Costs		
Costs of adoption of a new process including additional training and work to prepare new procedures, and educating the general public and staff around the new process	Submitters and Auckland Council	Unknown, although potentially medium. Requirement to implement new procedures around mediation could lead to significant transitional costs.
Costs of additional pre-hearing mediation	Auckland Council, submitters	Unknown, although potentially high. Mediation could require similar preparation and representation to Council hearing process, adding substantial cost.
Costs of additional central government oversight of the plan development process (audit of section 32 report on costs and benefits and stakeholder engagement plan)	Central government	Unknown, although potentially medium. The cost of an independent analysis on each of these items has been estimated to be between \$50,000 and \$100,000.
Costs to resource more formal hearings process through increased use of legal counsel and consultants to present evidence	Auckland Council, submitters	Unknown, although potentially high.
Benefits		
Reduced time and cost of developing the Unitary Plan through lower likelihood of appeals; and improved ability and experience of staff to run complex submission and hearings process	Auckland Council, general public and business interests	Unknown, although potentially high. An Auckland Council estimate of the appeal costs under the status quo (based on previous appeal costs for the Hauraki Gulf Islands District Plan) is \$5.2 million based on 100 appeals. The number of appeals on the Unitary Plan can be estimated to be more than this.
Reduced consenting costs resulting from an up to date and coherent Auckland planning framework	General public and business interests	Unknown, although potentially medium.
Reduced opportunity costs through quicker implementation of the Auckland Plan e.g. results in more business development and provision of housing (faster realisation of planning outcomes)	General public and business interests	Unknown, although potentially high.
A balance of local and independent decision makers, increased decision-making expertise and greater robustness would lead to greater stakeholder confidence in decisions	Stakeholders	Unable to quantify, although potentially low.
Risks		

The process fails to deliver the time benefits it is designed to (due to increased appeals on points of law, applications for judicial review and unforeseen costs and delays during the hearing process) and leads to additional costs e.g. land holding costs, unrealised profits	General public, Auckland Council, private sector	Unknown, although potentially medium.
The provision of a streamlined plan development process for Auckland creates expectations of precedent in other parts of New Zealand	Central government	Unable to quantify, although potentially medium.
The requirement for the Chairperson to commission an independent review of the section 32 analysis before the Unitary Plan can be notified leads to a 'loop' of modifications to the analysis and creates additional cost	Auckland Council	Unable to quantify, although potentially medium.
Conflict between councillors and independents decision-makers results in delays or affects the quality of recommendations	Auckland Council, general public	Unable to quantify, although potentially low.
Auckland Council, in its final decisions, significantly departs from the recommendations of the hearings panel, which leads to dissatisfaction with the process	Auckland Council, general public, private sector	Unable to quantify, although potentially high.
NET IMPACT: Although it is difficult to accurately quantify and therefore assess the impacts of this option, we consider that it is likely to result in a net benefit. It is likely to result in reduced costs through the reduction in appeals on the Unitary Plan. We consider that the greater independence and rigour attached to the hearing process may result in more robust planning decisions.		
Option 3) Special purpose entity model		
Costs		
Costs of adoption of a new process including additional training and work to prepare new procedures, and educating the general public and staff around the new process	Submitters and Auckland Council	Unknown, although potentially medium. Requirement to implement new procedures around mediation could lead to transitional costs.
Costs of additional pre-hearing mediation	Submitters and Council	Unknown, although potentially high. Mediation could require similar preparation and representation to Council hearing process, adding substantial cost.
Costs to resource more formal hearings process	Auckland Council, submitters	Unknown, although potentially medium.

Costs to set up, operate and monitor special purpose entity	Central government (although a significant part of these would be likely to be cost-recovered from Auckland Council)	Unknown, although potentially high.
Benefits		
Reduced time and cost of developing the Unitary Plan through lower likelihood of appeals; and improved ability and experience of staff to run complex submission and hearings process	Auckland Council, general public and business interests	Unknown, although potentially high. An Auckland Council estimate of the appeal costs under the status quo (based on previous appeal costs for the Hauraki Gulf Islands District Plan) is \$5.2 million based on 100 appeals. The number of appeals on the Unitary Plan can be estimated to be more than this.
Reduced consenting costs resulting from an up to date and coherent Auckland planning framework	General public and business interests	Unknown, although potentially medium.
Reduced opportunity costs through quicker implementation of the Auckland Plan e.g. results in more business development and provision of housing (faster realisation of planning outcomes)	General public and business interests	Unknown, although potentially high.
Efficiencies created by bringing together the relevant skills of staff from the Auckland Council, the EPA and the Environment Court registry	Auckland Council, central government	Unable to quantify, although potentially low.
Greater stakeholder confidence in decisions due to operation of independent entity	Stakeholders	Unknown, although potentially low.
Risks		
The process fails to deliver the time benefits it is designed to do and leads to costs e.g. land holding costs, unrealised profits	General public, Auckland Council, private sector	Unknown, although potentially medium.
The provision of a streamlined plan development process for Auckland creates expectations of precedent in other parts of New Zealand	Central government	Unable to quantify, although potentially medium.
The requirement for the Chairperson to commission an independent review of the section 32 analysis before the Unitary Plan can be notified leads to a	Auckland Council	Unable to quantify, although potentially medium.

'loop' of modifications to the analysis and creates additional cost		
Conflict between councillors and independents decision-makers results in delays or affects the quality of recommendations	Auckland Council, general public	Unable to quantify, although potentially low.
NET IMPACT: Although it is difficult to accurately quantify and therefore assess the impacts of this option, we consider that it is likely to result in a net benefit. It is likely to result in reduced costs through the reduction in appeals on the Unitary Plan. We consider that the greater independence and rigour attached to the hearing process may result in more robust planning decisions, and the separation of the planning function may provide greater confidence to some stakeholders.		
Option 4) Calling-in to the EPA		
Costs		
Costs of adoption of a new process including additional training and work to prepare new procedures, and educating the general public and staff around the new process	EPA, submitters and Auckland Council	Unknown, although potentially low. EPA processes have been used before for nationally significant applications, so there will be some established processes which will reduce duplication of cost.
Costs of EPA administration of the process (including costs of hearing panel, Chairperson)	Central government (although a significant part of these would be likely to be cost-recovered from Auckland Council)	Unknown, although potentially high. Average costs incurred by the EPA for a single nationally significant proposal are approximately \$500,000 (the Unitary Plan is likely to be significantly more costly).
Costs to resource more formal hearings process	Auckland Council, submitters	Unknown, although potentially high. In addition to
Benefits		
Reduced time and cost of developing the Unitary Plan through lower likelihood of appeals; and improved ability and experience of staff to run complex submission and hearings process	Auckland Council, general public and business interests	Unknown, although potentially high.
Reduced consenting costs resulting from an up to date and coherent Auckland planning framework	General public and business interests	Unknown, although potentially medium.
Reduced opportunity costs through quicker implementation of the Auckland Plan e.g. results in more business development and provision of housing (faster realisation of planning outcomes)	General public and business interests	Unknown, although potentially high.

Independent decision makers, increased decision-making expertise and greater robustness would lead to greater stakeholder confidence in decisions	Stakeholders	Unable to quantify, although potentially low.
Reduced costs for Auckland Council in plan development as the EPA will absorb some of the costs	Auckland Council	Unknown, although potentially medium.
Risks		
The process fails to deliver the time benefits it is designed to do and leads to costs e.g. land holding costs, unrealised profits	General public, Auckland Council, private sector	Unknown, although potentially medium.
Damage to the relationship between the Council and Government because of a perceived lack of confidence in Council	Auckland Council, central government	Unable to quantify, although potentially high.
Duplication of effort between the Council and EPA Board of Inquiry process due to separation of plan-making and decision-making	Auckland Council, EPA	Unable to quantify, although potentially low.
Reduced accountability of decision-makers through transfer of decisions to an independently appointed Board of Inquiry	Auckland Council, general public	Unable to quantify, although potentially medium.
Loss of local knowledge from decision-makers leads to inappropriate decisions	Auckland Council, general public, stakeholders	Unable to quantify, although potentially low.
Reduced participation of lay submitters because they are intimidated by the process	General public	Unable to quantify, although potentially low.
Reduced incentive for the Council to engage with submitters and participants if it feels it has 'lost control' of the process	General public, private sector	Unable to quantify, although potentially medium.
The process results in decisions that the Council cannot implement or agree to	Auckland Council	Unable to quantify, although potentially medium.
<p>NET IMPACT: Although it is difficult to accurately quantify and therefore assess the impacts of this option, we consider that the option is likely to result in a net cost. It offers benefits in terms of time savings to prepare the plan, and reduced costs. However, it presents a significant risk of a lack of Auckland Council ownership over the process, which may lead to overall poor outcomes. There is also a risk of duplication of processes between Auckland Council and the EPA.</p>		

Table 4: Assessment of options against objectives

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

Assessment against objectives ⁹					
Greater central government direction on resource management	Economic efficiency of implementation and environmental integrity	Avoid duplication of processes under the RMA and other statutes	Efficient and improved participation of Māori in resource management	Ensure that principles of good regulatory practice are met	Overall weighted score
1) Council-run model					
=	=	✓	=	x	=
2) Combined council-independent model					
✓	✓	✓	✓	✓	✓
3) Special purpose entity model					
=	✓	✓	=	x	=
4) Calling-in to the EPA					
x	=	✓	x	x	x

On the basis of the above, option 2 is the preferred option.

Consultation

Time constraints meant consultation was limited to central government departments and agencies, and the Council. In order to ensure policy options were workable, analysis was also tested with a representative sample of stakeholders and expert practitioners.

Central government departments and agencies

Targetted consultation with the following government departments and agencies took place during August 2012 through a series of meetings: Department of Conservation, Ministry of Transport, Department of Internal Affairs, Treasury, Ministry of Business, Innovation and Employment, New Zealand Transport Agency, Ministry of Health, the Environmental Protection Authority, Te Puni Kokiri, Ministry of Justice.

The majority of feedback received was generally supportive of the approach, however the Department of Conservation raised significant concerns about the limiting of appeal rights to points of law only and do not support this policy. The proposal has not been altered to address this concern as in order to address the problems – reduce the time and cost it takes to make the Unitary Plan operative and incentivise ‘front-end engagement in plan development – the limiting of appeals is a necessary component.

⁹ Key: ✓✓✓ indicates substantially better than status quo; ✓✓ better than status quo; ✓ slightly better than status quo; = no change compared to status quo; x slightly worse than status; xx worse than status quo; xxx substantially worse than status quo

Consultation with the Auckland Council

The Ministry for the Environment consulted with the Council throughout policy development. The Ministry and Council jointly agreed the purpose of a streamlined process is to produce a high quality unitary plan for the Auckland region and that any new process needs to:

- demonstrate that it ensured adequate engagement and reflection of stakeholders interests in the preparation of the plan
- safeguard natural justice, and result in robust and transparent decision-making.

The Council has indicated that it is largely supportive of the preferred option.

Testing with stakeholders and expert practitioners

Workshops were held to test policy options in confidence with a representative sample of stakeholders and expert practitioners, including:

- legal practitioners,
- planning practitioners, and
- an independent commissioner.

Conclusions and recommendations

We developed four options for a streamlined process as alternatives to the status quo. Common to all options is a statutory deadline for making the plan operative and limiting appeals to points of law to the High Court only. The critical difference between the options is the degree to which the Council maintains an independent role in decision-making.

We consider, as indicated above in the summary impact assessment, that Option 2 is likely to deliver the greatest benefits over the status quo and best meet the assessment criteria. As highlighted in the summary impact assessment all options provide greater efficiency through reduced transaction costs and less possibility for decisions to be re-litigated. Option 2, however, also ensures there is an appropriate balance of local representation while providing confidence of:

- a well-managed, thorough submissions and hearing process which ensures participants' views have been taken into account
- plan decisions that are robust, evidence-based and appropriately take into account the views of submitters while.

Option 2 also has a better risk profile than the other options considered above. The provision of external expertise can be assumed to provide greater assurance to stakeholders over the robustness of a streamlined process than one that relies solely on the Council itself (option 1), or perceptions over the exclusion of Council or local decision-making as reflected in options 3 and 4.

Implementation

See Part 1.

Monitoring, evaluation and review

Consideration is being given to the Ministry commissioning a review of the development of the Auckland Unitary Plan at various stages of the process. The details of this review are yet to be worked through but could include:

- monitoring how long each stage of the process takes
- interviewing a wide group of people (e.g. lay people, developers, iwi) party to the process in order to gauge and understanding of how successful it was
- monitoring the cost of each stage/component of the process (e.g. costs of mediation to the Council)

B. Section 32

Status quo and problem definition

Section 32 requires that any proposed regional policy statement, regional and district plan, plan change (including any private plan change), variation, national environmental standard, and national policy statement must be accompanied by a section 32 evaluation that assesses both:

- the extent to which each objective is the most appropriate way to achieve the purpose of the RMA
- whether the proposed policies and methods are the most appropriate way in which to achieve the objectives in terms of their efficiency and effectiveness

The assessment required under section 32 is released as part of the relevant local authority's decision. It is an important insight into the decision-making process for participants and the wider public, and is intended to provide rigour in decision-making practices. Subsequently, it also provides an instrument whereby decision-makers can be held to account.

Section 32 analysis and reporting has been a consistent area of focus for previous reviews of the RMA, and of Environment Court decisions. A 2009 TAG report (undertaken as part of the first phase of RMA reforms) identified a concern that practice under section 32 has not been meeting the intent of the section, and had high associated costs to councils. Following this, a 12-member evaluation group including regional councils, territorial authorities, central government agencies and major applicants/submitters considered section 32 in terms of both problem identification and possible solutions.

The conclusion of the group was that section 32 is not fundamentally flawed. However, it did conclude that legislative and practice improvements could be made to improve quality and ensure a more consistent interpretation. This advice was not progressed due to other priorities taking precedence.

Problems with section 32

Lack of direction in section 32

While section 32(4) does require that "an evaluation must take into account (a) the benefits and costs of policies, rules or other methods ..." it is silent on the methodologies to be employed. It does not specifically require quantitative economic evaluation of benefits and costs, which may be particularly important where an issue may have a significant economic impact on communities (whether positive or negative). Case law has been ambiguous about the level of importance to be placed on economic analysis.

Section 32 also fails to require consideration of the full hierarchy of planning instruments such as national policy statements, regional policy statements, and non-statutory documents such as iwi management plans, or growth strategies. This reduces the effectiveness of those other documents, and increases the likelihood of decisions inconsistent with agreed high-level objectives, including national objectives.

Variable quality and focus of some analysis under section 32

Some councils approach section 32 as an iterative 'process' and genuinely use it as a core part of the planning toolbox. Conversely, other councils appear to approach section 32 more as a 'reporting requirement' to be undertaken after planning decisions have already been made.

Section 32 does not explicitly require evaluations to be commensurate with the relative importance of an issue. The quality and rigour of analysis, and the level of detail in section 32 evaluations, varies considerably across the country for similar issues. There is a general lack of clarity or consistency of how much detail is appropriate for specific matters¹⁰.

Variation is due to the difference in the scale and complexity of the issues being considered, as well as differing levels of council resourcing, staff competence and experience, and councillor competence.

Capacity, capability and resourcing

There are issues with the capacity, capability and resourcing of council staff carrying out analysis under section 32. These issues include:

- poor capability and experience of council staff to understand and assess the nature and complexity of the policy or plan issue under consideration
- variable willingness of councils to invest in section 32 evaluation due to resource limitations
- poor understanding how to undertake complex analysis, including economic cost-benefit analysis
- poor decision-making capability of elected members.

The problems identified above, and potential solutions described in this RIS are most relevant to the following objectives and criteria for resource management reform:

- Greater central government direction on resource management,
 - Increase national consistency of resource management tools, processes and decision-making
 - Provide clear direction for end users that minimises uncertainty, including interpretation and implementation
- Economic efficiency of implementation and environmental integrity
 - Maximise economic efficiency of implementation of resource management tools, processes and decisions (practice or regulatory efficiency)
 - Provide decision-making processes that enable emerging issues and regional changes to be dealt with at least cost
 - Minimise the time taken to finalise resource management planning and consenting decisions
 - Ensure it is easy for the community and stakeholders to be meaningfully engaged in resource management processes

¹⁰ Harrison Grierson (2009) Review of Section 32 of the Resource Management Act 1991, Stage 1 - Problem Definition (pg 9).

Regulatory impact analysis

Policy options

We have considered four complementary interventions that aim to address the problems identified with section 32 analysis:

1. legislative amendments to clarify the requirements of section 32 analysis
2. a mix of short-term and more comprehensive initiatives to improve council practice (training and guidance)
3. a continuing professional development programme for section 32 decision-makers
4. greater central government involvement and oversight of section 32 analysis.

Table 1: Options

Option	Key Features
1. Legislative change	Amend the RMA to require: <ul style="list-style-type: none"> • the detail of the section 32 evaluation to correspond with the scale and/or significance of the plan or policy change. • an economic analysis where significant costs/benefits to a community are likely. • evaluation of any proposed plan or policy change against both higher-level statutory documents, such as NPSs and RPSs, and non-RMA documents e.g. iwi management plans.
2. Guidance and training	Provision of specific and detailed section 32 guidance and training, including: <ul style="list-style-type: none"> • a manual for practitioners • issue-specific section 32 report templates • guidance on specific topics e.g. how to quantify the costs and benefits of a plan or policy change, limit setting for water allocation plans, and how to assess the extent to which council provisions address the issues of significance to iwi.
3. Professional development	<ul style="list-style-type: none"> • Mandatory section 32 training as a continuing professional development requirement for those who undertake or lead section 32 evaluations. • An audit or practitioner accreditation process run by either the Ministry or an external body.
4. Government oversight	Increased role for the Ministry or EPA in an auditing or oversight role. Possible components of this intervention include: <ul style="list-style-type: none"> • a review structure analogous to the Regulatory Impact Assessment Team (RIAT) review process within Treasury • random audits of section 32 evaluations against quality and comprehensiveness guidelines • a more directive audit and oversight role of section 32 evaluations i.e. the Ministry or EPA would have 'sign-off' on evaluations prior to plans being notified • inclusion of section 32 considerations in the RMA performance monitoring framework, currently under development by the Ministry.

Summary impact assessment

Table 2: Summary impact assessment

Impact	Incidence	Magnitude
1) Legislative change amendment 1: A requirement for the detail of the section 32 evaluation to correspond with the scale and/or significance of the plan or policy change.		
COSTS		
<ul style="list-style-type: none"> May only serve to codify existing case law. Will increase workload on councils 	Councils	Low
BENEFITS		
<ul style="list-style-type: none"> May help to improve section 32 analysis by providing an explicit mandate for the detail and rigour of evaluations to correspond with the significance and potential costs of the related policy or plan change. Specific phrasing has the advantage of already having been considered by the Courts. 	Councils, stakeholders	Medium (unquantifiable but will lead to more in depth analysis in significant situations)
RISKS		
<p>Risks of legislative change in the absence of other interventions include:</p> <ul style="list-style-type: none"> a lack of suitable economic capability within councils will mean that additional requirements are not followed, or are inadequately implemented variability in the methodology and assumptions used in economic cost-benefit analysis will not provide greater clarity around decision-making poorly implemented economic analysis could result in inadequate consideration of less tangible factors that are harder to quantify or monetise additional requirements, poorly implemented, may slow down the plan-making process an increase in the risk of legal challenge to planning decisions. 	Councils	High if not accompanied by additional interventions to improve practice
NET IMPACT: Minimal benefit over status quo unless practice-related options are also implemented.. Councils are unlikely to implement new legislation as intended without greater central government involvement and no sanctions available.		
2) Legislative change amendment 2: A requirement to undertake an economic analysis where significant costs/benefits to a community are likely.		
Costs		
<ul style="list-style-type: none"> The trigger for when the economic analysis would be required would be difficult to codify clearly. Would increase the potential for challenges to the section 32 evaluation. May inappropriately reduce the significance of environmental and social factors in the 	Councils, proponents of private plan changes	High where lack of experience with cost-benefit methodology exists

Impact	Incidence	Magnitude
overall evaluation of 'appropriateness' (the court has considered the questions of economic analysis and its role in section 32 evaluation).		
BENEFITS		
<ul style="list-style-type: none"> Would require a more rigorous section 32 evaluation to be undertaken where the costs of a policy or plan change are likely to be significant, and any decision to proceed with a policy or plan proposal, despite high costs, would theoretically be more fully considered and explained. 	Stakeholders	Medium – not quantifiable but would clearly require cost-benefit analysis which would increase rigour
RISKS		
See above	Councils	High if not accompanied by additional interventions to improve practice
NET IMPACT: Minimal benefit over status quo unless practice-related options are also implemented. Councils are unlikely to implement new legislation as intended without greater central government involvement and no sanctions available.		
3) Legislative change amendment 3: <i>Introduce a requirement within section 32 to evaluate any proposed plan or policy change against both higher-level statutory documents, such as NPSs and RPSs, and non-RMA documents e.g. iwi management plans.</i>		
COSTS		
<ul style="list-style-type: none"> Will increase workload on councils 	Councils	Low – councils should largely be doing this anyway
BENEFITS		
<ul style="list-style-type: none"> Would provide more rigour, and provide an explicit record of statutory compliance with those relevant higher-level documents. 	Stakeholders	High – will provide greater transparency and ensure councils are taking a greater range of matters into account in decision making
RISKS		
See above	Councils	High if not accompanied by additional interventions to improve practice
NET IMPACT: Minimal benefit over status quo unless practice-related options are also implemented.. Councils are unlikely to implement new legislation as intended without greater central government involvement and no sanctions available.		
4) Guidance and training:		
COSTS		
<ul style="list-style-type: none"> Guidance and training would have resourcing implications for government. This would be ongoing to keep best practice methods and techniques up to date to reflect evolving resource management challenges and issues. 	Ministry for the Environment	Moderate – depending on development of a detailed work plan for greater guidance and training (not scoped yet)
BENEFITS		
<ul style="list-style-type: none"> Guidance and training would help section 32 evaluations to be better targeted to the scale and extent of the plan or policy 	Councils, stakeholders	High - targeted, direct assistance would allow many of the high priority areas of

Impact	Incidence	Magnitude
<p>change being considered.</p> <ul style="list-style-type: none"> Guidance would provide better support to those councils with limited resources or experience. Could be developed with assistance from councils that have demonstrated greater capacity, thereby increasing the application with little additional cost to the Ministry. Could offer lessons for developing a longer term and more comprehensive training and guidance programme for 2013 and beyond. 		<p>weakness to be dealt with directly.</p> <p>High - would increase transparency of analysis and decision making</p>
RISKS		
Not possible to guarantee council willingness to engage, so reliant on voluntary participation	Councils	<p>Medium – council involvement will occur if an effective package of training and guidance is put together.</p> <p>Best likelihood of successful implementation would occur in conjunction with other interventions (legislative change)</p>
NET IMPACT: More active involvement by central government with councils would have a beneficial impact through increasing capability and understanding.		
5) Professional Development		
COSTS		
<ul style="list-style-type: none"> This would require considerable effort and funding (this has not been assessed to date). 	Ministry for the Environment	<p>Medium – would be a new approach from government, albeit with similarities to other programmes (e.g. Making Good Decisions) so would require considerable design / implementation.</p>
BENEFITS		
<ul style="list-style-type: none"> Could provide significant advantages in terms of increasing competence and ongoing training for key council staff. Benefits of similar initiative (Making Good Decisions) have been demonstrated through improved decision making in consent / planning matters. 	<p>Councils</p> <p>Stakeholders</p>	<p>Medium - Professional development would help ensure quality from decision makers, but would need to ensure it was comprehensive enough to filter down through other staff and decision makers within councils.</p>
RISKS		
Professional development on its own doesn't guarantee quality of analysis – could still have inadequate section 32 reports without government having an oversight and audit role.	Government	High – would not be a stand-alone intervention
NET IMPACT: If implemented alongside other interventions could increase effectiveness of overall package, but if considered as a stand-alone intervention, net benefit would be reduced.		

6) Government oversight		
COSTS		
<ul style="list-style-type: none"> Increasing the degree of central government involvement in section 32 evaluation would have significant resourcing implications for government. This would be influenced by the relative comprehensiveness of the auditing. A random sample approach to auditing would have the benefit of limiting costs, but would also limit its effectiveness. 	Central government	High – would be a role not currently undertaken by central government, so depending on the degree of oversight to be provided, could be a significant undertaking.
BENEFITS		
<ul style="list-style-type: none"> Benefits of a more directive approach would extend beyond section 32; arguably they should result in better planning and better environmental outcomes. Would likely increase the value from measures to improve practice. 	Councils, stakeholders	High – depending on the level of increased oversight and monitoring, and the role of central government in approving section 32 evaluations or plans. Could be highly beneficial overall.
RISKS		
<ul style="list-style-type: none"> A government audit or review role may not be especially effective unless there is consequence associated with it. 	Central government	High – without sanctions or a signoff role, overview/ review would be of limited effectiveness
NET IMPACT: Value would be correlated to the degree of involvement and ability to impose sanctions based on council compliance with section 32 requirements		

Table 3: Assessment of options against objectives

Assessment against objectives					
Greater central government direction on resource management	Economic efficiency of implementation and environmental integrity	Avoid duplication of processes under the RMA and other statutes	Efficient and improved participation of Māori in resource management	Ensure that principles of good regulatory practice are met	Overall weighted score
Option 1) Legislative change					
✓	✓	~	✓	✓✓	✓
Option 2) Guidance and Training					
✓✓	✓	~	✓✓	✓✓	✓✓
Option 3) Professional Development					
✓✓	✓	~	~	✓✓✓	✓✓
Option 4) Government Oversight					
✓✓✓	✓✓	~	✓	✓✓	✓✓

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

Consultation

The analysis contained within this document is based in part on a February 2010 paper prepared for the Ministry in response to concerns raised by a Technical Advisory Group appointed by the Minister. This paper was prepared with the guidance of a 12-member evaluation group including regional councils, territorial authorities, government agencies and some key applicants/submitters. Consequently, this advice represents a broad sample of the views of these groups.

Other government agencies have not been consulted in the preparation of this briefing.

Conclusions and recommendations

It is recommended that legislative change is considered together with the practice-focused interventions, rather than in a stand-alone capacity

We consider, as indicated above in the summary impact assessment that as a package these options, which are substantially different with different strengths and weaknesses, offer net gains over the status quo and are considered to be best meet the most relevant assessment criteria.

As identified in the summary impact assessment, legislative change on its own is unlikely to improve section 32 practice, and may even result in poorer outcomes. Issues with the quality of section 32 reporting are symptomatic of wider concerns about local authority decision-making capability and processes under the RMA. We therefore recommend that any legislative change be considered together with the other measures identified above to improve the capability of local authorities to undertake high-quality analysis of the costs and benefits of proposed policies and actions, as part of the 2013 package of resource management reforms.

If legislative change is to be pursued in 2012, we recommend it be undertaken in combination with targeted training and guidance for councils (as a pilot) in subject areas such as quantitative economic analysis techniques, thus providing 'quick wins' that address some parts of the problems identified.

We recommend a comprehensive programme of legislative change and measures to improve practice under section 32 are progressed as part of the 2013 resource management reforms (officials' preference). Option 1, legislative change would be of relatively minor effectiveness in isolation from the other options, which seek to address practice issues within councils.

Implementation

See Part 1.

A targeted and direct pilot training and guidance programme would be developed and rolled out in advance of the legislation coming into force to ensure that councils are receiving appropriate training.

Monitoring, evaluation and review

Monitoring would be most effective through an increased central government oversight role option 4). In the absence of this, the Ministry is currently considering options for increasing monitoring of local government, albeit it broader than section 32 specifically.

C. Application of the Local Government Official Information and Meetings Act 1987 (LGOIMA) to Boards of Inquiry

This is a technical amendment to improve the clarity and workability of the Act. As such it is not subject to the detailed regulatory impact analysis that has been applied to the substantive policy issues in this RIS

Status Quo	Problem	Original policy intent (remains current objective)	Preferred option	Other options considered	Impacts	Recommendation
<ul style="list-style-type: none"> Boards of inquiry considering proposals of national significance and special tribunals under the RMA are subject to the LGOIMA. LGOIMA requires that when a board of inquiry or special tribunal holds a meeting at which a decision will be made, the meeting must be publicly notified and be open to the public unless the public is specifically 	<ul style="list-style-type: none"> Boards of inquiry can hold ten decision-making meetings, outside of the hearing. These are largely administrative meetings and the relevant decisions arising from these meetings are sent to the parties and are available on the EPA website. Many of these meetings are held at short notice to discuss a single issue and may be undertaken by teleconference. If the LGOIMA requirements were applied, these meetings would all need to be publicly notified. This would add significantly to the costs of Board of Inquiry processes, 	<ul style="list-style-type: none"> The policy intent was for the hearing only to be held in public and the application of LGOIMA has created an anomaly in the meeting requirements that apply to inquiry bodies of this type. 	<ul style="list-style-type: none"> A minor amendment to clarify that a board of inquiry under Part 6AA of the RMA or a special tribunal hearing an application for a water conservation order applications will be exempt from the meeting requirements under the LGOIMA. 	<ul style="list-style-type: none"> There are no other options to address the problem. 	<ul style="list-style-type: none"> No impact as the present practice is that boards of inquiry and special tribunals do not hold their business or administrative meetings in public. There will be no impact on the public as the public has not attended these meetings in the past. Relevant decisions arising from these meetings are sent to the parties involved and made public via the EPA website Public participation in board of inquiry and special tribunal hearing processes is separately provided for through the RMA. 	<ul style="list-style-type: none"> Proceed with preferred option.

excluded.	<p>reduce flexibility and make it more difficult for a board to meet the nine month timeframe for making decisions.</p> <ul style="list-style-type: none"> • EPA estimates the costs of public notices to advise the public of Board meetings, in the national papers, would be between \$3000 and \$10,000 per meeting. 							
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